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**Rechtswissenschaftliche Fakultät**

**Institut für Zivilrecht**

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**KU UN-Kaufrecht – Uniform Sales Law**

**The United Nations Convention on Contracts  
for the International Sale of Goods (CISG)**

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# **The United Nations Convention on Contracts for the International Sale of Goods (CISG)**

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  - **Conformity of Goods**
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  - **Obligations of the Buyer**
    - **Taking delivery**
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# **The United Nations Convention on Contracts for the International Sale of Goods (CISG)**

- **Part IV: Contract Performance and Breach**
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## Part III: Contract Content and Obligations of the Parties

### Obligations of the seller – Time of delivery – Articles 30 and 33

#### *Article 30*

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

#### *Article 33*

The seller must deliver the goods:

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

## Part III: Contract Content and Obligations of the Parties

### Obligations of the seller – Time of delivery – Articles 30 and 33

- Whether the property in the goods has in fact been transferred to the buyer is not a question governed by the CISG; it must be determined by reference to the law designated by the rules of private international law of the forum.
- Neither does the CISG govern the effect of a retention of title clause on the property in the goods
- A party asserting that a date or a period for delivery has been agreed upon must prove such agreement.
- “Reasonable” means a time adequate in the circumstances (e.g. two weeks after the seller received the first instalment on the price for the delivery of a bulldozer; 10 months in the case of a loader whose agreed refurbishment could last 120 to 180 days)
- Where the parties did not specify the delivery date in the contract, acceptance of the goods by the buyer without protest may indicate that delivery was made within a reasonable time

## Part III: Contract Content and Obligations of the Parties

### Obligations of the seller – Place of delivery – Article 31

#### *Article 31*

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

(a) if the contract of sale involves carriage of the goods — in handing the goods over to the first carrier for transmission to the buyer;

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

(c) in other cases — in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

## **Part III: Contract Content and Obligations of the Parties**

### **Obligations of the seller – Place of delivery – Article 31**

- Art. 31 (a) only applies if it is neither the seller's nor the buyer's own obligation under the contract to transport the goods from the seller's place of business (or from where they are located) to the buyer's place of business (or wherever specified by the buyer)**
- “Handing over,” in Art. 31 (a), means that the carrier is given possession of the goods. The handing over of documents relating to the goods does not appear to constitute handing over the goods themselves, and does not constitute delivery of the goods unless otherwise agreed by the parties**
- As a general rule, parties split the liability for customs duties, charges and licences: seller assumes export-related liabilities, buyer assumes import-related liabilities**
- Placing goods “at the buyer's disposal” means taking all necessary steps so that the buyer can collect them.**

## Part III: Contract Content and Obligations of the Parties

### Obligations of the seller – Delivery of documents – Article 34

#### *Article 34*

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





RFC GHE092502HXKS

BILL OF LANDING FOR PORT TO PORT SHIPMENT

Shipper (Complete Name And Address) Shenzhen Ailisheng Trade Co., Ltd. Phoenix Road, Luohu district, Guangdong Shenzhen city, China Telephone and fax: 086-755-36922075

Consignee (Complete Name And Address) Alejad Pc S.A.S - Aptdo Postal 28059 Carrera 100 5-39 - Cali - Valle - Colombia Telephone and email: 059-032-4491451 - alejad@hotmail.com

Notify Party (Complete Name And Address) Same as consignee

Place of Receipt: Shen Zhen / China Port Of Loading: Shanghai / China Place of Delivery: Cali / Colombia Port Of Discharge: Buenaventura / Colombia

Table with 5 columns: Marks And Numbers, No. of PKGS, Description of Packages And Goods, Gross Weight, Measurement. Row 1: 20' steel Dry Cargo Container No. CSQU3054383, 500 packages, 500 units of 15.6 inch laptop with core i7 8GB RAM, In 6 pallets with 80 packages each one with a volume of 1.63 M³ and 1 pallet with 20 packages with a volume of 0.41 M³, 1650 Kg, 10.2 M³

The above particulars are according to the declaration of the shipper. The carrier received the above goods in apparent good order and condition, unless otherwise specified, for carriage to the place as agreed above subject to the terms of this Bill of Lading including those on the back pages. If required by the Carrier, one original of this Bill of Lading must be surrendered duly endorsed in exchange for the goods or delivery order. In witness whereof original Bill of Lading has been signed in the number stated below, one of which being accomplished the other(s) to be void.

IN ACCEPTING THIS BILL OF LADING, the Shipper, Consignee, Holder hereof, and Owner of the goods, agree to be bound by all of its stipulations, exceptions and conditions, whether written, printed or stamped on the front or back hereof, as well as the provisions above Carrier's published Tariff Rules and Regulations.

Table with 3 columns: Prepaid, Collect, Shipped on Board: 20 - August - 2010. Row 1: Ocean freight, USD 3,300, Place: Shanghai

In Witness Whereof 3 original Bills of Lading have been signed, not otherwise stated above, one of which being accomplished the others shall be void

The Bill of Lading is governed by the laws of the Hong Kong Special Administrative Region. Any proceeding against the carrier must be brought in the courts of the Hong Kong Special Administrative Region and no other court.

It is mutually agreed that... 1. DEFINITIONS... 2. PORT TO PORT SHIPMENT... 3. FREIGHT AND CHARGES PAYABLE BY SHIPPER... 4. RESPONSIBILITY... 5. CONTAINERS... 6. CONTRACTUAL VOYAGE... 7. TRANSHIPMENT AND FORWARDING... 8. NOTIFICATION AND DELIVERY... 9. FREIGHT AND CHARGES... 10. LIEN... 11. GENERAL AVERAGE... 12. BOTH TO BLAME COLLISION CLAUSE... 13. CARRIER'S LIABILITIES IN THE EVENT OF LOSS, DAMAGE OR DELAY... 14. DESCRIPTION OF GOODS... 15. CARRIER'S RIGHT OF DISPOSAL... 16. LANDING CHARGES... 17. LIMITATION... 18. JURISDICTION... 19. LIABILITY OF SERVANTS AND SUB-CONTRACTORS... 20. DANGEROUS GOODS

Bill of Lading No.: SSOFO90406718

Freight And Charges Payable By: Shipper Terms Of Sale: FOB (2010)

Number of Original Bill of Lading Issued: Three (3)

Place and date of issue: 15 - August - 2010 Shen zhen / China

For Release Of Shipment, Please Contact: Agencia de Aduanas Siacomex Ltda - Buenaventura Calle 2 No. 2º-58 - PBX: (052) 242 2798 Fax: (052) 242 4823 - buenaventura@siacomex.com

Total No. Of Container/Package Received By The Carrier: 1 / 0

For Transshipment: Vessel/Voyage: CSCL LE HAVRE / 0029W To: Maersk Line

Table with 5 columns: Marks And Numbers, No. of PKGS, Description of Packages And Goods, Gross Weight, Measurement. Row 1: 20' steel Dry Cargo Container No. CSQU3054383, 500 packages, 500 units of 15.6 inch laptop with core i7 8GB RAM, In 6 pallets with 80 packages each one with a volume of 1.63 M³ and 1 pallet with 20 packages with a volume of 0.41 M³, 1650 Kg, 10.2 M³

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## Part III: Contract Content and Obligations of the Parties

### Obligations of the seller – Delivery of documents – Article 34

- “Documents relating to the goods” in the sense of Art. 34 includes primarily documents that give their holders control over the goods (bills of lading, dock receipts and warehouse receipts) but they also include insurance policies, commercial invoices, certificates (e.g. certificates of origin, weight, contents or quality), and other similar documents
- If neither the contract nor trade usages nor practices between the parties provide specific modalities for handing over the documents, the seller must tender the documents “in such time and in such form as will allow the buyer to take possession of the goods from the carrier when the goods arrive at their destination, bring them through customs into the country of destination and exercise claims against the carrier or insurance company.”
- The handing over of non-conforming documents (e.g. invoice discrepant from contract, non-negotiable BoL instead of order BoL, BoL from which is clear that goods were loaded on, instead of below deck, “unclean” BoL) constitutes a breach of contract to which the normal remedies apply.

## Part III: Contract Content and Obligations of the Parties

### Conformity of goods – Physical conformity – Article 35

#### *Article 35*

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

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

(b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;

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

(d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew or could not have been unaware of such lack of conformity.



## Part III: Contract Content and Obligations of the Parties

### Conformity of goods – Physical conformity – Article 35

- Comprehensive regime covering all types of lack of conformity for which domestic systems often have different rules (*aliud/peius* (Austria), *vice caché/vice apparente* (France) conditions/warranties (UK); express/implied warranties (US) etc.)
- Art. 35 (2) standards relating to the goods' quality, function and packaging that, while not mandatory, are presumed to be a part of sales contracts (i.e. they are **implied terms** that bind the seller even without affirmative agreement thereto)
- However, Art. 35 (2) (a), requires only that the goods be fit for the purposes for which they are **ordinarily used** (i.e. goods **need not be perfect or flawless**, unless perfection is required for the goods to fulfil their ordinary purposes). Depending on the circumstances and the parties' agreement, this may be the seller's or the buyer's country, or the country of ultimate use
- Also, quantity deviations may not constitute lack of conformity as long as they remain within customary range for the trade concern

## Part III: Contract Content and Obligations of the Parties

### Conformity of goods – Legal conformity – Articles 41 and 42

#### *Article 41*

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

#### *Article 42*

(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

(a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or

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

[...].

## Part III: Contract Content and Obligations of the Parties

### Conformity of goods – Legal conformity – Articles 41 and 42

- CISG maintains the distinction between defect in quality (*Sachmangel*) and defect in title (*Rechtsmangel*), to which Art. 35(3) does not apply
- CISG extends conformity obligations beyond free title (Art.41) to the obligation to sell goods that are free from any third party's right or claims based on industrial property or other intellectual property (Art. 42)
- Buyer retains the right to claim legal non-conformity beyond the two-year cut-off period of Art. 39(2)

## Part III: Contract Content and Obligations of the Parties

### Lack of conformity of goods – Notice requirements – Articles 38 and 39

#### *Article 38*

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

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

[...]

#### *Article 39*

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

## **Part III: Contract Content and Obligations of the Parties**

### **Lack of conformity of goods – Notice requirements – Articles 38 and 39**

- Time for buyer's examination depends on means of delivery**
- Factors taken into account by courts and arbitrators to determine the reasonableness of the period include:**
  - perishable or seasonal nature of goods/ whether the goods are subject to major fluctuations in price or rapid change in condition**
  - volume of goods delivered by the seller/ complexity of the goods/ difficulty of conducting an examination/ whether examining the goods would entail disassembling them or removing them from packaging/ the buyer's reasonable opportunity (and the availability of necessary facilities) to examine the goods/the risk that the goods would be mixed up with those from other suppliers unless examined immediately after delivery;**
  - professionalism and/or expertise of the buyer /timing and nature of the buyer's expected use or resale of the goods/ the buyer's knowledge of the seller's need for speedy notice of lack of conformity;**
  - whether the goods had passed a pre-delivery inspection/ whether there were defects in prior deliveries/the fact that the buyer had requested expedited delivery of the goods; whether lack of conformity was obvious**



## Part III: Contract Content and Obligations of the Parties

### Obligations of the buyer – Taking delivery – Articles 53 and 60

#### *Article 53*

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

#### *Article 60*

The buyer's obligation to take delivery consists:

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

## Part III: Contract Content and Obligations of the Parties

### Obligations of the buyer – Taking delivery – Articles 53 and 60

- Buyer has a **duty to cooperate** with the seller to effect delivery (e.g. preliminary examination of the goods prior to delivery; obtaining import licences; concluding a contract of carriage or notifying the name of the vessel on board which the goods are to be delivered; giving notice to the seller within a reasonable period in connection with deliveries to be made at the buyer's request)
- Buyer has an **obligation to physically take over the goods**, without prejudice to the buyer's remedies arising out of lack of conformity of the goods
- However, buyer has a **right to reject the goods** if they are delivered before the date fixed (Art. 52 (1)), or where the seller delivers a greater quantity than provided for in the contract (Art. 52 (2)). The buyer may also reject the goods if the seller commits a fundamental breach of contract

## Part III: Contract Content and Obligations of the Parties

### Obligations of the buyer – Price payment – Articles 58 and 59

#### *Article 58*

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

#### *Article 59*

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

## Part III: Contract Content and Obligations of the Parties

### Obligations of the buyer – Price payment – Articles 58 and 59

- The CISG default rule is simultaneous exchange of goods and price, subject to contract terms, commercial usages and practices established between the parties
- CISG has no default rules on currency of payment, but this question should be seen as within its scope, because of its logical relation with price payment (“internal gap”). In the absence of a contractual provision, price is to be paid in the currency of the place of payment or of the place of delivery
- “Documents controlling the disposition of the goods” is narrower than “documents relating to the goods” (Art. 34). Certificates of origin and quality, or customs documents, are not documents controlling the disposition of the goods so that their non-delivery does not justify a buyer’s refusal to pay the price.
- Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller (Art. 66)

## Part IV: Contract Performance and Breach

### Passage of risk – General rules – Article 67

#### *Article 67*

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

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

## **Part IV: Contract Performance and Breach**

### **Passage of risk – General rules – Article 67**

- As a default rule, where the contract of sale involves carriage of the goods, the risk passes to the buyer when the seller hands over the goods to the first carrier**
- The risk passes without regard to whether the seller or the buyer has title to the goods, and without regard to who is responsible for arranging transport and insurance**
- A contract of sale involves the carriage of goods when it expressly or implicitly provides for subsequent carriage irrespective of who is responsible for arranging the contract of carriage (seller or buyer)**
- “Handing over” of the goods is complete when the goods are in the physical custody of the carrier, i.e. actual surrender of the goods to the carrier**
- Depending on the agreed terms of transportation, risk may pass already at unloading the goods alongside the ship into the carrier’s custody or only at loading the goods onto the respective means of transport under the buyer’s custody**

## Part IV: Contract Performance and Breach

- Carriage terms and passage of risk

### Incoterms 2010

**EXW Ex works**

(...named place)

**FCA Free carrier**

(...named place)

**FAS Free alongside ship**

(...named port of shipment)

**FOB Free on board**

(...named port of shipment )

**CFR Cost and freight**

(...named port of destination)

**CIF Cost, insurance and freight** (...named port of destination)

**CPT Carriage paid to**

(...named place of destination)

**CIP Carriage and insurance paid to** (...named place of destination)

## Part IV: Contract Performance and Breach

- Carriage terms and passage of risk

### Incoterms 2010

**DAP Delivered at place**

(...named place)

**DAT Delivered at terminal**

(...named terminal or place of destination)

**DDP Delivered duty paid**

(...named place of destination)



# Part IV: Contract Performance and Breach

## • Incoterms 2010

■ COSTS    ■ RISK    ■ INSURANCE  
■ ALL MODES OF TRANSPORT    ■ SEA AND INLAND WATERWAYS




### DESCRIPTION

<b>EXW</b> Ex Works	SELLER	BUYER	
	SELLER	BUYER	
	SELLER	BUYER	
<b>FCA</b> Free Carrier	SELLER	BUYER	
	SELLER	BUYER	
	SELLER	BUYER	
<b>CPT</b> Carriage Paid to	SELLER		BUYER
	SELLER	BUYER	
	SELLER	BUYER	
<b>CIP</b> Carriage and Insurance Paid to	SELLER		BUYER
	SELLER	BUYER	
	SELLER		BUYER
<b>DAT</b> Delivered at Terminal	SELLER		BUYER
	SELLER		BUYER
	SELLER		BUYER
<b>DAP</b> Delivered at Place	SELLER		BUYER
	SELLER		BUYER
	SELLER		BUYER
<b>DDP</b> Delivered Duty Paid	SELLER		BUYER
	SELLER		BUYER
	SELLER		BUYER

# Part IV: Contract Performance and Breach

- Incoterms 2010**

■ COSTS   
 ■ RISK   
 ■ INSURANCE  
■ ALL MODES OF TRANSPORT   
 ■ SEA AND INLAND WATERWAYS



**DESCRIPTION**

Incoterm	Costs	Risk	Insurance	All Modes of Transport	Sea and Inland Waterways
<b>FAS</b> Free Alongside Ship	SELLER	BUYER	BUYER	BUYER	BUYER
	SELLER	BUYER	BUYER	BUYER	BUYER
	SELLER	BUYER	BUYER	BUYER	BUYER
<b>FOB</b> Free on Board	SELLER	BUYER	BUYER	BUYER	BUYER
	SELLER	BUYER	BUYER	BUYER	BUYER
	SELLER	BUYER	BUYER	BUYER	BUYER
<b>CFR</b> Cost and Freight	SELLER	BUYER	BUYER	BUYER	BUYER
	SELLER	BUYER	BUYER	BUYER	BUYER
	SELLER	BUYER	BUYER	BUYER	BUYER
<b>CIF</b> Cost, Insurance and Freight	SELLER	BUYER	BUYER	BUYER	BUYER
	SELLER	BUYER	BUYER	BUYER	BUYER
	SELLER	BUYER	BUYER	BUYER	BUYER

## Part IV: Contract Performance and Breach

### Special rules on passage of risk – Articles 68 and 69

#### *Article 68*

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

#### *Article 69*

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

[...]

## **Part IV: Contract Performance and Breach**

### **Special rules on passage of risk – Articles 68 and 69**

- Art. 67 inadequate when goods are sold after shipment (in transit), because buyer would be forced to assume risks retroactively**
- Sale of goods in transit (common in certain commodity trades)**
- However, risk may pass retroactively to the buyer as a consequence of shipment terms (e.g. CIF), but the buyer is protected against seller's bad faith**

## Part IV: Contract Performance and Breach

### Remedies of the buyer – Article 46

#### *Article 46*

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

## Part IV: Contract Performance and Breach

### Remedies of the buyer – Articles 46 and 28

- The buyer's right to require performance depends on the applicable law (Art. 28). If the seized court would not, on the facts of the case, grant such remedy under its own national law, it will not be bound to do so under the Convention, and may award only damages.
- Right to performance is the first among the remedies as CISG aims at preserving the contractual relation as far as possible (delivery of substitute goods, repair of defective performance)
- Avoidance of contract is only available as a last resort remedy if the continuation of the contract would no longer be tolerable because of a severe (“fundamental”) breach of contract by the seller
- Delivery of defective goods is not per se fundamental breach of contract if the goods are reparable (at least where the seller offers and effects speedy repair without any inconvenience to the buyer)

## Part IV: Contract Performance and Breach

### Remedies of the buyer – Article 47

#### *Article 47*

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract [but] is not deprived thereby of any right he may have to claim damages for delay in performance.

#### *Article 48*

(1) [...] the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

## Part IV: Contract Performance and Breach

### Remedies of the buyer – Article 47

- Buyer may (but is not obliged to) fix an additional period of time (*Nachfrist*) of a reasonable length within which the seller must perform its obligations, paving the way to the avoidance of the contract
- Right to demand specific performance, to avoid the contract or to demand damages is suspended during this period
- If the seller performs during the additional period of time the buyer must accept the performance (but retains the right to claim damages for losses caused by the delay of performance)
- If the seller does not perform within the additional period, the buyer may resort to any available remedy, including avoidance
- Seller himself has the right to cure defective performance, unless the buyer rejects (but buyer's lack of reaction where the seller has indicated a period of cure is presumed to be acceptance)



## Part IV: Contract Performance and Breach

### Remedies of the buyer – Articles 50 and 52

#### *Article 50*

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. [...].

#### *Article 52*

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

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

## Part IV: Contract Performance and Breach

### Remedies of the buyer – Articles 50 and 52

- Price reduction available when goods that have been delivered do not conform to the contract (i.e., defects as to quantity, quality, description (*aliud*) and packaging; defects in documents relating to the goods can be treated as a case of non-conformity), whether lack of conformity amounts to fundamental breach or not
- Price reduction however not available for late delivery or breach of any obligation of the seller other than the obligation to deliver conforming goods
- Price reduction is proportionate to the value loss of the goods actually delivered as compared to the value that conforming goods would have
- Buyer retains right to price reduction even where he lost the right to avoid the contract for fundamental breach

## Part IV: Contract Performance and Breach

### Remedies of the seller – Articles 46 and 28

#### *Article 63*

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

#### *Article 64*

(1) The seller may declare the contract avoided:

(a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so: [...]

## Part IV: Contract Performance and Breach

### Remedies of the seller – Articles 63 and 64

- The additional period of time granted by the seller is established by means of a notice by the seller to the buyer indicating that the buyer has to perform (a general demand that the buyer perform or discharge its obligations immediately or promptly is not enough) within a fixed or determinable additional period (i.e. by a date or within a time period)
- The additional period of time must be reasonable according to the circumstances of the case, including commercial usages and practices established between the parties (e.g. a reasonable period with regard to taking delivery of the goods will generally be longer than that applying to payment of the price)
- Definitive failure to pay the price or a large part of the price or to open a letter of credit at the time fixed by the contract generally constitutes a fundamental breach of contract, as opposed to a mere delay (unless timely performance of the obligation to pay the price is of the essence of the contract)