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## **Contract Law of the People's Republic of China**

Adopted 15 March 1999 by the 2nd Session of the 9th National People's Congress.

General Provisions

### **CHAPTER I — GENERAL PROVISIONS**

#### **Article 1.**

This Law is formulated with a view to protecting the lawful rights and interests of parties, maintaining social and economic order and promoting the development of socialist modernisation.

#### **Article 2.**

In this Law, "contracts" refers to agreements defining civil rights and obligations which are concluded, amended and terminated between natural persons, legal persons or other organisations of equal status.

With respect to agreements defining status relationships, such as agreements relating to marriage, adoption and guardianship, etc, the provisions of other laws shall apply.

#### **Article 3.**

Parties to a contract shall be of equal legal status, and neither party may impose its will on the other party.

#### **Article 4.**

Parties have the right to conclude contracts of their own free will in accordance with the law, and no unit or individual may illegally interfere with the exercise of this right.

#### **Article 5.**

Parties shall observe the principle of fairness in defining their respective rights and obligations.

#### **Article 6.**

Parties shall observe the principles of honesty and trustworthiness in exercising their rights and performing their obligations.

#### **Article 7.**

Parties shall comply with laws and administrative regulations in concluding and performing contracts, they shall respect social morals, and they may not disturb the social or economic order or harm social and public interests.

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**Article 8.**

Contracts concluded in accordance with the law shall be legally binding on the parties. A party shall perform its own obligations as agreed, and it may not of its own accord alter or terminate the contract.

Contracts formed in accordance with the law shall receive the protection of the law.

**CHAPTER II — CONCLUSION OF CONTRACTS****Article 9.**

A party concluding a contract shall possess the relevant capacity for civil rights and for civil acts.

A party may authorise its agent to conclude a contract on its behalf.

**Article 10.**

Parties shall conclude contracts in writing, orally, or in some other form.

Where laws or administrative regulations stipulate the use of the written form, then the written form shall be used. Where the parties agree to use the written form, then the written form shall be used.

**Article 11.**

"Written form" refers to documents of a form such that the content of the contract may be visibly recorded, such as contract instruments, correspondence, and electronic documents (including telegrams, telexes, facsimiles, electronic data interchange and electronic mail).

**Article 12.**

The parties shall agree on the content of a contract, and in general the following matters shall be included:

- (1) the title or full name and the residence of each party;
- (2) the subject matter;
- (3) quantity;
- (4) quality;
- (5) price or remuneration;
- (6) period, place and methods of contractual performance;
- (7) liability for breach of contract; and
- (8) methods of dispute resolution.

In concluding a contract, the parties may consult model contract instruments of various kinds.

**Article 13.**

In concluding a contract, the parties shall adopt the method of offer and acceptance.

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**Article 14.**

An offer is an expression of intention to conclude a contract with another person, and the said expression of intention shall satisfy the following requirements:

(1) its content shall be concrete and precise; and

(2) it shall be stated clearly that, upon the offer being accepted by the offeree, the offeror shall be bound by his or her expression of intention.

**Article 15.**

An invitation to treat is an expression of a desire that another person makes one an offer. The mailing of a price list, an auction announcement, a call for tenders, a share prospectus, a commercial advertisement, etc, are all deemed to be invitations to treat.

Where the content of a commercial advertisement satisfies the requirements necessary for it to constitute an offer, it shall be deemed to be an offer.

**Article 16.**

An offer shall take effect when it reaches the offeree.

Where a contract is concluded through the use of electronic documents, and the recipient of the offer specifies the use of a particular system for the receipt of electronic documents, the time at which the relevant electronic document enters the said system shall be deemed to be the time at which the offer reaches the offeree; where the recipient has not specified the use of a particular system, then the first time at which the electronic document enters any of the recipient's systems shall be deemed to be the time at which the offer reaches the offeree.

**Article 17.**

An offer may be withdrawn. Notification of the withdrawal of the offer must reach the offeree before the offer reaches the offeree or at the same time that the offer reaches the offeree.

**Article 18.**

An offer may be revoked. Notification of the revocation of the offer must reach the offeree before the offeree issues notification of acceptance of the offer.

**Article 19.**

In either of the following situations, an offer may not be revoked:

(1) the offeror specifies an acceptance period or in some other way makes it clear that the offer is irrevocable; or

(2) the offeree has grounds for believing that the offer is irrevocable, and has already completed some preparatory work relating to the performance of the contract.

**Article 20.**

In any of the following situations, an offer shall cease to have effect:

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- (1) a notification that the offer has been rejected reaches the offeror;
  - (2) the offeror revokes the offer in accordance with the law;
  - (3) the period for acceptance of the offer has expired, and the offeree has not accepted the offer; or
  - (4) the offeree materially alters the content of the offer.

**Article 21.**

An acceptance is a declaration by the offeree that it agrees with the terms of the offer.

**Article 22.**

Acceptance should be effected by notification, but acceptance may also be effected by conduct in line with business practices or in accordance with the terms of the offer.

**Article 23.**

An acceptance must reach the offeror within the time period specified by the offer.

Where the offer does not specify a time period for acceptance, the following rules apply with respect to the time at which the acceptance must reach the offeror:

- (1) where the offer is made orally, it must be accepted immediately, except where the parties agree otherwise; or
- (2) where the offer is not made orally, acceptance of the offer must reach the offeror within a reasonable time period.

**Article 24.**

Where an offer is made by correspondence or telegram, the acceptance period shall be calculated from the date shown on the correspondence or the date on which the telegram is sent. Where the correspondence is not clearly dated, the said period shall be calculated from the date of the postmark recording when the said correspondence was sent. Where the offer is made by telephone, facsimile or some other form of instantaneous communication, the acceptance period shall be calculated from the time the offer reaches the offeree.

**Article 25.**

A contract is formed at the time an acceptance takes effect.

**Article 26.**

A notification of acceptance of an offer shall take effect from the time it reaches the offeror. Where it is not necessary for there to be notification of acceptance, the acceptance shall take effect from the time the conduct of accepting the offer is carried out in accordance with business practices or the requirements of the offer.

Where a contract is concluded through the use of electronic documents, the provisions of paragraph 2 of Article 16 of this Law shall apply in determining the time at which the acceptance reaches the offeror.

**Article 27.**

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An acceptance may be withdrawn. Notification of the withdrawal of the acceptance must reach the offeror before notification of the offeree's acceptance reaches the offeror or at the same time that the notification of acceptance reaches the offeror.

**Article 28.**

Where the offeree accepts the offer after the expiry of the acceptance period, then, except where the offeror immediately notifies the offeree that the said acceptance is effective, such an acceptance shall be deemed to be a new offer.

**Article 29.**

Where the offeree issues an acceptance of the offer within the acceptance period, and where under normal circumstances it would be possible for the acceptance to reach the offeror promptly, but for other reasons the acceptance does not reach the offeror until after the expiry of the acceptance period, then, except where the offeror promptly notifies the offeree that the offeror will not accept the said acceptance because of the expiry of the acceptance period, the said acceptance shall be effective.

**Article 30.**

The contents of the acceptance must be identical to the contents of the offer. Where the offeree materially alters the contents of the offer, this shall be deemed to be a new offer. Any relevant alteration to the subject matter of the contract, quantity, quality, price or remuneration, time limits on contractual performance, the place and methods of contractual performance, liability for breach of contract, and methods of dispute resolution, etc, constitutes a material alteration to the contents of the offer.

**Article 31.**

Where the acceptance makes non-material alteration to the contents of the offer, then except where the offeror immediately expresses its opposition, or the offer clearly stipulates that the offeree may not in its acceptance make any alterations to the contents of the offer, the said acceptance shall have effect, and the contents of the contract shall be in accordance with the contents of the acceptance.

**Article 32.**

Where a contract is concluded through the use of a contract document, the contract shall be concluded from the time that the two parties sign or affix their respective seals to the contract document.

**Article 33.**

Where a contract is concluded by correspondence or electronic documents, either party may, prior to the contract being concluded, request the signing of a letter of confirmation. Where this is the case, the contract shall be concluded upon the signing of the letter of confirmation.

**Article 34.**

The place at which the acceptance takes effect shall be the place at which the contract is concluded.

Where a contract is concluded through the use of electronic documents, the main place of business of the recipient of the said documents shall be deemed to be the place at which the contract is concluded; where the said recipient does not have a main place of business, the recipient's usual place of abode shall be deemed to be the place at which the contract is concluded. Where the parties agree otherwise, the parties' agreement shall have effect.

**Article 35.**

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Where a contract is concluded through the use of a contract document, the place at which the parties sign or affix their respective seals on the contract document shall be the place at which the contract is concluded.

#### **Article 36.**

Where laws and administrative regulations stipulate that the contract is to be concluded in writing, or the parties agree to conclude the contract in writing, but where the parties fail to conclude the contract in writing, and one side has already performed a major obligation under the contract, and the other party has accepted the said performance, the said contract shall be concluded.

#### **Article 37.**

Where a contract document is used to conclude a contract, and prior to signing or affixing seals on the contract document, one of the parties has already performed a major obligation under the contract, and the other party has accepted the said performance, the said contract shall be concluded.

#### **Article 38.**

Where the State, in accordance with its needs, assigns mandatory tasks or tasks relating to state orders for goods, relevant legal persons and other organisations shall conclude contracts between themselves in accordance with the rights and obligations stipulated in relevant laws and administrative regulations.

#### **Article 39.**

Where a contract is concluded through the use of standard clauses, the party proposing the standard clauses shall observe the principle of fairness in defining the rights and responsibilities of the parties, and the said party must take reasonable steps to draw the other party's particular attention to those clauses which eliminate or limit the said party's liabilities, and must, where requested by the other party, explain the effect of the said clauses.

Standard clauses are those clauses which one party drafts in advance for repeated use, and are not the subject of negotiation with the other side at the time when the contract is concluded.

#### **Article 40.**

Where a standard clause possesses one of the characteristics set out in Article 52 or Article 53 of this Law, or where the clause operates to exclude the liabilities of the party proposing the standard clause, or to increase the liabilities of the other party, or to remove important rights enjoyed by the other party, the said clause shall be without effect.

#### **Article 41.**

Where a dispute arises over the interpretation of a standard clause, the said clause shall be interpreted in accordance with the way it is usually understood. Where a standard clause is open to two or more interpretations, the interpretation which is less favourable to the party supplying the standard clause shall be adopted. Where a contract contains a standard clause and a non-standard clause that has a differing effect, the non-standard clause shall be adopted.

#### **Article 42.**

Where, in the course of concluding a contract, a party is involved in any of the following acts, which result in a loss for the other party, then the first party shall be liable to pay compensatory damages:

(1) conducting negotiations in bad faith under the false pretext of concluding a contract;

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(2) deliberately concealing important facts relevant to the conclusion of the contract or providing a false account of the situation; or

(3) other acts which violate the principles of honesty and trustworthiness.

**Article 43.**

Commercial secrets of which the parties become aware in the course of concluding a contract must not be revealed or inappropriately used, regardless of whether or not the contract is concluded. Where the said secrets are revealed or inappropriately used, and the other party sustains losses as a result, then the first party shall be liable to pay compensatory damages.

**CHAPTER III — CONTRACTUAL VALIDITY**

**Article 44.**

A contract which is concluded in accordance with the law shall take effect from the time it is concluded.

Where laws and administrative regulations provide that ratification, registration and other procedures must be completed before the contract can come into effect, such provisions shall be followed.

**Article 45.**

The parties may agree that the effectiveness of a contract is subject to certain conditions. Where the coming into effect of a contract is subject to certain conditions, the contract shall only come into effect upon the said conditions being fulfilled. Where the contract is subject to dissolution upon certain conditions being fulfilled, then upon the said conditions being fulfilled the contract shall cease to have effect.

Where a party, for its own benefit, improperly prevents the relevant conditions from being fulfilled, the said conditions shall be deemed to have been fulfilled; where a party improperly facilitates the fulfilment of the relevant conditions, the said conditions shall be deemed not to have been fulfilled.

**Article 46.**

The parties may agree to attach a time limit to the validity of a contract. With respect to a contract which only comes into effect at a certain time, the contract shall only come into effect at the said time. Where a contract is subject to termination upon the expiry of a certain time limit, then upon the expiry of the relevant time limit the contract shall cease to have effect.

**Article 47.**

Where a person with only limited capacity for civil acts concludes a contract, the said contract shall take effect upon being subsequently confirmed by the legal representative of the said person, but with respect to contracts purely of benefit to the said person, or contracts appropriate to the age, intellectual capacity, and mental condition of the said person, it is unnecessary for the legal representative of the said person to provide subsequent confirmation.

The other party to a contract for which subsequent confirmation is required may request that the said legal representative provide subsequent confirmation of the contract within one (1) month. Where the legal representative does not respond, subsequent confirmation shall be deemed to have been refused. Before the contract is subsequently confirmed, the other party, acting in good faith, has the right to revoke the contract. The revocation shall be effected by notification.

**Article 48.**

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Where a person not possessing agency power, or acting in excess of his or her authority, or acting after the termination of the agency relationship, concludes a contract in the name of the relevant principal, and the contract is not subsequently confirmed by the principal, the contract has no effect in relation to the principal, and the said person shall be held responsible.

The other party to such a contract may request that the said principal provide subsequent confirmation of the contract within one (1) month. Where the principal does not respond, subsequent confirmation shall be deemed to have been refused. Before the contract is subsequently confirmed, the other party, acting in good faith, has the right to revoke the contract. The revocation shall be effected by notification.

**Article 49.**

Where a person not possessing agency power, or acting in excess of his or her authority, or acting after the termination of the agency relationship, concludes a contract in the name of the relevant principal, and the other party has grounds for believing that the said person possesses agency power, the said agency conduct shall have effect.

**Article 50.**

Where a legal person or the legal representative or responsible person of some other organisation concludes a contract in excess of his or her authority, except where the other party knows or ought to know that the said person is acting in excess of his or her authority, the said act of representation shall have effect.

**Article 51.**

Where a person without power of disposition disposes of the property of another person, and where the person with the relevant power provides subsequent confirmation or the person who lacks the power of disposition obtains the power of disposition after concluding the contract, the said contract shall have effect.

**Article 52.**

In any one of the following situations, a contract shall be without effect:

- (1) one party concludes the contract through the use of fraudulent or coercive means, causing detriment to the interests of the State;
- (2) the contract involves a malicious conspiracy which is detrimental to the interests of the State, a collective or a third party;
- (3) illegal intentions are concealed beneath an appearance of legality;
- (4) there is detriment to social and public interests; or
- (5) the mandatory provisions of laws and administrative regulations are violated.

**Article 53.**

The following kinds of exemption clauses in a contract shall have no effect:

- (1) clauses relating to personal injuries sustained by the other party; and

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(2) clauses relating to property losses sustained by the other party either because of the first party's deliberate acts or its gross negligence.

**Article 54.**

A party has the right to request that the people's court or an arbitration body alters or nullifies the following contracts:

- (1) one which was concluded as a result of a serious misunderstanding; or
- (2) one which was clearly unfair at the time it was concluded.

Where one party, through the use of fraudulent or coercive means or by taking advantage of the other party's difficulties, leads the other party to conclude a contract contrary to his or her true intentions, the party suffering detriment has the right to request that the people's court or an arbitration body alters or nullifies the said contract.

Where a party requests alteration of the contract, the people's court or the arbitration body may not nullify the said contract.

**Article 55.**

In either of the following situations, the right to revoke the contract will be lost:

- (1) the party with the right to revoke has failed to exercise this right within one (1) year from the date on which the said party knew or ought to have known of the circumstances out of which the right to revoke arose; or
- (2) after the party possessing the right to revoke has become aware that the right to revoke has arisen, the said party, through a clear declaration or by his or her conduct, waives the right of revocation.

**Article 56.**

Contracts that are invalid or have been revoked possess no legal binding force ab initio. Where a contract is invalid in part, but the invalidity of the said part does not affect the validity of the other parts of the contract, then these other parts will still be valid.

**Article 57.**

A contract's invalidity, revocation or termination does not affect the effectiveness of those clauses in the contract relating to methods of dispute resolution which exist independently.

**Article 58.**

After a contract has been declared invalid or revoked, all property obtained by reason of the said contract shall be returned; where the property cannot be returned or there is no need to return it, compensation shall be paid on the basis of the depreciated value of the property. A party that is at fault is liable to compensate the other party for its resulting losses, and where both parties are at fault, then each party shall bear the relevant liability respectively.

**Article 59.**

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Where the contract involves a malicious conspiracy, and is detrimental to the interests of the State, a collective or a third party, all property thereby obtained shall be the property of the State or shall be returned to the collective or the third party.

## **CHAPTER IV — PERFORMANCE OF CONTRACTS**

### **Article 60.**

The parties shall perform their respective obligations in their entirety in accordance with the terms of their agreement.

Parties shall observe the principles of honesty and trustworthiness, and shall perform all notification, assistance and confidentiality obligations, etc, in accordance with the nature and purpose of the contract and in accordance with business practices.

### **Article 61.**

After the contract comes into effect, where the parties have made no agreement or have not come to a clear agreement with respect to matters such as quality, price or remuneration, the place of performance, etc, they may agree on additional provisions dealing with these matters; where the parties are unable to reach agreement on such provisions, the said matters will be determined by reference to the relevant provisions of the contract or by reference to business practice.

### **Article 62.**

Where the parties have not come to a clear agreement on a relevant issue under the contract, and it is not possible to determine the issue in accordance with the provisions of Article 61 of this Law, the following provisions shall apply:

(1) Where there has been no clear agreement as to quality requirements, performance shall be in accordance with state or industry standards; where there are no state or industry standards, performance shall be in accordance with usual standards or in accordance with special standards as appropriate given the purpose of the contract.

(2) Where there has been no clear agreement as to price or remuneration, performance of payment obligations shall be in accordance with market prices at the place that the contract is performed at the time the contract is concluded; where the law requires the implementation of government fixed prices or government guiding prices, then payment shall be in accordance with the relevant provisions.

(3) Where there has been no clear agreement as to the place of performance, and payment is made in the form of money, performance shall be at the place of business of the party which is receiving the money; where payment is made in the form of real property, performance shall be at the place where the said real property is located; where payment is made in some other form, performance shall be at the place where the performing party is located.

(4) Where there has been no clear agreement as to the period of time for performance, the obligor may provide performance at any time, and the obligee may demand performance at any time, although the obligee must give the obligor any time necessary for preparation.

(5) Where there has been no clear agreement as to methods of performance, performance of obligations shall be in accordance with methods which are beneficial to the realisation of the objectives of the contract.

(6) Where there has been no clear agreement as to responsibility for the payment of expenses relating to performance, this responsibility shall be borne by the party performing the obligation.

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**Article 63.**

In relation to the implementation of government fixed prices or government guiding prices, where government prices are revised during the period for payment agreed on in the contract, the price shall be calculated in accordance with the price at the time of payment. Where the subject matter of the contract is delivered after the expiry of the deadline for payment, and prices then rise, the original price shall be paid; where the price falls, the new price shall be paid. Where the subject matter of the contract is collected or monies are paid after the expiry of the relevant deadline, and prices then rise, the new price shall be implemented; where the price falls, the original price shall be implemented.

**Article 64.**

Where the parties agree that the obligor shall perform the obligation for the benefit of a third party, but the obligor does not perform the obligation for the benefit of the said third party or does not perform in conformity with the parties' agreement, the obligor shall be liable to the obligee for breach of contract.

**Article 65.**

Where the parties agree that those obligations owed to the obligee shall be performed by a third party, but the said third party does not perform the obligation or does not perform in conformity with the parties' agreement, the obligor shall be liable to the obligee for breach of contract.

**Article 66.**

Where the parties owe obligations to one another, and there is no agreement that one obligation shall be performed first and the other subsequently, then the obligations shall be performed at the same time. A party has the right to refuse a request by the other party that it provide performance where the other party has not yet performed its obligations. A party has the power to refuse the corresponding request of the other party to provide performance where the other party has performed its obligation in a manner not in conformity with the parties' agreement.

**Article 67.**

Where the parties owe obligations to one another, and where one obligation is to be performed first and the other subsequently, then where the party with the obligation to provide initial performance has not performed its obligation, the party with the obligation to provide subsequent performance may refuse the request of the other party to provide performance. Where the party with the obligation to provide initial performance has performed its obligation in a manner not in conformity with the parties' agreement, the party with the obligation to provide subsequent performance may refuse the corresponding request of the other party to provide performance.

**Article 68.**

Where the party with the obligation to provide initial performance has reliable evidence which proves that one of the following situations exists with respect to the other party, the said party may suspend performance:

- (1) there has been a serious decline in the state of the other party's business;
- (2) property has been transferred or funds have been secretly withdrawn in an effort to evade obligations;
- (3) the other party has lost its commercial reputation; or
- (4) there are other circumstances which indicate that the party has lost or has probably lost its ability to perform its obligations.

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If the said party suspends performance without reliable evidence, it shall be liable for breach of contract.

**Article 69.**

Where a party suspends performance in accordance with the provisions of Article 68 of this Law, it shall immediately notify the other party. Where the other party provides an appropriate guarantee, the said party shall resume performance. After performance has been suspended, and the other party has not regained its capacity to perform its obligations or provided an appropriate guarantee within a reasonable time, the party which has suspended performance may dissolve the contract.

**Article 70.**

Where an obligee which is divided into smaller entities, is involved in a merger or changes its place of business, and fails to notify the obligor, thus making it difficult for the obligor to perform its obligations, the obligor may suspend performance or lodge the subject matter of the contract.

**Article 71.**

The obligee may refuse performance of an obligation by the obligor ahead of schedule, except where performance of an obligation ahead of schedule is not detrimental to the obligee's interests.

Where the obligee incurs increased expenses as a result of the obligor performing its obligations ahead of schedule, these added expenses shall be borne by the obligor.

**Article 72.**

The obligee may refuse partial performance of an obligation by the obligor, except where partial performance is not detrimental to the obligee's interests.

Where the obligee incurs increased expenses as a result of the obligor providing partial performance of an obligation, these added expenses shall be borne by the obligor.

**Article 73.**

Where the obligee sustains losses due to the obligor neglecting to exercise his or her matured obligatory rights, the obligee may make a request to the people's court that the obligee be subrogated in his or her own name to the obligor in the obligor's exercise of its claims, except where the obligor enjoys the said obligatory rights personally.

The scope within which the right of subrogation may be exercised shall be no greater than the scope of the obligatory right enjoyed by the obligee. Necessary expenses incurred by the obligee in exercising the right of subrogation shall be borne by the obligor.

**Article 74.**

Where the obligee sustains losses due to the obligor abandoning his or her matured obligatory rights or transferring property without providing compensation, the obligee may petition the people's court to nullify the obligor's conduct. Where the obligee sustains losses due to the obligor transferring property at a low and clearly unreasonable price, and the transferee of the property is aware of the relevant circumstances, the obligee may also petition the people's court to nullify the obligor's conduct.

The scope within which the power of annulment may be exercised is limited to the scope of the obligatory right enjoyed by the obligee. Necessary expenses incurred by the obligee in exercising the right of annulment shall be borne by the obligor.

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**Article 75.**

The power of annulment shall be exercised within one (1) year from the date on which the obligee knows or ought to know of the circumstances out of which the power of annulment has arisen. Where the obligee does not exercise the power of annulment within five (5) years from the date on which the relevant conduct of the obligor has occurred, the said power of annulment shall be lost.

**Article 76.**

After the contract takes effect, a party may not use any change in its name or title or any change in the identity of its legal representative, responsible person or the person undertaking performance as grounds for not performing its contractual obligations.

**CHAPTER V — ALTERATION AND ASSIGNMENT OF CONTRACTS****Article 77.**

The parties may alter the contract after reaching agreement through consultation.

Where laws and administrative regulations provide that ratification, registration and other procedures must be completed when a contract is altered, such provisions shall be followed.

**Article 78.**

If the content of the parties' agreed alteration to the contract is not clear, it shall be presumed that no alteration has occurred.

**Article 79.**

The obligee may assign its contractual rights to a third party in whole or in part, except in the following situations:

- (1) the rights may not be assigned because of the nature of the contract;
- (2) the parties have agreed that the rights may not be assigned; or
- (3) laws stipulate that the rights may not be assigned.

**Article 80.**

The obligee shall notify the obligor of any assignment of its rights. Where notification is not provided, the assignment shall have no effect in relation to the obligor.

Notification of the assignment of rights by the obligee may not be revoked, except with the consent of the assignee.

**Article 81.**

Where the obligee assigns its rights, the assignee shall obtain all accessory rights related to the main obligatory rights, except where the obligee personally enjoys the said accessory rights.

**Article 82.**

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After the obligor receives notification of the assignment of the obligatory rights, any defences that the obligor has against the assignor may be raised against the assignee.

**Article 83.**

When the obligor receives notification of the assignment of obligatory rights, the obligor may request that its obligations to the assignee be offset against the obligatory rights which the obligor has against the assignor and which are due before or at the same time as the assigned obligations owed by the obligor to the assignee.

**Article 84.**

Where the obligor assigns its contractual obligations in whole or in part to a third party, the consent of the obligee must be obtained.

**Article 85.**

Where the obligor assigns its obligations, any defences available to the original obligor as against the obligee may be raised by the new obligor.

**Article 86.**

Where the obligor assigns its obligations, the new obligor must assume all accessory obligations related to the main obligation, except where the said associated obligations are personally owed by the original obligor.

**Article 87.**

Where laws and administrative regulations provide that ratification, registration and other procedures must be completed when rights or obligations are assigned, such provisions shall be followed.

**Article 88.**

A party may, upon gaining the consent of the other party, assign to a third party all its rights and obligations under the contract in their entirety.

**Article 89.**

With respect to the assignment of rights and obligations in their entirety, the provisions of Article 79, Articles 81 to 83 and Articles 85 to 87 of this Law shall apply.

**Article 90.**

Where a party is involved in a merger subsequent to concluding a contract, the legal person or other entity created by the merger shall enjoy all rights and perform all obligations under the contract. Where a party is divided into smaller entities subsequent to concluding a contract, except where the obligee and the obligor agree otherwise, the legal person or other entity created by the division shall, with respect to its contractual rights and obligations, enjoy joint obligatory rights and be responsible for joint and several obligations.

**CHAPTER VI — TERMINATION OF CONTRACTUAL RIGHTS AND OBLIGATIONS**

**Article 91.**

In any of the following situations, contractual rights and obligations shall be terminated:

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- (1) all obligations have already been performed as agreed;
  - (2) the contract has been dissolved;
  - (3) obligations have been offset against one another;
  - (4) the obligor has lodged the subject matter of the contract in accordance with the law;
  - (5) the obligee has released the obligor from its obligations;
  - (6) all obligations and all obligatory rights under the contract are owed and enjoyed by the same person; or
  - (7) any other situation in which the law requires termination or the parties agree on termination.

**Article 92.**

After the termination of all contractual rights and obligations, the parties shall observe the principles of honesty and trustworthiness, and shall perform all notification, assistance and confidentiality obligations, etc, in accordance with business practices.

**Article 93.**

The parties may dissolve the contract after reaching agreement through consultation.

The parties may agree on certain conditions under which one party may dissolve the contract. When the said conditions for the dissolution of the contract are satisfied, the party with the right of dissolution may dissolve the contract.

**Article 94.**

The parties may dissolve the contract in the following circumstances:

- (1) the objectives of the contract cannot be realised due to force majeure;
- (2) prior to the expiry of the period for performance of the contract, one of the parties states clearly, or makes it clear from its behaviour, that it will not perform the major obligation;
- (3) one of the parties delays the performance of a major obligation, and after being called on to perform the obligation, fails to do so within a reasonable period of time;
- (4) because one of the parties delays the performance of an obligation or because of other conduct in breach of contract, the objectives of the contract cannot be realised; or
- (5) other circumstances stipulated in the law.

**Article 95.**

Where a time period for exercising the right of dissolution is stipulated by laws or has been agreed on by the parties, and where, upon the expiry of the time period, this right has not been exercised, the said right shall be extinguished.

Where a time period for exercising the right of dissolution is not stipulated by laws or has not been agreed on by the parties, and where the other side has been called upon to exercise the right but has not done so within a reasonable period of time, the said right shall be extinguished.

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**Article 96.**

Where one of the parties seeks dissolution of the contract in accordance with the provisions of paragraph 2 of Article 93, or Article 94 of this Law, the said party must notify the other party. The contract shall be dissolved from the time the notification reaches the other party. Where the other party objects to the dissolution of the contract, it may request that the people's court or an arbitration body determine the validity of the dissolution of the contract.

Where laws and administrative regulations provide that ratification, registration and other procedures must be completed when a contract is dissolved, such provisions shall be followed.

**Article 97.**

After a contract has been dissolved, the performance of any obligations which have not been performed shall be terminated; where obligations have already been performed, depending on the nature of the performance that has been provided and the nature of the contract, a party may demand that there be a return to the original state of affairs or that remedial measures be adopted, and a party may also demand compensation for any losses sustained.

**Article 98.**

The termination of contractual rights and obligations does not affect the validity of contractual clauses relating to the settlement and clearance of accounts.

**Article 99.**

Where the parties owe each other matured obligations, and the subject matter of the said obligations are items of the same kind and quality, either party may offset its obligation against the obligation of the other party, except where, in accordance with legal provisions or the nature of the contract, the offsetting of obligations is not permitted.

A party which seeks to offset obligations must notify the other party. The notification shall take effect from the time it reaches the other party. Neither conditions nor a time limit may be attached to the offsetting of obligations.

**Article 100.**

Where parties owe each other obligations, and the subject matter of the said obligations are items of different kinds or different quality, the two parties may agree, through consultation, to offset the said obligations.

**Article 101.**

In the following circumstances, where difficulties are encountered in the performance of obligations, the obligor may lodge the subject matter of the contract:

- (1) the obligee refuses to accept performance without a legitimate reason;
- (2) the whereabouts of the obligee are unknown;
- (3) the obligee has died and the identity of his or her heir has not been determined, or the obligee has lost his or her capacity for civil acts and the relevant guardian has not been determined; or
- (4) other circumstances stipulated in the law.

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Where it is impractical to lodge the subject matter of the contract, or expenses involved in the lodgement of the subject matter are too high, the obligor may auction or sell off the subject matter in accordance with the law, and lodge the income received from the sale.

**Article 102.**

After the subject matter of the contract has been lodged, the obligor shall immediately notify the obligee or the obligee's heir or guardian, unless the obligee's whereabouts are unknown.

**Article 103.**

After the subject matter of the contract has been lodged, the risk of the subject matter being damaged or lost shall be borne by the obligee. During the period of lodgement, any interest accrued in the subject matter shall revert to the obligee. The obligee shall bear the costs of the lodgement.

**Article 104.**

The obligee may at any time collect any lodged objects, but where the obligee owes matured obligations to the obligor, then the department responsible for the lodgement of the objects shall, upon the request of the obligor, refuse to allow the obligee to collect the lodged objects, prior to the obligee performing these obligations or providing a guarantee.

If the right of the obligee to collect lodged goods is not exercised within five (5) years of the date on which the goods are lodged, it shall be extinguished, whereupon the lodged goods shall revert to the State after an amount has been deducted to cover the cost of lodging the goods.

**Article 105.**

Where the obligee releases the obligor from its obligations in part or in whole, the relevant contractual rights and obligations shall terminate in part or in whole.

**Article 106.**

Where all obligations are owed and all obligatory rights are enjoyed by the same person, all contractual rights and obligations shall terminate, except where the interests of third parties are involved.

**CHAPTER VII — LIABILITY FOR BREACH OF CONTRACT**

**Article 107.**

Where one of the parties does not perform a contractual obligation, or does not perform a contractual obligation as agreed, the said party shall assume its liability for breach of contract by providing ongoing performance, adopting remedial measures, or paying compensatory damages, etc.

**Article 108.**

Where one of the parties states clearly, or makes it clear from its behaviour, that it will not perform its contractual obligations, the other party may, prior to the expiry of the period for performance, demand that the said party assume liability for breach of contract.

**Article 109.**

Where one of the parties does not make a payment or provide remuneration, the other party may demand that the said party make the payment or provide the remuneration.

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**Article 110.**

Where one of the parties does not perform a non-monetary obligation, or does not perform a non-monetary obligation as agreed, the other party may demand performance of the obligation, except in the following circumstances:

(1) it is impossible, either legally or in practice, to provide performance;

(2) compelling performance is inappropriate given the subject matter of the obligation, or the expenses associated with performance are too high; or

(3) the obligee has not demanded performance within a reasonable period of time.

**Article 111.**

Where the quality provided does not conform to agreed standards, the relevant party shall be liable for breach of contract in accordance with the parties' agreement. Where there has been no agreement or no clear agreement as to liability for breach of contract, and it is not possible to resolve the issue in accordance with the provisions of Article 61 of this Law, the party which has sustained the loss, in accordance with the nature of the subject matter and the size of the loss, may reasonably choose to demand that the other party assume its breach of contract by carrying out repairs, by exchanging, reworking or returning the relevant items, or by reducing the price charged or the remuneration received, etc.

**Article 112.**

Where one of the parties does not perform a contractual obligation, or does not perform a contractual obligation as agreed, and after the obligation has been performed or remedial measures have been adopted, the other party has still sustained other losses, compensatory damages shall be provided.

**Article 113.**

Where one of the parties does not perform a contractual obligation, or does not perform a contractual obligation as agreed, resulting in losses to the other party, the total amount of compensatory damages shall be equivalent to the total losses sustained by the other party through the breach of contract, including benefits that the other party would have been able to obtain upon the contract being performed, but this amount shall not exceed the total losses that the breaching party, at the time of concluding the contract, foresaw or should have foreseen would probably result from breach of contract.

Where business operators engage in fraudulent behaviour with respect to consumers in the provision of goods or services, they shall be liable to provide compensatory damages in accordance with the provisions of the Law of the People's Republic of China on the Protection of the Rights and Interests of Consumers.

**Article 114.**

The parties may agree that when one party breaches the contract, that party shall pay the other party a penalty of a specified amount depending on the nature of the breach, and they may also agree on a method of calculating the total amount of compensation based on the total losses sustained as a result of the breach.

Where the agreed penalty for breach of contract is less than the losses sustained, a party may request that the people's court or an arbitration body increase the said amount; where the agreed penalty for breach of contract is excessively high compared with the losses sustained, a party may request that the people's court or an arbitration body decrease the said amount in an appropriate fashion.

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If the parties agree on the payment of a penalty for late performance of an obligation, the breaching party must still perform the said obligation after it has paid the penalty.

**Article 115.**

The parties may, in accordance with the Law of the People's Republic of China on Guarantees, agree that one party pay the other party a deposit as a guarantee for the performance of a relevant obligation. After the obligor performs the obligation, the said deposit shall be offset against the price paid by the obligee or shall be returned to the obligee. Where the party which pays the deposit does not perform its own agreed obligations, it has no power to demand the return of the deposit; where the party which receives the deposit does not perform agreed obligations, it shall return twice the amount of the deposit to the other side.

**Article 116.**

Where the parties agree on the use of both a penalty for breach of contract and a deposit, and where one party breaches the contract, the other party may choose to use either the clauses relating to the penalty for breach of contract or the clauses relating to the deposit.

**Article 117.**

Where it is not possible to perform a contract due to force majeure, then, depending on the extent of the force majeure, the performing party shall be partially or wholly excused from liability, except where laws provide otherwise. Where force majeure occurs after a party has already been late in performing an obligation, the said party will not be excused from liability.

In this Law, "force majeure" means a situation which, on an objective view, is unforeseeable, unavoidable and is not able to be overcome.

**Article 118.**

Where one of the parties is unable to perform the contract due to force majeure, the said party shall immediately notify the other party in order to reduce the potential losses sustained by the other party, and the said party shall also provide evidence of the force majeure within a reasonable time.

**Article 119.**

After one of the parties has breached the contract, the other party shall take appropriate measures to prevent any increase in the losses sustained; where the other party fails to take appropriate measures, and this leads to an increase in the losses sustained, the other party may not demand compensation for these additional losses.

Any reasonable expenses paid by a party to prevent increased losses shall be borne by the breaching party.

**Article 120.**

In a case where both parties are in breach of contract, each party shall bear the corresponding liabilities respectively.

**Article 121.**

Where one of the parties breaches the contract because of the actions of a third party, the said party shall be liable to the other party to the contract for breach of contract. Any dispute between the said party and the third party shall be resolved in accordance with the provisions of laws or by agreement.

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**Article 122.**

If the conduct of one of the parties in breach of contract results in an infringement of the personal or property rights of the other party, the injured party has the right to choose to demand that the said party be liable for breach of contract in accordance with this Law, or to demand that the said party bear liability for tort in accordance with other laws.

**CHAPTER VIII — OTHER PROVISIONS****Article 123.**

Where other laws have other provisions dealing with contracts, these other provisions shall apply.

**Article 124.**

With respect to contracts which are not clearly dealt with by the Specific Provisions of this Law or by other laws, the provisions of the General Principles of this Law shall be applied, and the provisions of the Specific Provisions of this Law as well as of other laws which deal with contracts and which are most similar to the relevant contracts may also be consulted.

**Article 125.**

Where the parties are in dispute over the interpretation of clauses of the contract, the true meaning of the said clauses shall be determined on the basis of the words used in the contract, other contractual clauses of relevance, the purpose of the contract, business practices, and the principles of honesty and trustworthiness.

Where the text of the contract is concluded in two or more different languages and it is agreed that all versions will be equally effective, it shall be presumed that the words used in each version all have the same meaning. Where the words used in the different versions of the contract are not identical, then the contract shall be interpreted in accordance with its purpose.

**Article 126.**

Parties to a contract with a foreign element may nominate the law to be applied in the handling of contractual disputes, except where laws provide otherwise. Where the parties to a contract with a foreign element fail to nominate the law of the contract, the law of the country with the closest connection to the contract shall be applied.

Sino-foreign equity joint venture contracts, Sino-foreign cooperative enterprise contracts and Sino-foreign contracts for the cooperative exploitation and development of natural resources which are to be performed within the territory of the People's Republic of China shall be governed by the law of the People's Republic of China.

**Article 127.**

The administrative departments responsible for industry and commerce as well as other responsible administrative departments shall, within the scope of their respective authority, and in accordance with the provisions of laws and administrative regulations, be responsible for the supervision and handling of illegal conduct involving the use of contracts to the detriment of state or public interests; where the relevant conduct constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

**Article 128.**

The parties may resolve contractual disputes through conciliation or mediation.

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If the parties are unwilling to participate in conciliation or mediation, or if the conciliation or mediation is unsuccessful, the parties may, in accordance with an arbitration agreement, apply to an arbitration body for arbitration. Parties to a foreign-related contract may, in accordance with an arbitration agreement, apply to a Chinese arbitration body or some other arbitration body for arbitration. Where the parties have not concluded an arbitration agreement or their arbitration agreement is invalid, they may file a suit with the people's court. The parties shall implement any judgments, arbitral awards or mediation agreements which possess legal effect; where a party refuses to implement the same, the other party may petition the people's court to enforce the relevant judgment, award or agreement.

**Article 129.**

There is a four (4) year time limit on filing a lawsuit or applying for arbitration in relation to a dispute arising from an international contract for the sale of goods or a contract for the import and export of technology, and this time limit is calculated from the date on which the party knows or ought to know that there has been an infringement of its rights. The time limit for filing a lawsuit or applying for arbitration in relation to disputes arising from other types of contracts shall be in accordance with the provisions of relevant laws.

Specific Provisions

**CHAPTER IX — PURCHASE AND SALES CONTRACTS**

**Article 130.**

Purchase and sales contracts are contracts whereby the seller transfers ownership of the subject matter of the contract to the purchaser, and the purchaser pays a sum of money.

**Article 131.**

Apart from the matters referred to in the provisions of Article 12 of this Law, a purchase and sales contract may also include clauses dealing with methods of packaging, inspection standards and methods, methods of settling accounts, the language of the contract and its effectiveness, etc.

**Article 132.**

The seller must own the subject matter sold or have the power to dispose of the said subject matter.

Where the provisions of laws and administrative regulations prohibit, or place limits on, the transfer of the said subject matter, these provisions shall be followed.

**Article 133.**

Ownership of the subject matter is transferred from the moment that the subject matter is delivered, except where laws provide otherwise or the parties agree otherwise.

**Article 134.**

The parties may agree in the contract that where the purchaser does not provide payment or does not perform some other obligation, the seller shall retain ownership of the subject matter.

**Article 135.**

The seller shall perform its obligation to deliver the subject matter to the purchaser or to deliver a document entitling the bearer to collect the subject matter, and the seller shall also perform its obligation to transfer ownership of the subject matter.

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**Article 136.**

The seller must deliver, in addition to a document for the collection of the subject matter, any relevant documents and other materials in accordance with the parties' agreement or business practice.

**Article 137.**

With respect to the sale of subject matter containing intellectual property rights, such as computer software, etc, the intellectual property rights contained in the said subject matter shall not belong to the purchaser, except where laws provide otherwise or the parties agree otherwise.

**Article 138.**

The seller shall deliver the subject matter before the expiry of the agreed deadline. Where the parties agree on a time period within which the delivery is to occur, the seller may deliver the subject matter at any time within the said time period.

**Article 139.**

Where the parties have not agreed, or have not come to a clear agreement, on a deadline for the delivery of the subject matter, the provisions of Article 61 and Article 62(4) of this Law shall apply.

**Article 140.**

Where the purchaser is already in possession of the subject matter prior to the conclusion of the contract, the time at which the contract comes into effect shall be the time at which the subject matter is delivered.

**Article 141.**

The seller shall deliver the subject matter at the agreed location.

Where the parties have not agreed, or have not come to a clear agreement, on the place of delivery, and the issue cannot be determined by reference to the provisions of Article 61 of this Law, the following provisions shall apply:

(1) where the subject matter needs to be transported, the seller shall deliver the subject matter to the first carrier for carriage and delivery to the purchaser; or

(2) where it is not necessary to transport the subject matter, and where the seller and the purchaser know at the time that the contract is concluded that the subject matter is at a certain location, the seller shall deliver the subject matter at the said location; where the parties do not know that the subject matter is at a certain location, the subject matter shall be delivered at the seller's place of business at the time that the contract is concluded.

**Article 142.**

The risk of the subject matter being damaged or lost shall be borne by the seller prior to the delivery of the subject matter, and by the purchaser after the delivery of the subject matter, except where laws provide otherwise or the parties agree otherwise.

**Article 143.**

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Where, for reasons for which the purchaser is responsible, it is not possible to deliver the subject matter at the agreed time, the purchaser shall, from the date on which it is in breach of the parties' agreement, bear the risk of the subject matter being damaged or lost.

**Article 144.**

Where a seller sells an object which has been delivered to a carrier for transportation and is already in transit, then unless the parties agree otherwise, the risk of the subject matter being damaged or lost shall be borne by the purchaser from the date on which the contract is concluded.

**Article 145.**

Where the parties have not agreed, or have not come to a clear agreement, on the place of delivery, and where, in accordance with the provisions of Item 1 of paragraph 2 of Article 141 of this Law, it is necessary to transport the subject matter, then after the seller has delivered the subject matter to the first carrier, the risk of the subject matter being damaged or lost shall be borne by the purchaser.

**Article 146.**

Where the seller places the subject matter at the agreed place of delivery or in accordance with the provisions of Item 2 of paragraph 2 of Article 141 of this Law, and where the purchaser fails to collect the subject matter as agreed, the risk of the subject matter being damaged or lost shall be borne by the purchaser from the date on which the purchaser acts in violation of the parties' agreement.

**Article 147.**

Where the seller fails to deliver, as agreed, documents and other materials relating to the subject matter, this will not affect the transfer of the risk that the subject matter may be damaged or lost.

**Article 148.**

Where the subject matter does not satisfy quality requirements, and as a result it is impossible to realise the objectives of the contract, the purchaser may refuse to accept the subject matter or dissolve the contract. Where the purchaser refuses to accept the subject matter or dissolves the contract, the risk of the subject matter being damaged or lost shall be borne by the seller.

**Article 149.**

Where the risk of the subject matter being damaged or lost is borne by the purchaser, this shall not affect the right of the purchaser to demand that the seller be liable for breach of contract where the seller fails to perform its obligations as agreed.

**Article 150.**

The seller has an obligation to guarantee that no third party can claim, against the purchaser, any interest in the subject matter delivered, except where laws provide otherwise.

**Article 151.**

Where, at the time of the conclusion of the contract, the purchaser knows or ought to know that a third party has an interest in the subject matter being purchased and sold, the seller shall not be under the obligation stipulated in Article 150 of this Law.

**Article 152.**

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Where the purchaser has reliable evidence proving that a third party will probably claim an interest in the subject matter of the contract, it may suspend the performance of its corresponding payment obligations, except where the seller provides an appropriate guarantee.

**Article 153.**

The seller shall deliver the subject matter in accordance with agreed quality requirements. Where the seller provides a description of the quality of the subject matter, the subject matter delivered shall satisfy the quality standards referred to in the said description.

**Article 154.**

Where the parties have not agreed, or have not come to a clear agreement, in relation to quality requirements, and the said quality requirements cannot be determined by reference to the provisions of Article 61 of this Law, the provisions of Article 62 (1) of this Law shall apply.

**Article 155.**

Where the subject matter delivered by the seller does not satisfy quality requirements, the purchaser may demand that the seller assume liability for breach of contract in accordance with the provisions of Article 111 of this Law.

**Article 156.**

The seller shall use the agreed method of packaging when delivering the subject matter of the contract. Where there has been no agreement, or no clear agreement, on the method of packaging, and the said methods cannot be determined by reference to the provisions of Article 61 of this Law, usual packaging methods shall be used, and where there are no usual packaging methods, a method of packaging shall be used which adequately protects the subject matter.

**Article 157.**

When the purchaser takes delivery of the subject matter, it shall conduct inspection of the subject matter within the agreed inspection period. Where there has been no agreement on an inspection period, inspection shall be conducted promptly.

**Article 158.**

Where the parties agree on an inspection period, the purchaser shall, within the inspection period, notify the seller of any circumstances whereby the quantity or quality of the subject matter is not as agreed. Where the purchaser is slow in notifying the seller, the quality and quantity of the subject matter shall be deemed to be in conformity with the parties' agreement.

Where the parties have no agreement on an inspection period, the purchaser shall notify the seller of any circumstances whereby the quantity or quality of the subject matter is not as agreed within a reasonable period after the purchaser has discovered or should have discovered the said circumstances. Where the purchaser does not provide notification to the seller within a reasonable period or within two (2) years from the date of receipt of the subject matter, the quality and quantity of the subject matter shall be deemed to be in accordance with the parties' agreement, but, if the quality of the subject matter is subject to a quality guarantee period, the said quality guarantee period shall apply, and the said two-year rule shall not apply.

Where the seller knows or ought to know that the supplied subject matter is not as agreed upon by the parties, the purchaser will not be subject to the notification limitation periods outlined in the previous two paragraphs.

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**Article 159.**

The purchaser shall pay the price agreed by the parties. Where there has been no agreement, or no clear agreement, on the price to be paid, the provisions of Article 61 and Article 62(2) of this Law shall apply.

**Article 160.**

The purchaser shall make all payments at the agreed location. Where there has been no agreement, or no clear agreement, on the place for payment, and the place for payment cannot be determined by reference to the provisions of Article 61 of this Law, the purchaser shall make the payment at the seller's place of business, but if there is a condition of payment that the subject matter be delivered or that a document for the collection of the subject matter be delivered, payment shall be at the place where the subject matter is delivered or a document for the collection of the subject matter is delivered.

**Article 161.**

The purchaser shall make all payments at the agreed time. Where there has been no agreement, or no clear agreement, on the time for payment, and the time for payment cannot be determined by reference to the provisions of Article 61 of this Law, the purchaser shall make payment at the same time when it receives the subject matter or the document for the collection of the subject matter.

**Article 162.**

If the seller delivers excessive quantities of the subject matter, the purchaser may accept or refuse to accept those extra items delivered in excess of the agreed amount. Where the purchaser accepts the extra items, they shall be paid for in accordance with the contract price; where the purchaser refuses to accept the extra items, it must promptly notify the seller.

**Article 163.**

Any interest on the subject matter generated prior to the delivery of the subject matter shall be the property of the seller, and any interest generated after the delivery shall be the property of the purchaser.

**Article 164.**

Where the contract is dissolved because the principal subject matter of the contract does not conform to the parties' agreement, the dissolution of the contract will be effective with respect to the accessory subject matter. Where the contract is dissolved because the accessory subject matter of the contract do not conform to the parties' agreement, the dissolution of the contract will not be effective with respect to the principal subject matter.

**Article 165.**

Where the subject matter of the contract is made up of a number of items, and one of the said items does not conform to the parties' agreement, the purchaser may reject the said item, but where the separation of the said item from the other items results in a significant reduction in the value of the subject matter as a whole, the relevant party may dissolve the contract in relation to all the items which make up the subject matter.

**Article 166.**

Where the seller delivers the subject matter of the contract in batches, and the seller does not deliver one of the batches, or one of the batches delivered does not conform to the parties' agreement, and as a result it is not possible to realise the objectives of the contract with respect to the said batch of the subject matter, the purchaser may dissolve the contract in relation to the said batch of the subject matter.

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Where the seller does not deliver one of the batches of the subject matter, or one of the delivered batches does not conform to the parties' agreement, with the result that the delivery of all the subsequent batches of the subject matter cannot lead to the realisation of the objectives of the contract, the purchaser may dissolve the contract in relation to the said batch as well as all subsequent batches of the subject matter.

If the purchaser dissolves the contract with respect to one batch of the subject matter, and the said batch of the subject matter and all the other batches of the subject matter are mutually dependent on one another, the purchaser may dissolve the contract in relation to all batches of the subject matter already delivered as well as all batches of the subject matter yet to be delivered.

#### **Article 167.**

Where a purchaser paying in periodic instalments has unpaid instalments up to one fifth of the total amount payable, the seller may demand that the purchaser pay the total amount payable or may dissolve the contract.

Where the seller dissolves the contract, it may demand that the purchaser pay a fee for the use of the subject matter of the contract.

#### **Article 168.**

Parties who purchase and sell items on the basis of samples shall seal up the samples for safekeeping, and may describe the quality of the samples. The quality of the subject matter delivered by the seller shall be consistent with the quality of the samples as well as the relevant description.

#### **Article 169.**

If a purchaser purchases items on the basis of samples but does not know that the samples contain hidden defects, the quality of the subject matter delivered by the seller shall still satisfy the usual standards for goods of a similar kind, even if the subject matter delivered is identical to the samples.

#### **Article 170.**

Parties who purchase and sell items on a trial basis may agree on a trial period for the subject matter of the contract. Where there has been no agreement, or no clear agreement, on the length of the trial period, and the length of the said trial period cannot be determined by reference to the provisions of Article 61 of this Law, it shall be determined by the seller.

#### **Article 171.**

A purchaser who purchases items on a trial basis may either purchase the subject matter or refuse to purchase the subject matter within the trial period. A purchaser who has not indicated whether or not it intends to purchase the subject matter at the expiry of the trial period shall be deemed to have purchased the subject matter.

#### **Article 172.**

The rights and responsibilities of parties who purchase and sell items on a tendering basis, as well as procedures for the invitation and submission of tenders, etc, shall be determined in accordance with the provisions of relevant laws and administrative regulations.

#### **Article 173.**

The rights and responsibilities of parties at an auction as well as auctioning procedures, etc, shall be determined in accordance with the provisions of relevant laws and administrative regulations.

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**Article 174.**

Where there are provisions of laws that govern other types of contracts for value, such provisions shall be followed; where there are no legal provisions governing such contracts, the relevant provisions of the laws applying to purchase and sales contracts shall be consulted.

**Article 175.**

Where parties agree to engage in a barter transaction, whereby ownership of the subject matter is transferred, the relevant provisions applying to purchase and sales contracts shall be consulted.

**CHAPTER X — CONTRACTS FOR THE SUPPLY AND CONSUMPTION OF ELECTRICITY, WATER, GAS AND HEATING****Article 176.**

A contract for the supply and consumption of electricity is a contract under which the electricity supplier supplies electricity to the electricity consumer, and the electricity consumer pays an electricity fee.

**Article 177.**

A contract for the supply and consumption of electricity shall include clauses dealing with the methods, quality and time of electricity supply, the volume and nature of the electricity to be consumed and the address at which it is to be consumed, methods of calculation of the amount of electricity used, methods of account settlement in relation to electricity prices and electricity fees, responsibility for the repair of electricity supply facilities, etc.

**Article 178.**

The place at which a contract for the supply and consumption of electricity is to be performed shall be agreed on by the parties; where the parties have not agreed, or have not come to a clear agreement, on the place of performance, the place of performance shall be within the boundaries of those areas within which the electricity supplier has property rights in electricity supply facilities.

**Article 179.**

The electricity supplier shall provide electricity safely in accordance with electricity supply standards stipulated by the State and as agreed by the parties. Where the electricity supplier fails to provide electricity safely in accordance with electricity supply standards stipulated by the State and as agreed by the parties, resulting in losses to the electricity consumer, the electricity supplier shall be liable to pay compensatory damages.

**Article 180.**

Where the electricity supplier needs to interrupt the supply of electricity due to scheduled or non-scheduled repairs on electricity supply facilities, or due to electricity restrictions required by law, or the illegal consumption of electricity by the electricity consumer, etc, the supplier shall notify the consumer in advance in accordance with relevant state regulations. Where the supplier fails to notify the consumer in advance that the supply of electricity is to be interrupted, and as a result the consumer sustains losses, the supplier shall be liable to pay compensatory damages.

**Article 181.**

Where electricity supply is cut off due to natural disasters, etc, the electricity supplier shall, in accordance with relevant state regulations, immediately make urgent repairs. Where the electricity supplier fails to

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make the urgent repairs immediately, and as a result the electricity consumer sustains losses, the supplier shall be liable to pay compensatory damages.

**Article 182.**

The electricity consumer shall promptly pay electricity fees in accordance with relevant state regulations and as agreed between the parties. Where the consumer is overdue in its payment of electricity fees, it shall pay a penalty for breach of contract in accordance with the parties' agreement. Where the supplier has called on the consumer to make a payment, but within a reasonable period of time the consumer has still not paid the said electricity fees or the penalty for breach of contract, the supplier may cut off the supply of electricity in accordance with procedures stipulated by the State.

**Article 183.**

The electricity consumer shall consume electricity safely in accordance with relevant state regulations and as agreed by the parties. Where the electricity consumer fails to consume electricity safely in accordance with relevant state regulations and as agreed by the parties, resulting in losses to the electricity supplier, the electricity consumer shall be liable to pay compensatory damages.

**Article 184.**

With respect to contracts for the supply and consumption of water, gas and heating, the relevant provisions applying to contracts for the supply and consumption of electricity shall be consulted.

**CHAPTER XI — GIFT CONTRACTS**

**Article 185.**

A gift contract is a contract under which the donor gives its own property to the donee without consideration, and the donee indicates its acceptance of the gift.

**Article 186.**

The donor may revoke the gift at any stage prior to the transfer of its proprietary interests in the granted property.

The preceding paragraph shall not apply to gift contracts for the public welfare or in compliance with a moral obligation, such as contracts for disaster or poverty relief, etc, or gift contracts which have already been notarised.

**Article 187.**

Where it is necessary to complete registration and other procedures in relation to the granted property in accordance with the law, the relevant procedures shall be completed.

**Article 188.**

Where the donor fails to deliver property granted according to gift contracts for the public welfare or in compliance with a moral obligation, such as contracts for disaster or poverty relief, etc, or according to gift contracts which have already been notarised, the donee may demand that the said property be delivered.

**Article 189.**

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Where, as a result of a deliberate act or gross negligence on the part of the donor, the granted property is damaged or lost, the donor shall be liable to pay compensatory damages for the losses sustained.

**Article 190.**

There may be obligations attached to the making of a gift.

Where obligations are attached to the making of a gift, the donee shall perform these obligations as agreed.

**Article 191.**

Where the granted property contains a defect, the donor shall not bear any liability. Where obligations on the donee are attached to the making of the gift by the donor, and the granted property contains a defect, the donor shall, to an extent limited by the nature of the donee's obligations, bear the same liability as that of a seller.

Where the donor deliberately fails to inform the donee of the defects or warrants that there are no defects, and as a result the donee sustains losses, the donor shall be liable to pay compensatory damages.

**Article 192.**

Where the donee is involved in any of the following situations, the donor may revoke the gift:

- (1) the donee seriously harms or infringes the rights or interests of the donor or the donor's close relatives;
- (2) the donee has an obligation to provide for the donor but fails to fulfil this obligation; or
- (3) the donee does not perform obligations agreed upon in the gift contract.

The donor's right of revocation must be exercised within one (1) year of the date on which the donor knows or ought to know of the circumstances out of which the right of revocation has arisen.

**Article 193.**

Where, as a result of the donee's illegal conduct, the donor dies or loses the capacity for civil acts, the donor's heir or legal agent may revoke the gift.

The right of revocation enjoyed by the donor's heir or legal agent must be exercised within six (6) months of the date on which the relevant person or persons knows or ought to know of the circumstances out of which the right of revocation has arisen.

**Article 194.**

Where the party with the right of revocation revokes the gift, the said party may demand that the donee return the granted property.

**Article 195.**

Where there is a marked deterioration in the economic situation of the donor, seriously affecting the donor's production and business operations or family life, the donor may cease to perform the gift obligations.

**CHAPTER XII — LOAN CONTRACTS**

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**Article 196.**

A loan contract is a contract under which a borrower borrows money from a lender, repays the loan as it becomes due and also pays interest.

**Article 197.**

Loan contracts shall be in writing, except in the case of a loan between natural persons where the parties agree otherwise.

A loan contract shall include clauses dealing with the type of loan, the type of currency, uses to which the principal may be put, the amount loaned, interest, the loan period, and methods of repayment, etc.

**Article 198.**

When concluding a loan contract, the lender may request that the borrower provide a guarantee. The said guarantee must be in accordance with the provisions of the Law of the People's Republic of China on Guarantees.

**Article 199.**

When concluding a loan contract, the borrower shall, as requested by the lender, provide a true account of the business activities and financial circumstances relating to the loan.

**Article 200.**

Interest on the loan shall not be deducted from the loan principal in advance. If interest is deducted from the principal in advance, the loan shall be repaid and interest shall be calculated on the basis of the actual amount lent.

**Article 201.**

Where the lender fails to forward the principal to the borrower on the agreed date and/or in the agreed amount, and the borrower sustains losses as a result, the lender shall provide compensation for the said losses.

Where the borrower fails to collect the principal on the agreed date and/or in the agreed amount, the borrower shall still pay interest according to the agreed date and/or agreed amount.

**Article 202.**

The lender may, as agreed, inspect or supervise the borrower's use of the loan principal. The borrower shall, as agreed, periodically provide relevant materials to the lender such as financial accounting statements, etc.

**Article 203.**

Where the borrower does not use the principal in accordance with agreed uses, the lender may suspend the issue of the principal, recall the loan in advance, or dissolve the contract.

**Article 204.**

Interest on money lent by financial organisations which handle loan business shall be within the range for interest rates on loans stipulated by the People's Bank of China.

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**Article 205.**

The borrower shall pay interest within the agreed time period. Where there has been no agreement or no clear agreement as to the time period for the payment of interest, and the said time period cannot be determined by reference to the provisions of Article 61 of this Law, then where the loan period is less than one (1) year, interest shall be paid at the same time that the principal is repaid in full; where the loan period is one (1) year or longer, then interest shall be paid at the completion of each year of the loan period, and where that part of the loan period which remains is less than one (1) year, the remaining interest shall be paid at the same time that the principal is repaid in full.

**Article 206.**

The borrower shall repay the principal within the agreed time period. Where there has been no agreement or no clear agreement as to the period of the loan, and the said loan period cannot be determined by reference to the provisions of Article 61 of this Law, the borrower may repay the loan at any time; the lender may call on the borrower to repay the loan within a reasonable period of time.

**Article 207.**

Where the borrower fails to repay the loan principal within the agreed period of time, the borrower shall pay interest for late payment as agreed or in accordance with relevant state regulations.

**Article 208.**

Where the borrower repays the loan principal in advance, then except where the parties agree otherwise, interest shall be calculated on the basis of the actual period of the loan.

**Article 209.**

The borrower may, prior to the expiry of the loan period, apply to the lender for an extension of the loan period. Where the lender agrees, the loan period may be extended.

**Article 210.**

Loan contracts between natural persons shall take effect from the time the lender supplies the loan principal.

**Article 211.**

With respect to a loan contract between natural persons, where there has been no agreement or no clear agreement as to whether or not interest is to be paid, it shall be deemed that interest is not to be paid.

With respect to a loan contract between natural persons, where it is agreed that interest is to be paid, the interest rates on the said loan must not violate relevant state provisions which place restrictions on interest rates on loans.

**CHAPTER XIII — LEASING CONTRACTS****Article 212.**

A leasing contract is a contract under which the lessor delivers the leased goods to the lessee, and the lessee uses the leased goods, enjoys benefits derived from the leased goods, and makes rental payments.

**Article 213.**

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A leasing contract shall include clauses dealing with the name, quantity and uses of the leased goods, the period of the lease, rent, deadlines for rent payments and methods of payment, the repair of the leased goods, etc.

**Article 214.**

The period of the lease may not exceed twenty (20) years. Where the lease exceeds twenty (20) years, that part of the lease beyond the said limit shall be invalid.

When the lease period has expired, the parties may renew the leasing contract, but the lease period agreed upon may not be more than twenty (20) years from the date of the renewal.

**Article 215.**

Where the lease period is six (6) months or more, the lease shall be in writing. If the parties do not conclude the lease in writing, the lease is deemed to be for an indefinite period.

**Article 216.**

The lessor shall deliver the leased goods to the lessee as agreed, and shall, for the duration of the lease period, preserve the leased goods in a condition fit for their agreed usages.

**Article 217.**

The lessee shall use the leased goods in accordance with usages agreed by the parties. Where there has been no agreement or no clear agreement as to the permitted usages of the leased goods, and it is not possible to determine the issue in accordance with the provisions of Article 61 of this Law, the leased goods shall be used in a manner consistent with the nature of the said goods.

**Article 218.**

If the lessee uses the leased goods in accordance with the agreed usages or in a manner consistent with the nature of the leased goods, and there is wear and tear to the leased goods as a result, the lessee shall not be liable to pay compensatory damages for any losses sustained.

**Article 219.**

If the lessee does not use the leased goods in accordance with the agreed usages or not in a manner consistent with the nature of the leased goods, and there is wear and tear to the leased goods as a result, the lessor may dissolve the contract and demand compensation for the losses sustained.

**Article 220.**

The lessor shall perform its obligation to make repairs to the leased goods, except where the parties agree otherwise.

**Article 221.**

When the leased goods need to be repaired, the lessee may demand that the lessor make repairs within a reasonable period of time. If the lessor does not perform its obligation to make repairs, the lessee may make the repairs itself, and responsibility for expenses relating to the repairs shall be borne by the lessor. Where the repairs to the leased goods affect the lessee's ability to use the leased goods, rent shall be correspondingly reduced or the lease period shall be correspondingly extended.

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**Article 222.**

The lessee shall take appropriate care of the leased goods, and if there is damage or loss in relation to the leased goods through a failure to take appropriate care, the lessee shall be liable to pay compensation for any losses sustained.

**Article 223.**

The lessee may, with the consent of the lessor, make improvements to, or affix attachments to the leased goods.

Where the lessee makes improvements to, or affixes attachments to the leased goods without obtaining the consent of the lessor, the lessor may demand that the leased goods be restored to their original condition, or may demand compensation for any losses sustained.

**Article 224.**

The lessee may, with the consent of the lessor, sublease the leased goods to a third party. Where the lessee subleases the leased goods, the leasing contract between the lessor and the lessee shall continue to be in effect, and if the third party causes damage to the leased property, the lessee shall provide compensation for the losses sustained.

Where the lessee subleases the leased goods without the consent of the lessor, the lessor may dissolve the contract.

**Article 225.**

Any benefits obtained by the lessee by reason of its possession or use of the leased goods shall be the property of the lessee, except where the parties agree otherwise.

**Article 226.**

The lessee shall pay rent in accordance with the agreed deadlines. Where there has been no agreement or no clear agreement as to the deadlines for the payment of rent, and it is not possible to determine the issue in accordance with the provisions of Article 61 of this Law, then where the lease period is less than one (1) year, rent shall be paid at the expiry of the lease period; where the lease period is one (1) year or longer, rent shall be paid at the completion of each year of the lease period, and where that part of the lease period which remains is less than one (1) year, all outstanding rent shall be paid at the expiry of the lease period.

**Article 227.**

Where the lessee, without a legitimate reason, does not pay rent or is late in making a rent payment, the lessor may demand that the lessee make the relevant payment within a reasonable period of time. If at the conclusion of the said time period the lessee has not made the payment, the lessor may dissolve the contract.

**Article 228.**

Where the lessee is unable to use or obtain benefit from the leased goods because a third party claims an interest in the said goods, the lessee may demand that the rent be reduced or not pay rent.

Where a third party claims an interest in the leased goods, the lessee shall promptly notify the lessor.

**Article 229.**

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Any change in the ownership of the leased goods during the period of the lease shall have no effect on the validity of the leasing contract.

**Article 230.**

Where the lessor intends to offer for sale a house which is subject to a lease, the lessor shall notify the lessee within a reasonable period before the house is offered for sale, and the lessee has a priority right to purchase the house on equal terms.

**Article 231.**

Where the leased property is damaged or lost wholly or in part as a result of circumstances for which the lessee cannot be held responsible, the lessee may demand that the rent be reduced or not pay rent; where, the objectives of the contract cannot be realised owing to the loss of or damage to the whole or part of the leased property, the lessee may dissolve the contract.

**Article 232.**

Where the parties have not agreed or have not come to a clear agreement on the period of the lease, and it is not possible to determine the lease period in accordance with the provisions of Article 61 of this Law, the lease shall be deemed to be for an indefinite period. In such a case the parties may dissolve the contract at any time, but where the lessor seeks to dissolve the contract, it shall notify the lessee a reasonable time in advance.

**Article 233.**

If the leased goods pose a threat to the safety or health of the lessee, then even if, at the time of concluding the contract, the lessee is fully aware that the leased goods are not of a satisfactory quality, the lessee may still dissolve the contract at any time.

**Article 234.**

Where the lessee dies during the period of the lease of a house, any joint tenants of the deceased lessee prior to his or her death may lease the said house in accordance with the original leasing contract.

**Article 235.**

Once the lease period has expired, the lessee shall return the leased goods. At the time of their return, the leased goods shall be in a condition consistent with their having been used in the agreed manner or in an appropriate manner given the nature of the said goods.

**Article 236.**

Where the lessee continues to use the leased goods after the expiry of the lease period, provided the lessor does not raise any objections, the original lease contract shall continue to be effective, but the lease will become a lease for an indefinite period.

## **CHAPTER XIV — FINANCIAL LEASING CONTRACTS**

**Article 237.**

A financial leasing contract is a contract under which a lessor purchases leased goods from a seller on the basis of a lessee's choice of seller and leased goods, and the lessor then provides the goods for use by the lessee, for which the lessee pays rent.

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**Article 238.**

A financial leasing contract shall include clauses dealing with the name, quantity, specifications, technical functions, and methods of inspection of the leased goods, the period of the lease, composition of the rent as well as deadlines for rent payments and methods of payment, types of currency to be used, ownership of the leased goods upon the expiry of the lease period, etc.

A financial leasing contract shall be in writing.

**Article 239.**

The lessor shall conclude a purchase and sales contract in accordance with the lessee's choices as to the seller and the leased goods, the seller shall deliver to the lessee the subject matter of the said contract as agreed, and the lessee shall enjoy the rights of a purchaser in relation to the receipt of subject matter.

**Article 240.**

The lessor, seller and lessee may agree that if the seller does not perform its obligations under the purchase and sales contract, the right to claim compensation will be exercised by the lessee. Where the lessee exercises the right to claim compensation, the lessor shall provide assistance.

**Article 241.**

With respect to the purchase and sales contract concluded by the lessor in accordance with the lessee's choices as to the seller and the leased goods to be purchased, the lessor shall not, without the consent of the lessee, alter any part of the contract which is of relevance to the lessee.

**Article 242.**

The lessor shall enjoy the ownership of the leased goods. If the lessor becomes bankrupt, the leased goods shall not be included as part of the bankruptcy property.

**Article 243.**

In a financial leasing contract, except where the parties agree otherwise, rent shall be determined in accordance with the total cost or the majority of the cost of purchasing the leased goods and also on the basis that the lessor shall receive a reasonable profit.

**Article 244.**

Where the leased goods do not conform to the parties' agreement or are not suitable to be used as intended, the lessor shall not be responsible, unless the lessee relied on the lessor's technical skills when deciding upon the leased goods, or the lessor interfered with the lessee's choice of leased goods.

**Article 245.**

The lessor shall provide guarantees as to the lessee's possession and use of the leased goods.

**Article 246.**

The lessor shall not be liable for personal injury or damage to the property of a third party caused by the leased goods while the leased goods are in the possession of the lessee.

**Article 247.**

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The lessee shall take appropriate care and make proper use of the leased goods.

The lessee shall fulfil its obligation to carry out repairs while in possession of the leased goods.

**Article 248.**

The lessee shall make all rental payments as agreed. Where the lessee has still not paid rent within a reasonable period after being called upon to make the relevant payment, the lessor may demand that all the rent be paid; the lessor may also dissolve the contract, and recall the leased goods.

**Article 249.**

Where the parties have agreed that at the expiry of the lease period the leased goods shall be the property of the lessee, and the lessee has already paid most of the rent but is unable to pay the outstanding rent, and for this reason the lessor dissolves the contract and recalls the leased goods, then where the value of the leased goods recalled is greater than the amount of rent owed by the lessee plus other expenses, the lessee may demand that the money it has paid be returned in part.

**Article 250.**

The lessor and the lessee may come to an agreement as to ownership of the leased goods upon the expiry of the lease period. Where there has been no agreement or no clear agreement as to the ownership of the leased goods at the expiry of the lease period, and it is not possible to determine the issue in accordance with the provisions of Article 61 of this Law, the lessor shall own the leased goods.

**CHAPTER XV — WORK CONTRACTS**

**Article 251.**

A work contract is a contract under which a contractor completes work in accordance with the requirements of a party which places an order, delivers the fruits of the said labour, and for which the party that placed the order provides remuneration.

"Work" here includes processing, work done to order, repairs, reproduction, testing, inspection, etc.

**Article 252.**

A work contract shall include clauses dealing with the subject matter, quantity and quality of the work contracted for, remuneration, contracting methods, the supply of materials, the period for performance, and standards and methods of examination and acceptance, etc.

**Article 253.**

The contractor shall complete all major work tasks with its own equipment, technology and labour, except where the parties agree otherwise.

Where the contractor assigns a major work task under the contract to a third party for completion, the contractor shall bear responsibility to the party which has placed the order in relation to the results of the said work completed by the third party; where the party which has placed the order has not consented to the work being completed by a third party, the party which has placed the order may terminate the contract.

**Article 254.**

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The contractor may assign an auxiliary work task under the contract to a third party for completion. Where the contractor assigns an auxiliary work task under the contract to a third party for completion, the contractor shall bear responsibility to the party which has placed the order in relation to the results of the said work completed by the third party.

**Article 255.**

Where the contractor supplies materials, the contractor shall select and use the said materials in the agreed manner, and shall submit to examination and acceptance procedures conducted by the party which has placed the order.

**Article 256.**

Where the party which has placed the order supplies materials, the said party shall supply the said materials in the agreed manner. The contractor shall promptly inspect the materials supplied by the party which has placed the order. If the contractor discovers that certain materials do not comply with the agreed specifications, the contractor shall promptly notify the party which has placed the order of the need to replace the materials, supply more materials or take other remedial measures.

The contractor may not, of its own accord, replace materials supplied by the party which has placed the order, and may not replace components or parts which do not need to be repaired.

**Article 257.**

Where the contractor discovers that any drawings or technical requirements supplied by the party which has placed the order are unreasonable, the contractor shall promptly notify the said party. Where the contractor sustains losses because the said party is slow to reply or for some other reason, the said party shall provide compensation for the contractor's losses.

**Article 258.**

If the party which has placed the order alters its requirements in relation to the contracted work whilst the work is in progress, and the contractor suffers losses as a result, the said party shall provide compensation for the contractor's losses.

**Article 259.**

Where the performance of the contracted work requires the assistance of the party which has placed the order, then the said party has an obligation to provide such assistance. Where, due to the said party's failure to meet its obligation to provide assistance, it is not possible to complete the contracted work, the contractor may call on the said party to fulfil its obligation within a reasonable period of time, and the contractor may also extend the deadline for performance. Where the party which has placed the order has not fulfilled its obligation to provide assistance within the period stipulated by the contractor, the contractor may dissolve the contract.

**Article 260.**

The contractor is subject to the necessary supervision and inspection by the party which has placed the order for the duration of the work period. The said party, while undertaking its supervision and inspection, may not hinder the normal work of the contractor.

**Article 261.**

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Once the contractor has completed the work, it shall deliver the product to the party which has placed the order, and shall also deliver necessary technical materials and relevant quality certificates. The said party shall then inspect the product upon delivery.

**Article 262.**

Where the work product delivered by the contractor does not satisfy quality requirements, the party which has placed the order may demand that the contractor assumes its liability for breach of contract by repairing or reworking the work product, by reducing the remuneration or by providing compensation for losses sustained, etc.

**Article 263.**

The party which has placed the order shall pay remuneration in accordance with the agreed deadlines. Where there has been no agreement, or no clear agreement, on the deadlines for the payment of remuneration, and the said deadlines cannot be determined by reference to the provisions of Article 61 of this Law, the said party shall pay remuneration at the time that the contractor delivers the work product; where the work product is only delivered in part, the said party shall pay a corresponding amount.

**Article 264.**

Where the party which has placed the order has not made remuneration payments or payments of materials expenses, etc, to the contractor, the contractor shall enjoy a lien over the completed work product, except where the parties agree otherwise.

**Article 265.**

The contractor shall take appropriate care of materials supplied by the party which has placed the order as well as of completed work product; where damage or loss occurs through a failure to take appropriate care, the contractor shall provide compensation for the losses sustained.

**Article 266.**

The contractor shall maintain confidentiality as required by the party which has placed the order, and it may not retain replicas or technical materials in its possession without the consent of the party which has placed the order.

**Article 267.**

Joint contractors shall be jointly and severally liable to the party which has placed the order, except where the parties agree otherwise.

**Article 268.**

The party which has placed the order may dissolve a work contract at any time, but the said party shall provide compensation for any losses sustained by the contractor as a result.

**CHAPTER XVI — CONTRACTS FOR CONSTRUCTION PROJECTS**

**Article 269.**

A contract for a construction project is a contract under which a contractor completes a construction project, and the contract issuer makes a payment.

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Contracts for construction projects include contracts for surveying, design and building projects.

**Article 270.**

A contract for a construction project shall be in writing.

**Article 271.**

All activities relating to the invitation and submission of tenders for construction projects shall be conducted openly, fairly and impartially in accordance with the provisions of relevant laws.

**Article 272.**

The contract issuer may conclude a contract for a construction project with a head contractor, and may also conclude separate surveying, design and building work contracts with surveyors, designers and builders. The contract issuer may not divide up a construction project that should be completed by one contractor into several parts to be issued to a number of contractors.

The head contractor or the surveying, design or building contractor may, with the consent of the contract issuer, assign that part of the work which the said person has been contracted to complete to a third party for completion. The said third party shall be jointly and severally liable, along with the head contractor or the surveying, design or building contractor, to the contract issuer with respect to the product of the work it has completed. A contractor may not subcontract the entire contracted construction project to a third party, and may not divide up the whole contracted construction project into parts and then separately subcontract these parts to third parties.

It is forbidden for the contractor to subcontract the project to units that do not possess the requisite professional qualifications. It is forbidden for a subcontracted unit to subcontract any projects it has itself been subcontracted to complete.

The construction of the major structural elements of a construction project must be carried out by the contractor itself. The contractor itself must complete the construction of the main structure of the construction project.

**Article 273.**

Contracts for significant state construction projects shall be concluded in accordance with stipulated state procedures as well as documents such as investment plans and feasibility studies ratified by the State, etc.

**Article 274.**

Surveying and design contracts shall include clauses dealing with deadlines for the submission of relevant basic materials and documents (including budget proposals), quality requirements and expenses, as well as other conditions on cooperation, etc.

**Article 275.**

Building contracts shall include clauses dealing with the scope of the project, the time limit for construction work, commencement and completion times for intermediary stages of the project, project quality and construction costs, the time for the delivery of technical materials, responsibility in relation to the supply of materials and equipment, the appropriation of funds and account settlement, examination and acceptance procedures upon the completion of work, the scope of quality guarantees and the length of quality guarantee periods, and mutual cooperation by the parties, etc.

**Article 276.**

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Where supervision and management is carried out during a construction project, the contract issuer shall conclude a written contract with the supervisor authorising supervision and management. The rights, responsibilities and legal liability of the contract issuer and the supervisor shall be determined in accordance with the provisions of this Law relating to mandate contracts as well as the provisions of other relevant laws and administrative regulations.

**Article 277.**

The contract issuer may at any time inspect the rate of progress and the quality of the work completed, provided there is no hindrance to the contractor's normal operations.

**Article 278.**

Prior to concealed construction work being covered over, the contractor shall notify the contract issuer in order to allow the contract issuer to inspect the work. If the contract issuer does not promptly conduct an inspection, the contractor may extend construction deadlines, and also has the right to demand compensation for losses arising from related work stoppages, and work delays, etc.

**Article 279.**

After a construction project is completed, the contract issuer shall promptly carry out an acceptance check in accordance with the construction drawings and explanatory documents, with the acceptance checking standards for construction work promulgated by the State, and with the quality inspection standards. Where the project conforms to the acceptance checking standards, the contract issuer shall make all payments as agreed, and shall accept the said construction project. After a construction project has been completed and has been found to conform to the acceptance checking standards, it may then be made available for use. If no acceptance check has been carried out or if the project does not conform to the said standards, the project may not be made available for use.

**Article 280.**

Where the contract issuer sustains losses because the quality of surveying or design work does not conform to required standards or the project construction period is extended due to a failure to lodge surveying or design documentation by the relevant deadlines, the surveyor or designer shall continue to improve the surveying and design, while surveying or design fees shall be reduced or waived and compensation shall be provided for the losses sustained.

**Article 281.**

Where the quality of the construction project does not conform to the parties' agreement due to reasons attributable to the builder, the contract issuer has the right to demand that the builder carries out repairs, does the work again or rebuilds the project free of charge and within a reasonable period of time. If the project is not made available until after the due date because repairs have occurred, the work has been redone or the project has been rebuilt, the builder shall be liable for breach of contract.

**Article 282.**

Where personal injury or damage to property occurs due to reasons attributable to the contractor within a reasonable period after the construction project has been put into use, the contractor shall be liable to provide compensation for the losses sustained.

**Article 283.**

Where the contract issuer fails to provide raw materials, equipment, premises, funds or technical materials at the agreed time or in accordance with agreed requirements, the contractor may extend work deadlines,

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and also has the right to demand compensation for losses arising from related work stoppages, work delays, etc.

**Article 284.**

Where there are construction stoppages or delays whilst a project is in progress for reasons attributable to the contract issuer, the contract issuer shall take measures to make up for or minimise any losses, and shall compensate the contractor for any losses sustained in relation to work stoppages, work delays, the return of materials to the supplier, the shifting of machinery and equipment, overstocking of materials and components, etc, as well as any actual expenses incurred.

**Article 285.**

Where, as a result of the contract issuer changing relevant plans, materials not being correctly supplied, or the necessary conditions not existing to allow the completion of surveying or design work at the relevant times, it is necessary for surveying or design work to be redone, for surveying or design work to be halted, or for designs to be altered, the contract issuer shall pay additional fees in accordance with the amount of work actually completed by the surveyor or designer.

**Article 286.**

Where the contract issuer does not make payments as agreed, the contractor may call on the contract issuer to make the said payments within a reasonable period of time. Where the contract issuer has not made the said payments within the said period of time, then except where it is not appropriate to conduct a sale at a depreciated price or an auction, due to the nature of the construction project, the contractor may conclude an agreement with the contract issuer that the project be sold off, or may apply to the people's court for the said project to be auctioned in accordance with the law. With respect to all monies received in selling off or auctioning the said project, priority shall be given to using the monies to make the relevant payments on the construction project.

**Article 287.**

Where this Chapter contains no relevant provisions on a certain issue, the relevant provisions relating to work contracts shall apply.

**CHAPTER XVII — TRANSPORT CONTRACTS**

**Section 1 — General Provisions**

**Article 288.**

A transport contract is a contract under which a carrier transports passengers or goods from the place of dispatch to an agreed place, and the passenger, consignor or consignee pays a fare or transport fee.

**Article 289.**

Carriers that operate public transport may not refuse normal and reasonable transport requests made by passengers or consignors.

**Article 290.**

A carrier shall safely transport passengers and goods to the agreed place within the agreed period of time or within a reasonable time.

**Article 291.**

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A carrier shall transport the passengers and goods to the agreed place along the agreed or the normal transit route.

**Article 292.**

Passengers, consignors or consignees shall pay fares or transport fees. Where a carrier does not travel along the agreed or the normal route and it increases fares or transport fees, passengers, consignors or consignees may refuse to pay the additional part of the fare or the transport fee.

**Section 2 — Passenger Transport Contracts**

**Article 293.**

A passenger transport contract is concluded from the time the carrier delivers to the passenger the passenger ticket, except where the parties agree otherwise or some other business practice exists.

**Article 294.**

A passenger must hold a valid ticket for the duration of the journey. Where a passenger travels without a ticket, travels a further distance or at a higher class than is permitted by the ticket, or travels with an invalid ticket, the passenger shall pay any extra amount owing, and the carrier may collect the extra amount in accordance with the provisions. Where a passenger does not pay the said amount, the carrier may refuse to transport the passenger.

**Article 295.**

Where a passenger, for his or her own reasons, cannot take his or her seat at the time recorded on the ticket, the passenger shall complete all refunding or ticket alteration procedures before the agreed deadline. Where the said procedures are completed after the agreed deadline, the carrier may refuse to refund the ticket, and will no longer be under any obligation to provide transportation.

**Article 296.**

For the duration of the journey, passengers shall only carry luggage up to the agreed limit. Where luggage exceeds the relevant limits, the passenger shall complete procedures for the consignment of the luggage.

**Article 297.**

Passengers are forbidden to carry, on their person or concealed in their luggage, dangerous goods or other prohibited goods including inflammable, explosive, poisonous, corrosive or radioactive goods as well as goods that may pose a danger to the safety of persons and property on the relevant transport conveyance.

If a passenger violates the provisions of the above paragraph, the carrier may remove or destroy the prohibited goods or send them to the relevant departments. If the passenger insists on carrying or smuggling the prohibited goods, the carrier shall refuse to transport the passenger.

**Article 298.**

The carrier shall promptly notify passengers of any major reasons why normal transportation is not possible as well as safety considerations to which passengers should pay attention.

**Article 299.**

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The carrier shall transport the passenger in accordance with the time and the voyage number, etc, recorded on the passenger's ticket. If the carrier delays transportation, it shall, as requested by the passenger, either arrange another flight, etc, for the passenger to change to, or refund the ticket.

**Article 300.**

Where the carrier of its own accord changes the means of transportation provided and service standards are lowered, it shall refund the ticket or reduce the fare as requested by the passenger; where service standards are raised, the carrier shall not increase the fare.

**Article 301.**

During the course of the journey, the carrier must make every effort to assist passengers who are afflicted with a serious illness, are in labour, or have met with a mishap.

**Article 302.**

The carrier shall be liable to provide compensatory damages with respect to any passenger deaths or injuries which occur in the course of the journey, except where the death or injury occurs due to reasons associated with the passenger's health or where the carrier proves that the death or injury was caused through the deliberate act or gross negligence of the passenger.

The provisions of the previous paragraph shall apply to passengers without a ticket who have been permitted to travel free of charge in accordance with regulations, who hold preferential tickets or who have been approved to travel by the carrier.

**Article 303.**

Where goods carried by a passenger during a journey are damaged or lost, and there has been negligence on the part of the carrier, the carrier shall be liable to provide compensation for the losses sustained.

The relevant provisions relating to the transportation of goods shall apply with respect to damage to or loss of luggage which is consigned.

**Section 3 — Goods Transportation Contracts**

**Article 304.**

A consignor who seeks to transport goods shall clearly and accurately declare to the carrier the name or title of the consignee or that it has been paid to order by the consignee, the name, nature, weight and quantity of the goods, the place to which the goods are to be delivered, and other matters relevant to the transportation of the goods.

Where the consignor's declaration is not accurate or important matters are omitted, and the carrier sustains losses as a result, the consignor shall be liable to provide compensatory damages.

**Article 305.**

Where goods to be transported are subject to completion of procedures relating to examination, approval and inspection, etc, the consignor shall submit to the carrier all documentation relating to the completion of all relevant procedures.

**Article 306.**

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The consignor shall package the goods in accordance with agreed packaging methods. If there has been no agreement or no clear agreement on packaging methods, the provisions of Article 156 of this Law shall be applied.

If the consignor violates the provisions of the preceding paragraph, the carrier may refuse to transport the goods.

#### **Article 307.**

Where the consignor consigns inflammable, explosive, poisonous, corrosive, radioactive or other dangerous goods, the consignor shall package the dangerous goods in an appropriate manner in accordance with state provisions relating to the transportation of dangerous goods, attach a dangerous goods mark and label, and shall submit to the carrier all written documentation relating to the name and nature of the dangerous goods as well as any precautionary measures that need to be taken.

If the consignor violates the provisions of the preceding paragraph, the carrier may refuse to transport the goods, and may also adopt corresponding measures to prevent loss or damage; the cost of adopting these measures shall be borne by the consignor.

#### **Article 308.**

Before the carrier delivers the goods to the consignee, the consignor may demand that the carrier cancel the transportation, return the goods, change the destination or demand that the goods be delivered to some other consignee, but the consignor shall compensate the carrier for any losses sustained as a result.

#### **Article 309.**

After the goods have been transported to their destination, and once the carrier ascertains the identity of the consignee, the carrier shall promptly notify the consignee, and the consignee shall promptly collect the goods. If the consignee is late in collecting the goods, it shall pay any storage and other expenses incurred by the carrier.

#### **Article 310.**

When the consignee collects the goods it shall inspect the goods within the agreed time limits. Where there has been no agreement or no clear agreement as to the time limit for the inspection of the goods, and the said time limit cannot be determined by reference to the provisions of Article 61 of this Law, the goods shall be inspected within a reasonable period of time. Where the consignee has not raised any objections with respect to the quantity or condition of the goods, etc, within the agreed period or within a reasonable period of time, this shall be considered prima facie evidence that the carrier has delivered the goods in accordance with the details recorded in the transport receipts.

#### **Article 311.**

The carrier shall be liable to pay compensation for any losses sustained in relation to the damage to or loss of goods in transit, but where the carrier proves that the said damage or loss was due to force majeure, the nature of the goods themselves, or reasonable wear and tear, or was the fault of the consignor or consignee, the carrier shall not be liable to pay compensation for the losses.

#### **Article 312.**

If the parties have agreed on the total amount of compensation to be paid for damage to or loss of goods, they shall act according to their agreement. If there has been no agreement or no clear agreement, and the issue cannot be determined by reference to the provisions of Article 61 of this Law, compensation shall be calculated in accordance with the market price of the goods at their intended destination at the time when

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they were delivered or ought to have been delivered. Where laws or administrative regulations provide otherwise with respect to calculation methods or limits on the amount of compensation, such provisions shall apply.

**Article 313.**

Where two or more carriers provide multimodal transportation using the same means of transport, the carrier which concludes the contract with the consignor shall be liable with respect to the entire journey. Where loss is sustained on one particular section of the journey, the carrier which has concluded the contract with the consignor and the carrier operating on that particular leg shall be jointly and severally liable.

**Article 314.**

Where goods are lost in transit due to force majeure, and the transport fee has not yet been collected, the carrier may not demand payment of the transport fee; if the transport fee has already been collected, the consignor may demand its return.

**Article 315.**

If a consignor or consignee does not pay a transport fee, a storage fee or other related transportation expenses, the carrier shall enjoy a lien over the relevant transported goods, except where the parties agree otherwise.

**Article 316.**

If the identity of the consignee is not clear or the consignee refuses to take delivery of the goods without a legitimate reason, then in accordance with Article 101 of this Law, the carrier may lodge the goods.

**Section 4 — Multimodal Transport Contracts**

**Article 317.**

A multimodal transport operator is responsible for performing or organising the performance of a multimodal transport contract, and enjoys the rights and bears the liability of a carrier with respect to the entire journey.

**Article 318.**

A multimodal transport operator may agree with the carrier participating in each section of a multimodal transport operation on the mutual liability with respect to transport on the relevant section under the multimodal transport contract. But such an agreement shall not affect the liability of the multimodal transport operator with respect to the entire journey.

**Article 319.**

When the multimodal transport operator receives goods delivered by the consignor, the operator shall sign and issue a multimodal transport document. The multimodal transport document may, as requested by the consignor, be either a negotiable instrument or an instrument which is not negotiable.

**Article 320.**

Where the multimodal transport operator sustains losses due to an error by the consignor when consigning the goods, the consignor shall be liable to provide compensation for any losses sustained, even if the consignor has transferred the multimodal transport document.

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**Article 321.**

Where damage to or loss of goods occurs during a particular section of a multimodal transport operation, the multimodal transport operator's liability to pay compensation and the limits of this liability are subject to the provisions of the relevant laws regulating the mode of transport in the said section. Where it is not possible to determine in which section the damage to or loss of goods has occurred, liability to pay compensation for losses sustained shall be borne in accordance with this Chapter.

**CHAPTER XVIII — TECHNOLOGY CONTRACTS****Section 1 — General Provisions****Article 322.**

A technology contract is a contract which establishes the mutual rights and obligations of the parties in relation to technology development, transfer, consultation or service.

**Article 323.**

The conclusion of a technology contract shall be beneficial to scientific and technological progress, and shall accelerate the transformation, application and dissemination of the results of scientific and technical endeavour.

**Article 324.**

The content of a technology contract shall be agreed upon by the parties, and shall generally include the following clauses:

- (1) the name of the project;
- (2) the content, scope and the requirements of the subject matter of the contract;
- (3) performance plans and schedules, the performance period, location and region, and methods of performance;
- (4) the confidentiality of technical information and data;
- (5) liability for risks;
- (6) measures to allocate the ownership of, and the benefits to be derived from, the technical results;
- (7) the standards for and the method of inspection and acceptance;
- (8) payment, remuneration or usage fees and the method of payment;
- (9) the method of calculating penalties for breach of contract or compensatory damages;
- (10) the method of dispute resolution; and
- (11) explanation of terms and technical phrases.

Background technical data and proof of feasibility, technical evaluation reports, project task and planning documents, technical standards, technical specifications, original design and process documents, as well

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as other technical documents relevant to the performance of the contract, may all be integral parts of the contract as agreed by the parties.

Where a technology contract makes reference to a patent, the contract shall clearly state the name of the invention/creation, the patent applicant and the patentee, the application date, application number, the patent number and the duration of the patent right.

#### **Article 325.**

The parties shall agree on the method of payment with respect to price, remuneration and usage fees. The parties may adopt the method of lump sum calculation and lump sum payment or the method of lump sum calculation and periodical payment, or may also adopt a payment method involving paying a royalty, or paying a royalty and an initial fee.

Where it is agreed that one party will pay a royalty, the said amount may be calculated according to a fixed percentage of the product's price, of any increase in output or profits following the exploitation of the patent or the use of the technical secrets, or of the total volume of product sales, or according to some other agreed method. The said party may pay a set percentage of the relevant amount, or the percentage may increase or decrease progressively from year to year.

Where it is agreed that a party is to pay a royalty, the parties shall agree in the contract on measures to inspect relevant accounts.

#### **Article 326.**

Where the use rights and transfer rights in relation to occupational technical results belong to a legal person or some other organisation, the said legal person or other organisation may conclude technology contracts in relation to the said results. The legal person or other organisation should retain a certain proportion of the benefits obtained from the use or transfer of the said results, and use this money to provide rewards or remuneration to individuals responsible for achieving the said occupational technical results. When the legal person or other organisation wishes to conclude a technology contract for the transfer of the said occupational technical results, an individual responsible for achieving the results shall enjoy a priority right to be the transferee of the said results on equal terms.

An occupational technical result is a technical result completed in the course of carrying out work for a legal person or other organisation, or completed primarily through the use of the technical facilities of the legal person or other organisation.

#### **Article 327.**

Where the use rights and transfer rights in relation to non-occupational technical results belong to the individual responsible for achieving the said technical results, individuals responsible for achieving the technical results may conclude technology contracts in relation to the said non-occupational technical results.

#### **Article 328.**

An individual responsible for achieving technical results shall have the right to clearly declare on documents relating to the technical results that he or she is the person responsible for them, and shall have the right to obtain an honorary certificate and to receive a reward.

#### **Article 329.**

Technology contracts that monopolise technology, hinder technological development or infringe the technical results of other persons shall be invalid.

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## **Section 2 — Technology Development Contracts**

### **Article 330.**

Technology development contracts are contracts concluded between parties in relation to research and development into new technology, new products, new processes, new materials and relevant systems.

Technology development contracts include commission development contracts and cooperative development contracts.

Technology development contracts shall be in writing.

Where parties conclude contracts for the exploitation and transformation of scientific and technical results with the value of industrial applications, the provisions on technology development contracts shall be consulted.

### **Article 331.**

The commissioning party to a commission development contract shall, as agreed, pay research and development fees and remuneration; provide technical material and original data; make its contribution to the completion of all cooperative tasks; and accept the results of the research and development.

### **Article 332.**

The party undertaking research and development under a commission development contract shall, as agreed, formulate and implement a research and development plan; make reasonable use of funds for research and development; complete research and development work on time, deliver the results of the research and development, supply relevant technical data and necessary technical guidance, and assist the commissioning party to gain an understanding of the results of the research and development.

### **Article 333.**

If the commissioning party violates the parties' agreement, thereby interrupting the research and development, delaying it, or causing it to fail, the commissioning party shall be liable for breach of contract.

### **Article 334.**

If the party undertaking research and development violates the parties' agreement, thereby interrupting the research and development, delaying it, or causing it to fail, the party undertaking research and development shall be liable for breach of contract.

### **Article 335.**

Parties to a cooperative development contract shall make investment contributions as agreed, including the use of technology as an investment; participate in research and development according to the division of the work; and work together to coordinate the research and development.

### **Article 336.**

Where a party to a cooperative development contract violates the parties' agreement, thereby interrupting the research and development, delaying it, or causing it to fail, the said party shall be liable for breach of contract.

### **Article 337.**

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Where the technology which is the subject matter of a technology development contract has already been made public by some other person, with the result that the performance of the technology development contract has become meaningless, the parties may dissolve the contract.

#### **Article 338.**

The parties shall agree on liability for risks associated with the complete or partial failure of a research and development project resulting from insurmountable technical difficulties during the performance of a technology development contract. Where there has been no agreement or no clear agreement on liability for risk, and the issue cannot be determined by reference to the provisions of Article 61 of this Law, the parties shall each bear a reasonable share of the liability.

If one of the parties discovers circumstances of the kind mentioned in the previous paragraph, which will probably lead to the complete or partial failure of a research and development project, the party shall promptly notify all other parties and adopt appropriate measures to reduce the loss. If the said party fails to notify the other parties and fails to adopt appropriate measures, and the loss is increased as a result, the said party shall bear liability for the additional loss.

#### **Article 339.**

The right to apply for a patent with respect to an invention/creation arising from completed commissioned development projects shall belong to the party which has undertaken the research and development, except where the parties agree otherwise. If the party which has undertaken the research and development obtains a patent right, the commissioning party may exploit the said patent free of charge.

Where the party which has undertaken the research and development seeks to transfer its patent application right, the commissioning party has a priority right to be the transferee of the patent application right on equal terms.

#### **Article 340.**

The right to apply for a patent with respect to an invention/creation arising from completed cooperative development projects shall belong jointly to the parties to the cooperative development project, except where the parties agree otherwise. If one of the parties seeks to transfer its jointly held patent application right, each of the other parties has a priority right to be the transferee of the patent application right on equal terms.

If one of the parties to the cooperative development declares that it is abandoning its jointly held patent application right, the other party may apply for the patent on its own or the other parties may jointly apply for the patent. Where the applicant obtains a patent right, the party which gave up its patent application right may exploit the said patent free of charge.

Where one of the parties to the cooperative development does not consent to the filing of a patent application, the other party or parties may not file the patent application.

#### **Article 341.**

The parties shall agree on methods for the allocation of use rights, transfer rights and profits with respect to any secret technical results from completed commissioned development projects or cooperative development projects. Where there has been no agreement or no clear agreement on allocation methods, and the issue cannot be determined by reference to the provisions of Article 61 of this Law, all the parties shall enjoy use and transfer rights, but the party which has undertaken research and development on a commissioned development project may not transfer the results of the research and development to a third party prior to handing the said results over to the commissioning party.

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## **Section 3 — Technology Transfer Contracts**

### **Article 342.**

Technology transfer contracts include contracts for the transfer of patent rights, patent application rights, technical secrets and patent exploitation licences.

Technology transfer contracts shall be in writing.

### **Article 343.**

In a technology transfer contract the transferor and the transferee may agree on the scope within which a patent may be exploited or technical secrets may be used, but it is not permitted to restrict technological competition or technological development.

### **Article 344.**

Contracts relating to licences for the exploitation of patents shall only have effect for the valid period of the patent right. A person holding a patent right may not conclude a contract with another person relating to a licence for the exploitation of the patent after the patent has expired or has been declared invalid.

### **Article 345.**

The transferor under a contract relating to a licence for the exploitation of a patent shall, as agreed by the parties, license the transferee to exploit the patent, deliver all technical data relating to the exploitation of the patent, and provide all relevant technical guidance.

### **Article 346.**

The transferee under a contract relating to a licence for the exploitation of a patent shall exploit the patent as agreed by the parties, and may not allow a third party who is not party to the agreement to exploit the patent; the transferee shall also pay licence fees as agreed.

### **Article 347.**

The transferor under a contract for the transfer of technical secrets shall, as agreed by the parties, supply technical data, provide technical guidance, guarantee the utility and reliability of the technology, and undertake an obligation of confidentiality.

### **Article 348.**

The transferee under a contract for the transfer of technical secrets shall, as agreed by the parties, use the technology, pay usage fees, and undertake an obligation of confidentiality.

### **Article 349.**

The transferor under a technology transfer contract shall guarantee that it is itself the legal owner of all the technology supplied, and shall guarantee that all the technology supplied is complete, without defects, effective, and is capable of achieving the agreed objectives.

### **Article 350.**

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The transferee under a technology transfer contract shall, with regard to the agreed scope and for the agreed period, maintain confidentiality concerning those elements of the technology supplied by the transferor which are secret and have not been made public.

**Article 351.**

Where the transferor does not transfer the technology as agreed, it shall refund usage fees wholly or in part, and shall be liable for breach of contract; where the transferor exploits a patent or a technical secret beyond the scope of what the parties have agreed, or, of its own accord, licenses a third party to exploit the said patent or use the said technical secrets in violation of their agreement, the transferor shall desist from the breach of contract, and shall be liable for the said breach. Where the transferor violates its agreed obligation of confidentiality, it shall be liable for breach of contract.

**Article 352.**

Where the transferee fails to pay a usage fee as agreed, the transferee shall pay the outstanding usage fee and shall pay a penalty for breach of contract in accordance with the parties' agreement. Where the transferee fails to pay the outstanding usage fee or the penalty for breach of contract, the transferee shall cease to exploit any patents or use any technical secrets, it shall return all technical data, and it shall be liable for breach of contract. Where the transferee exploits a patent or uses a technical secret beyond the scope of what the parties have agreed, or, of its own accord and without the consent of the transferor, licenses a third party to exploit the said patent or use the said technical secret in violation of their agreement, the transferee shall desist from the breach of contract, and shall be liable for the breach. Where the transferee violates its agreed obligation of confidentiality, it shall be liable for breach of contract.

**Article 353.**

Where the transferee infringes the lawful rights and interests of a third party in the course of exploiting a patent or using technical secrets as agreed by the parties, liability shall be borne by the transferor, except where the parties agree otherwise.

**Article 354.**

The parties may, in accordance with the principle of mutual benefit, agree that the technology transfer contract shall contain measures providing for the shared enjoyment of subsequent technological improvements obtained through the exploitation of a patent or the use of technical secrets. Where there has been no agreement or no clear agreement on the said measures, and the issue cannot be determined by reference to the provisions of Article 61 of this Law, then other parties shall not have the right to share in the enjoyment of subsequent technological improvements obtained by one party.

**Article 355.**

Where laws and administrative regulations provide otherwise with respect to contracts for the import and export of technology or contracts relating to patents and patent applications, such provisions shall be followed.

**Section 4 — Technical Consultancy Contracts and Technical Services Contracts**

**Article 356.**

Technical consultancy contracts include contracts for the provision of feasibility studies, calculations and forecasts relating to technology, investigations into specific technology, and analytical and evaluative reports related to specific technical projects.

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A technical services contract is a contract under which one of the contracting parties uses its technical expertise to resolve a particular technical problem faced by the other party, but technical services contracts do not include contracts for construction projects and work contracts.

**Article 357.**

The commissioning party under a technical consultancy contract shall, in accordance with the parties' agreement, clearly state the problem that is the subject of the consultancy, provide technical background material and relevant technical material and data, accept the work results produced by the commissioned party and pay remuneration.

**Article 358.**

The commissioned party under a technical consultancy contract shall, within the agreed period of time, complete a consultancy report or provide answers to any questions posed; the submitted consultancy report shall meet agreed requirements.

**Article 359.**

Where the commissioning party under a technical consultancy contract fails to provide necessary materials and data as agreed, thereby affecting the progress and quality of the work, and the commissioning party then refuses to accept or is late in accepting the results of the work, any remuneration paid by the commissioning party may not be retrieved, and any unpaid remuneration shall be paid.

Where the commissioned party under a technical consultancy contract fails to provide the consultancy report on schedule or the technical consultancy report submitted does not satisfy agreed criteria, the said party shall receive a reduced remuneration, or no remuneration, and shall bear other liability for breach of contract.

Except where the parties agree otherwise, the commissioning party to a technical consultancy contract shall be liable for any losses it sustains through its implementation of policies and strategies which are based on a technical consultancy report or opinions which have been prepared by the commissioned party in a manner agreed on by the parties.

**Article 360.**

The commissioning party to a technical services contract shall provide the agreed working conditions and complete tasks aimed at facilitating cooperation and coordination; the commissioning party shall also accept work results and pay remuneration.

**Article 361.**

The commissioned party to a technical services contract shall, as agreed by the parties, complete all service tasks, resolve technical problems, provide guarantees of work quality, and pass on the expertise used to resolve the technical problems.

**Article 362.**

Where the commissioning party to a technical services contract fails to perform its contractual obligations, or does not perform its contractual obligations in the agreed manner, and where this affects work progress and quality, and the commissioning party then refuses to accept or is late in accepting the work results, any remuneration paid by the commissioning party may not be retrieved, and any unpaid remuneration shall be paid.

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Where the commissioned party to a technical services contract fails to complete all services tasks as agreed in the contract, it shall receive a reduced remuneration, or no remuneration, and other civil liability for breach of contract.

**Article 363.**

Any new technical results achieved by the commissioned party in the course of performing a technical consultancy or technical services contract, and achieved through the use of technical background materials and working conditions provided by the commissioning party, shall belong to the commissioned party. Any new technical results achieved by the commissioning party through the use of the work products of the commissioned party shall belong to the commissioning party. Where the parties agree otherwise, their agreement shall be followed.

**Article 364.**

Where laws and administrative regulations provide otherwise with respect to contracts for the provision of intermediary services in relation to technology and technical training contracts, such provisions shall be followed.

**CHAPTER XIX — STORAGE CONTRACTS**

**Article 365.**

A storage contract is a contract under which the custodian takes custody of the custodial goods delivered by the depositor, and subsequently returns the said goods to the depositor.

**Article 366.**

The depositor shall pay custody fees to the custodian as agreed by the parties.

If the parties have not agreed, or have not come to a clear agreement, on the payment of custody fees, and the issue cannot be determined by reference to the provisions of Article 61 of this Law, custody shall be free of charge.

**Article 367.**

The storage contract is concluded from the time the custodial goods are delivered, except where the parties agree otherwise.

**Article 368.**

When the depositor delivers the custodial goods to the custodian, the custodian shall provide a custody receipt, except where some other business practice exists.

**Article 369.**

The custodian shall take custody of the custodial goods in an appropriate way.

The parties may agree on the custodial location or custodial methods. The custodian may not change the custodial location or custodial methods, except in emergency situations or where the change is made to safeguard the depositor's interests.

**Article 370.**

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Where there are defects in the custodial goods delivered by the depositor or it is necessary to adopt special custodial methods due to the nature of the custodial goods, the depositor shall inform the custodian of the relevant circumstances. If the depositor fails to provide notification, and there is damage to the custodial goods as a result, the custodian shall not be liable to provide compensation for the losses sustained; if the custodian sustains losses as a result of the depositor's failure to provide notification, except where the custodian knows or ought to know of the relevant circumstances and fails to adopt remedial measures, the depositor shall be liable to provide compensation for the losses sustained by the custodian.

**Article 371.**

The custodian shall not transfer the custodial goods into the custody of a third party, except where the parties agree otherwise.

If the custodian, in violation of the provisions of the preceding paragraph, transfers the custodial goods to a third party for custody, the custodian shall be liable to provide compensation for any damage to the custodial goods.

**Article 372.**

The custodian shall not use the custodial goods or license a third party to use the custodial goods, except where the parties to the contract agree otherwise.

**Article 373.**

If a third party claims an interest in the custodial goods, then, except where, in accordance with the law, the third party has adopted preservation measures or measures for the enforcement of a court order, the custodian shall perform its obligation of returning the custodial goods to the depositor.

Where a third party files a lawsuit against the custodian or applies for the custodial goods to be impounded, the custodian shall promptly notify the depositor.

**Article 374.**

Where there is loss or damage to the custodial goods during the custody period due to the poor custodianship of the custodian, the custodian shall be liable to provide compensation for the losses sustained, but where the custodianship is free of charge, and the custodian proves that it has not been seriously at fault, it shall not be liable to provide compensation for the losses sustained.

**Article 375.**

Where the depositor deposits money, valuable securities or other valuable goods, it shall make a declaration to the custodian to this effect, and the custodian shall examine and accept the goods or seal up the goods for safekeeping. If the depositor fails to make the relevant declaration, then upon the said goods being damaged or lost, the custodian may provide compensation on the basis that the goods are ordinary goods.

**Article 376.**

The depositor may collect the custodial goods at any time.

Where the parties have not agreed or have not come to a clear agreement on the custody period, the custodian may at any time demand that the depositor collect the custodial goods; where the parties have agreed on a custody period, then in the absence of special circumstances, the custodian may not demand that the depositor collect the goods in advance.

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**Article 377.**

At the expiry of the custody period or when the depositor seeks to collect the custodial goods in advance, the custodian shall return the original custodial goods, as well as any interest accrued on the goods, to the depositor.

**Article 378.**

Where the custodian takes custody of money, it may return to the depositor currency of the same denomination and the same amount. Where the custodian takes custody of other exchangeable goods, the custodian may return to the depositor goods of a similar type, quality and quantity, in accordance with the parties' agreement.

**Article 379.**

With respect to custody contracts for value, the depositor shall pay custody fees to the custodian in accordance with agreed deadlines.

If the parties have not agreed, or have not come to a clear agreement, on the deadline for the payment of custody fees, and the issue cannot be determined by reference to the provisions of Article 61 of this Law, then custody fees shall be paid at the same time that the custodial goods are collected.

**Article 380.**

Where the depositor fails to pay custody fees and other fees as agreed by the parties, the custodian shall enjoy a lien over the custodial goods, except where the parties agree otherwise.

**CHAPTER XX — WAREHOUSING CONTRACTS****Article 381.**

A warehousing contract is a contract under which the custodian places in storage the goods delivered by the storing party, and the storing party pays storage fees.

**Article 382.**

A storage contract takes effect from the time it is concluded.

**Article 383.**

With respect to the storage of inflammable, explosive, poisonous, corrosive, radioactive, or other dangerous goods, or perishable goods, the storing party shall explain the nature of the said goods, and provide any relevant materials.

If the storing party violates the provisions of the preceding paragraph, the custodian may refuse to receive the storage goods, and may also adopt corresponding measures to prevent losses being sustained, and any expenses incurred as a result shall be borne by the storing party.

A custodian who stores inflammable, explosive, poisonous, corrosive, radioactive, or other dangerous goods, must have the relevant safekeeping facilities to store such goods.

**Article 384.**

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The custodian shall, as agreed, conduct examination and acceptance procedures with respect to goods entering the warehouse for storage. If the custodian, when conducting examination and acceptance procedures, discovers that the goods entering the warehouse for storage do not comply with the parties' agreement, the custodian shall promptly notify the storing party. Where the custodian discovers, subsequent to the completion of examination and acceptance procedures, that the type, quantity or quality of the storage goods are not as agreed by the parties, the custodian shall be liable to provide compensation for any losses sustained.

**Article 385.**

When the storing party delivers the storage goods, the custodian shall provide a storage receipt.

**Article 386.**

The custodian shall sign or affix its seal to the storage receipt. The storage receipt shall include the following items:

- (1) the storing party's name and domicile;
- (2) the type, quantity, quality, packaging and labelling of the storage goods, and the number of different items;
- (3) standards for wear and tear of the storage goods;
- (4) the storage location;
- (5) the storage period;
- (6) storage fees;
- (7) where the storage goods are already insured, the insured amount, the duration of insurance coverage and the name of the insurer; and
- (8) the person who has issued the receipt, and the place and date on which the receipt was issued.

**Article 387.**

The storage receipt is the evidence on the basis of which the storage goods may be collected. If the storing party or the party holding the storage receipt endorses the storage receipt and the custodian signs or affixes its seal to the receipt, the right to collect the storage goods may be transferred to another party.

**Article 388.**

The custodian shall consent to the storage goods being examined or to the collection of a sample, as requested by the storing party or the holder of the storage receipt.

**Article 389.**

Where the custodian discovers that goods entering the warehouse for storage have deteriorated or are damaged in some other way, the custodian shall promptly notify the storing party or the holder of the storage receipt.

**Article 390.**

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Where the custodian discovers that goods entering the warehouse for storage have deteriorated or are damaged in some other way, and the said goods pose a threat to the safe and normal storage of other stored goods, the custodian shall call on the storing party or the holder of the storage receipt to deal with the said goods as required. In an emergency the custodian may dispose of the said goods as required, but once the situation has been dealt with the custodian shall promptly inform the storing party or the holder of the storage receipt what has occurred.

**Article 391.**

Where the parties have not agreed or have not come to a clear agreement on the storage period, the storing party or the holder of the storage receipt may collect the stored goods at any time, and the custodian may also demand, at any time, that the storing party or the holder of the storage receipt collect the stored goods, but the relevant party must provide the other party with the time needed to make preparations.

**Article 392.**

Upon the expiry of the storage period, the storing party or the holder of the storage receipt shall collect the stored goods on the strength of the storage receipt. Where the storing party or the holder of the storage receipt is late in collecting the stored goods, additional storage fees shall be paid; where the goods are collected in advance, there shall not be a reduction in the storage fees collected.

**Article 393.**

Where the storing party or the holder of the storage receipt fails to collect the stored goods at the expiry of the storage period, the custodian may call on the relevant person to collect the stored goods within a reasonable period of time, and where the goods are not collected within the said period, the custodian may lodge the stored goods.

**Article 394.**

Where there is loss or damage to the stored goods during the storage period due to poor custodianship, the custodian shall be liable to provide compensation for the losses sustained. Where the stored goods deteriorate or are damaged because the nature and/or packaging of the goods does not conform to the agreement, or because the effective storage period has been exceeded, the custodian shall not be liable to provide compensation for the losses sustained.

**Article 395.**

With respect to those issues not addressed by the provisions of this Chapter, the relevant provisions applying to storage contracts shall apply.

**CHAPTER XXI — MANDATE CONTRACTS**

**Article 396.**

A mandate contract is a contract under which a principal and an agent agree that the agent shall handle the principal's affairs.

**Article 397.**

The principal may provide the agent with specific authority to handle one matter or a number of matters on its behalf, or the principal may provide the agent with general authority to handle all of its affairs.

**Article 398.**

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The principal shall pay in advance any expenses associated with the handling of those affairs which have been delegated. With respect to any essential expenses related to the handling of the principal's affairs which are paid by the agent in the expectation of repayment by the principal, the agent shall be reimbursed the amount of the said expenses plus interest.

**Article 399.**

The agent shall handle the principal's affairs in accordance with the principal's instructions. Where it is necessary to alter the principal's instructions, the principal's consent shall be obtained; where an emergency arises and it is difficult to establish contact with the principal, the agent shall handle the delegated affairs in an appropriate manner, but after the event the agent shall immediately provide the principal with a report explaining what has occurred.

**Article 400.**

All delegated affairs shall be handled by the agent itself. With the consent of the principal, the agent may sub-delegate the handling of delegated affairs. Once consent to the sub-delegation has been obtained, the principal may directly instruct an authorised third party to handle the delegated affairs, and the agent shall only be liable in relation to its choice of the said third party and any instructions it gives to the third party. Where the consent of the principal to the sub-delegation has not been obtained, the agent shall be liable for all the conduct of the delegated third party, except where, in an emergency situation, it is necessary for the agent to carry out sub-delegation in order to protect the principal's interests.

**Article 401.**

The agent shall provide a report on its handling of the principal's delegated affairs as required by the principal. When a mandate contract is terminated, the agent shall report on the final situation in relation to the delegated affairs.

**Article 402.**

Where the agent concludes a contract in its own name with a third party, and to do so is within the scope of the authorisation given by the principal, and at the time of concluding the contract the third party knows of the relationship of agency existing between the principal and the agent, the said contract shall directly bind the principal and the third party, unless there is conclusive evidence which proves that the contract only binds the agent and the third party.

**Article 403.**

Where the agent concludes a contract in its own name with a third party, and at this time the third party does not know of the relationship of agency existing between the principal and the agent, and the agent then fails to perform a duty owed to the principal due to a reason associated with the said third party, the agent shall immediately reveal to the principal the existence of the third party, and the principal may exercise any rights enjoyed by the agent as against the third party, unless the third party would not have concluded the contract had it known of the existence of the said principal at the time that it concluded the said contract with the agent.

Where the agent fails to perform a duty owed to the third party due to a reason associated with the principal, the agent shall immediately reveal to the third party the existence of the principal, and the third party may then choose either the agent or the principal as the relevant party against whom it asserts its rights. However, the third party may not at a later stage alter its choice of relevant party.

Where the principal exercises the agent's rights in relation to the third party, the third party may raise with the principal its counterclaims and its defences to any assertion of rights against the agent. Where the third party chooses the principal as the relevant party against whom it asserts its rights, the principal may raise,

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with the third party, its own counterclaims and its defences to the claims of the agent as well as the counterclaims and defences of the agent to the claims of the third party.

**Article 404.**

Any property obtained by the agent in the course of handling delegated affairs shall be passed on to the principal.

**Article 405.**

When the agent has completed its handling of the delegated affairs, the principal shall pay remuneration to the agent. Where, due to circumstances for which the agent cannot be held responsible, the mandate contract is dissolved or the handling of the delegated affairs cannot be completed, the principal shall pay a corresponding amount of compensation to the agent. Where the parties agree otherwise, their agreement shall be applied.

**Article 406.**

With respect to mandate contracts for value, the principal may demand compensation for any losses sustained due to the error of the agent. With respect to mandate contracts not for value, the principal may demand compensation for any losses sustained due to the deliberate acts or gross negligence of the agent.

The agent shall provide compensation for losses sustained by the principal as a result of the agent acting in excess of its authority.

**Article 407.**

Where the agent sustains losses in the course of handling delegated affairs due to circumstances for which the agent cannot be held responsible, the agent may demand that the principal provide compensation for the said losses.

**Article 408.**

The principal may, with the consent of the agent, authorise some third party other than the agent to handle the delegated affairs. The agent may demand that the principal provide compensation for any losses sustained as a result.

**Article 409.**

Where two or more agents jointly handle delegated affairs, the said agents shall be jointly and severally liable to the principal.

**Article 410.**

A principal or an agent may dissolve a mandate contract at any time. A party shall be liable to provide compensation for any losses sustained by the other party due to the dissolution of the contract, except with respect to those losses for which the said party cannot be held responsible.

**Article 411.**

Where the principal or the agent dies, loses its capacity for civil acts or becomes bankrupt, the mandate contract shall be terminated, unless the parties have agreed otherwise or termination is not appropriate due to the nature of the delegated affairs.

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**Article 412.**

Where the principal dies, loses its capacity for civil acts or becomes bankrupt, and the resulting termination of the mandate contract will be detrimental to the principal's interests, then prior to the principal's heirs, legal representative or liquidation organisation assuming responsibility for the delegated affairs, the agent shall continue to handle the delegated affairs.

**Article 413.**

Where the agent dies, loses its capacity for civil acts or becomes bankrupt, resulting in the termination of the mandate contract, the agent's heirs, legal representative or liquidation organisation shall immediately notify the principal. Where the termination of the mandate contract will be detrimental to the principal's interests, then prior to the principal acting to rectify the situation, the agent's heirs, legal representative or liquidation organisation shall take necessary measures.

**CHAPTER XXII — COMMISSION CONTRACTS****Article 414.**

A commission contract is a contract under which a commission agent conducts trading activities in its own name on behalf of a principal, and the principal pays remuneration to the commission agent.

**Article 415.**

Expenses paid by the commission agent in the course of handling the principal's affairs shall be borne by the commission agent, except where the parties agree otherwise.

**Article 416.**

When the commission agent is in possession of goods entrusted to its care, it shall take appropriate care of the said goods.

**Article 417.**

If, at the time they are delivered, the entrusted goods are defective or are liable to decompose or deteriorate, then with the consent of the principal, the commission agent may dispose of the said goods; where the commission agent is unable to establish contact with the principal immediately, the commission agent may dispose of the said goods in a reasonable manner.

**Article 418.**

If the commission agent sells goods at a price lower than the price specified by the principal or buys goods at a price higher than the price specified by the principal, the principal's consent shall be obtained. Where the principal's consent is not obtained, the commission agent shall compensate the principal for the difference in the relevant prices, and the said purchase or sale shall be binding on the principal.

If the commission agent sells goods at a price higher than the price specified by the principal or buys goods at a price lower than the price specified by the principal, the commission agent may increase the amount of its remuneration in accordance with the parties' agreement. Where there has been no agreement, or no clear agreement, on any increase in remuneration, and the issue cannot be determined by reference to the provisions of Article 61 of this Law, the principal shall retain the said benefit.

Where the principal gives special instructions in relation to the price at which the goods are to be purchased or sold, the commission agent may not act contrary to these instructions in completing the purchase or sale.

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**Article 419.**

Where the commission agent sells or purchases commodities which have a quoted market price, the commission agent may itself be the purchaser or seller in the relevant transaction, unless the principal expresses a preference that this not be the case.

A commission agent who is in the situation described in the preceding paragraph may still demand that the principal pay remuneration.

**Article 420.**

Where the commission agent purchases entrusted goods as agreed, the principal shall promptly collect the said goods. Where the commission agent has called on the principal to collect the goods, and the principal has no legitimate reason to refuse to collect the goods, the commission agent may lodge the entrusted goods in accordance with the provisions of Article 101 of this Law.

Where the entrusted goods cannot be sold or the principal withdraws the offering of the goods for sale, and the principal does not take back or dispose of the said goods after being called upon by the commission agent to do so, the commission agent may lodge the entrusted goods in accordance with the provisions of Article 101 of this Law.

**Article 421.**

Where the commission agent concludes a contract with a third party, the commission agent shall directly enjoy rights and assume responsibilities in relation to the said contract.

Where the principal sustains losses due to the failure of the third party to perform its obligations, the commission agent shall be liable to provide compensation for the losses sustained, unless the commission agent and the principal have agreed otherwise.

**Article 422.**

Where the commission agent has completed the delegated tasks wholly or in part, the principal shall pay the commission agent the corresponding amount of remuneration. If the principal does not pay remuneration on time, the commission agent shall enjoy a lien over the entrusted goods, unless the parties have agreed otherwise.

**Article 423.**

With respect to those issues not covered by the provisions of this Chapter, the relevant provisions applying to mandate contracts shall apply.

**CHAPTER XXIII — CONTRACTS FOR INTERMEDIARY SERVICES****Article 424.**

A contract for intermediary services is a contract under which the intermediary reports to the client on opportunities for the conclusion of contracts or supplies intermediary services relating to the conclusion of contracts, and the client pays remuneration to the intermediary.

**Article 425.**

The intermediary shall provide the client with a strictly truthful account of all matters relating to the conclusion of any contract.

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Where the intermediary deliberately conceals important matters relating to the conclusion of contracts or supplies a false account of the situation, to the detriment of the client's interests, the intermediary may not demand the payment of remuneration and shall also be liable to provide compensation for any losses sustained.

**Article 426.**

Where the intermediary facilitates the establishment of a contract, the client shall pay remuneration to the intermediary as agreed. Where there has been no agreement, or no clear agreement, on the intermediary's remuneration, and the issue cannot be determined by reference to the provisions of Article 61 of this Law, remuneration shall be determined in a reasonable manner on the basis of the intermediary's labour. Where the provision, by the intermediary, of intermediary services relating to the conclusion of the contract facilitates the establishment of a contract, the parties to the said contract shall be equally liable to pay the intermediary's remuneration.

Where an intermediary facilitates the establishment of a contract, expenses relating to the relevant intermediary activities shall be borne by the intermediary.

**Article 427.**

Where an intermediary fails to facilitate the establishment of a contract, the intermediary may not demand the payment of remuneration, but the intermediary may demand that the client provide reimbursement for necessary expenses incurred in the course of the relevant intermediary activities.

Supplementary Provisions

**Article 428.**

This Law shall take effect from 1 October 1999, and the Economic Contract Law of the People's Republic of China, the Foreign Economic Contract Law of the People's Republic of China and the Technology Contract Law of the People's Republic of China shall all be repealed simultaneously.



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