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Uniform law in the matter of international sales

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr P.G.M. Van MEEUWEN, Netherlands

A. I . Draft Recommendation

The Assembly,

Considering that national legislations on the sale of goods differ widely ;

Considering that this state of affairs is prejudicial to the development of trade between European countries ;

Considering that concerted action in this field has become more urgent by reason of the creation of the Common Market, the agreement , in principle , to setup a Free Trade Area among the Outer Seven and the possible creation of a wider Economic Association ;

Realising, accordingly, the need for a uniform law in this field ;

Having noted the contents of the report of the Legal Committee (Doc. 1022),

Recommends that the Committee of Ministers :

1. invite member Governments which have not ye t done so to forward to the Netherlands Government their comments on the draft Uniform Law in the matter of international sales, prepared in 1956 by a Special Committee , under the chairmanship of M. Pilotti , and communicated to them by the Netherlands Government in the course of t he same year ;
2. invite the Netherlands Government to convene as soon as possible, at The Hague, a diplomatic conference of all member States and non-member States interested , to prepare, on the basis of the Pilotti Committee's draft, the final text of a Convention embodying a uniform law in the matter of internation al sales and to open it to signature by Governm ents ;
3. inform the Assembly at the opening of its twelfth Session of the action taken on this Recommendation.

B. I I . Draft Order [1] presented by the Legal Committee

The Assembly,

Considering the urgency of facilitating as much and as soon as possible the international trade between the member States ;

Considering that this question has become more urgent after the creation of the Common Market , the agreement , in principle, to set up a Free Trade Area among the Outer Seven, and the possibility of creating a wider Economic Association ;

Having considered the report of its Legal Committee on a uniform law in the matter of international sales,

Instructs its Legal Committee to study the question of the formation of contracts of international sale in the light of the draft prepared by the International Institute for the Unification of Private Law.

1. See 21st Sitting, 18th September 1959 (draft Order adopted), and Order No. 148.

C. I I I . Explanatory Memorandum by M. van MEUUWEN

1.

1. On 17th October 1958, t h e Consultative Assembly adopted Order 132 as follows :

" The Assembly,

Considering that the Common Market has now come into existence and initial steps have been taken to institute a European Economic Association ;

Realising, in consequence, the patent need for a uniform law in the matter of international sales,

Instructs the Legal Committee to consider the question in the light of the work already carried out by The Hague Conference on Private International Law, and the Rome Institute for the Unification of Private Law, and to report to the Assembly in due course".

For this purpose , the Legal Committee set up a Sub-committee , the results of whose work were considered at the Committee's meeting on 21st August in Paris . The Committee's conclusions are contained in this report.

2. National legislation governing sales differs widely from country to country , even among member States of the Council of Europe. Moreover, regulations on conflicting legislation designed to determine which national legislation shall apply to a given sale are not only at variace , but imprecise. This state of affairs is clearly prejudicial to international trade, and has led certain trade organisations to introduce numerous legal provisions applying to a large proportion of goods traffic. However, these provisions , which relate to certain aspects of trade only, are frequently inconsistent. Consequently , the International Law Association , The Hague Conference on Private International Law and the International Institute for the Unification of Private Law have been endeavouring for years to find solutions to this problem. Though noteworthy progress has been made, no international regulations on sales have so far come into force.

3. It is to the advantage of the Council of Europe to encourage all attempts to solve this problem satisfactorily . The rapid, development of trade between European countries, especially since the Common Market Treaty came into force (one of whose principal objectives is to further such development) calls for a further effort. This should not be confined to the member States of the six-Power Communities , for it is essential to prevent any further breach between the Six and the rest of Europe ; it should the refore embrace as many member States of the Council of Europeas possible, together with other countries such as Portugal and Switzerland, which are Members of 0.E.E.C. and of the group of the " Outer Seven ".

4. As has been said, several bodies have taken an active interest in the law governing international sales. Before I deal with the attempts made to arrive at a uniform law in such matters , I would point out that The Hague Conference considered that , pending such unification of law, it would be useful?in view of the diversity of existing law?to have a convention laying down precisely the law applicable to sales. It seems that not only would it be easier to reach agreement in this field and thus quickly achieve positive results, but also that the two undertakings could be conducted on parallel lines, the solution of conflicts of l aw being at the same time a first phase in unification and an indispensable complement of the uniform law, filling the inevitable gaps it must leave. An example of such parallel efforts, namely unification in the field of substantive law and the uniform regulation of conflicts of law, is provide d by the Geneva Treaties on cheques and bills of exchange.

I t was for these reasons t h a t The Hague Conference drafted, at its Seventh Session in 1951, a Convention on the law applicable to the international sale of corporeal movable property , the principles of which are that the sale is governed by the municipal law of the country specified by the Contracting Parties and that failing any declaration by the Parties that a given law is applicable it shall be governed by the municipal law of the country where the vendor is usually resident at the time when he receives the order . This Convention was signed by all the States represented at the 1951 Session, except Germany, Austria and Great Britain . At the Eighth Session, held in 1956, t h e German delegation put forward certain comments , the substance of which was that, following objections raised by the trade circles concerned, the Federal Republic was not in a position to give effect to the Convention unless certain changes were made to it . After discussion, the majority of the States represented held that the Convention, having been signed by several States , should not be called into question . To date , only Italy has ratified the Convention.

Your Committee feels sure that a convention on the conflict of laws relating to international sales would be an important step to wards the unification of the rules of private international law. While it does not feel able to take sides in the difference of opinion which has arisen over the draft Convention of 1951, it is of opinion that

a new attempt should be made to reach agreement on this important issue and bring the Convention into force, whether in its original or in a revised form. It would be glad there fore if The Hague Conference would agree to study the matter again at its next Session with a view t o finding a way out of the impasse.

5. Whilst The Hague Conference was seeking ways and means of unifying the law of conflicts, the International Institute for the Unification of Private Law was seeking means of unifying the law of the various countries. To this end, it produced a draft uniform law relating to sales. At the opening of the International Conference which studied this draft, the Netherlands Minister of Justice said of the work of unifying the law : " It is an immense task , but one well worth undertaking . History shows us that even in countries which now have a single civil and commercial code for their entire territory , uniformity has not always existed ; it has slowly evolved. There has been a gradual unification of civil law and commercial law in the various countries . This result has already been achieved in a number of fields in which we have arrived at a certain unification of law. Unity in such matters can only be beneficial to relations between countries . "

The Committee is sure that the draft first prepared by the Rome Institute and revised by a Committee of the International Conference already referred to, the broad outlines of which are set forth below, could form the basis for an understanding among the intereste d European countries. So it suggests, in its draft Recommendation , that we urge the member Governments to arrange for a Convention embodying a uniform law in the matter of sales to be signed in the fairly near future . This would necessitate all Governments forwarding their written comments on the latest version of this draft without delay to the Netherlands Government, which could then convene a diplomatic conference t o open the Convention to signatureby the countries interested .

2. Origin of the Rome Institute Draft

6. The first draft uniform law on international sales was prepared by a Special Committee of the International Institute for the Unification of Private Law with its headquarters in Rome. On its completion in 1935, it was communicated to member Governments of the Rome Institute for comment. The Special Committee then amended it in the light of the comments received. It was planned to submit the second draft to a diplomatic conference in 1940 or 1941. The war having intervened , the Netherlands Government welcomed the proposal to convene at The Hague, in connection with the Seventh Session of the Conference on Private International Law, an International Diplomatic Conference to consider the Rome Institute's draft. This Conference, which to ok place in The Hague from 1st t o 10th November 1951, was attended by representatives of the Council of Europe countries, less Iceland and Turkey, and of the Vatican, Spain, Finland , Japan , Portugal , San Marino and Switzerland. Bolivia, Chile, Cuba, the United States and Yugoslavia sent observers, as did the United Nations, the Rome International Institute and the International Chamber of Commerce. The Conference approved the draft in principle, but decided that it needed certain amendments . Accordingly, a Committee was appointed to revise it. Under the chairmanship of M. Pilotti (Italy) , this Committee completed its work in 1956. As decided by the Conference in 1951, the revised draft was submitted to the Netherlands Government for distribution to member States of the Rome Institute and of The Hague Conference on Private International Law, with the request that they forward their comments to the Netherlands Government. It has been agreed that the Netherlands Government will then convene a second Diplomatic Conference t o consider the draft. The only member States whose replies have reached the Netherlands Government so far are : Austria , Denmark, Federal Republic of Germany, Sweden and Turkey .

3. The latest version of the Rome Institute Draft

7. Generally speaking, the draft prepared by the Pilotti Committee in 1956 [2] , like the original Rome Institute text , makes very few changes in commercial law and practice in the countries interested in establishing a uniform law in the matter of international sales of corporeal property . It is quite clear, however, that there can be no uniform law without some changes in national legislation.

The Pilotti Committee's draft tends to embody new ideas, rather than seeking a compromise between the various national legislations .

8. As explained in the Committee's report, the draft is confined to legal provisions relating to international sales, to the exclusion of all internal trade . In this respect, its scope is narrower than that of the International Convention of 1930 on bills of exchange and that of 1931 on cheques.

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2. See Appendix.

It is accordingly most important to define the term " international sale ", and Articles 2 to 8 of t h e draft uniform law contain , to my mind, a most satisfactory definition.

9. However, the draft does not make its provisions binding on the Contracting Parties, even in respect of international sales. The uniform law may always be set aside in favour of some national law or else certain of its provisions may be replaced by contractual regulations regarded as more appropriate to the terms of the contract (Article 6). It may be said, therefore, that the draft is simply designed to supply deficiencies in international sales legislation.

10. The draft contains provisions of two kinds , relating respectively to the articles to which the uniform law is to apply, and to the legal situations it is designed t o govern.

With regard to the former, Article 9 specifies that it shall apply to " corporeal property ", that is to say goods normally dealt in commercially.

The draft specifically excludes, however, stocks and shares, bills of exchange, currency , sea-going craft, inland waterway craft and registered aircraft.

The legal situations that the law is designed to govern are to be found in Article 12, which states that the uniform law shall apply only to buyers' and sellers' commitments arising out of sales contracts.

The draft contains no provisions relating to the formation of contracts , either as regards the capacity of the Parties or as regards their mutual consent or impairment thereof.

The Pilotti Committee feared that the draft might be adopted less readily if it contained provisions relating to highly complex problems in the treatment of which national legislations differed widely.

While agreeing with the Pilotti Committee , your Committee suggests that the Assembly should instruct the Legal Committee now to consider the advisability of action to standardise national legislation on the formation of contracts . For this purpose, it has prepared a draft Order of the Assembly which, if adopted , would set in motion the procedure for an examination of this problem.

Appendix APPENDIX

Draft uniform law on the international sale of moveable corporeal property

Revised draft prepared in 1956 by the Special Committee on Sales appointed by The Hague Conference (Pilotti Committee) .

CHAPTER I - Scope and purpose

Article 1

This law shall replace the municipal laws of the signatory States in cases where it is applicable and in matters governed by it ; if certain aspects of these matters are not expressly settled by this law, they shall be settled in accordance with its general underlying principles.

SECTION I - Scope

Article 2

This law shall apply to contracts of sale signed between parties having their establishment or, in the absence of an establishment, their habitual residence in the territory of different States, in any of the following cases :

a. when it is implicit in the contract that t h e goods sold will be, or at the time of the conclusion of the contract have been, transported from the territory of one State to the territory of another ;

b. when the instruments embodying the offer and the acceptance have not all been completed in the territory of the same State ; in contracts by correspondence, the instruments embodying the offer and the acceptance shall be regarded as having been completed in the territory of a single State when the correspondence embodying the contract was despatched and received in the territory of that State ;

c. when the goods arc to be delivered in the territory of a state other than that in which the instruments embodying the offer and the acceptance of the contract were completed.

Article 3

However, two or more signatory States may declare in the final protocol that they are agreed not to regard one another as different States, within the meaning of this law, because they apply the same or similar legislation to sales covered thereby. A signatory State may declare in the final protocol that it does not regard one or more nonsignatory States as different from it, within the meaning of this law, because they apply identical or similar legislation to its own to sales covered thereby.

Article 4

If the contract of sale is signed by a person with more than one establishment, the establishment from which the first offer or the first reply thereto was despatched shall be the one taken into account.

If a person appoints a representative in concluding a contract of sale, the establishment or residence of the person represented shall be the one taken into account.

Article 5

No account shall be taken of the nationality of the parties.

Article 6

The parties may entirely debar the application of this law, provided that they name the municipal law which is to apply to their contract. This information must be embodied in a specific clause or be obvious from the terms of the contract.

The parties may derogate from any of the provisions of this law, provided that they signify agreement on different provisions, either by mentioning them explicitly, or by indicating the particular rules extraneous to this law on which they intend to rely.

Article 7

This law shall likewise be applicable when it has been chosen as the law of contract by contracting parties who have their establishment, or in the absence of an establishment, their habitual residence in the territory of other States, be they non-signatory States.

Article 8

I t shall be assumed that the parties have agreed to apply this law :

a. to contracts of sale in which the purchaser has informed the vendor, before conclusion of the contract, that the goods purchased have been or will be re-sold under the terms of this law ;

b. to contracts of sale concerning goods which the vendor himself has purchased under a contract governed by this law, provided that the vendor has informed the purchaser, before concludpar ing the contract, of the obligations of his own vendor and has entered i n to the same commitments vis-a-vis his purchaser.

SECTION II - Purpose

Article 9

This law shall govern sales of moveable corporeal property but not sales :

a. of stocks and shares, bills of exchange and currency ;

b. of registered sea-going or inland waterway craft and aircraft ;

c. by order of a court or by distraint.

Article 10

The following shall be treated as sales, within the meaning of this law : contracts for the supply of moveable corporeal property still to be manufactured or produced, when the supplier has to provide the raw materials needed for manufacture or production.

Article 11

This law shall govern sales regardless of the commercial or civil character of the parties and the contracts.

Article 12

This law shall govern solely obligations between the vendor and the purchaser which arise out of the contract ; it shall not effect, inter alia, the establishment of the contract, any effects which its conclusion may have upon the ownership of the article sold, the validity of the contract or of any of the clauses therein, or the validity of the customs invoked.

Article 13

Points 3 to 5 of Article 40 concerning failure to conform to the contract shall not apply to the sale of live animals.

CHAPTER II - General clauses

Article 14

The parties shall be bound :

a. by customs to which they have referred explicitly or implicitly ;

b. by customs which persons in their position as contracting parties normally consider to be a clause of their contract.

In cases of inconsistency, the customs mentioned in the previous paragraph shall override the terms of this law.

When clauses or forms of words current in the trade have been employed, the judge must interpret them in accordance with the customs of that trade.

Article 15

It shall be a vital breach of the contract whenever one party knew or should have known, when concluding the contract, that the other party would not have concluded it if he had foreseen that breach.

Article 16

By the " short period " in which an act must be performed, this law means : within as short a period as possible, having regard to the circumstances, of the time when the act can reasonably be performed.

Communications to be made within a short period, under the terms of this law, shall be made by the means of correspondence normal in the circumstances. If a communication is made by letter, telegram or other appropriate means, its delay or failure to reach its destination shall not deprive the sender of the right t o invoke it.

Article 17

By " listed price " is meant the price officially quoted on the market or, in the absence of such quotation, one based on the factors customarily used by t h e market to determine prices.

Article 18

By "municipallaw " is meant thel aw of t he country having jurisdiction according to the principles of private international law applied by the court to which the case is referred.

Article 19

No special form shall be prescribed for the contract of sale. It may be proven by witnesses.

CHAPTER III - Obligations of the vendor

SECTION I - Delivery of the Goods

Article 20

Delivery consists in handing over goods in conformity with the contract and their accessories ; the vendor shall undertake to deliver the goods on the terms laid down in the contract and in this law.

Article 21

Where the contract of sale implies conveyance of the goods, if it is not specified that delivery shall be at the place of destination, delivery shall consist in handing over the goods t o the forwarding agent. If, for some portion of the journey, the vendor makes use of his own facilities or facilities hired on his own account, delivery shall consist in handing over the goods to the forwarding agent with whom the shipment contract has been signed on the purchaser's account. If, because transport must be arranged b y several successive forwarding agents, the vendor is obliged by the contract of sale to conclude one or more contracts covering the whole process of shipment, delivery shall consist in handing over the goods to the first forwarding agent.

When it is not clear, by the affixing of an address or some other means, that the goods handed over to the forwarding agent are those mentioned in the contract, the vendor shall not have fulfilled his obligation as regards delivery unless, besides handing over the goods, he sends the purchaser a consignment note and, if need be, a specification of the goods.

If the forwarding agent who is to receive the goods in accordance with paragraphe 1 above has arranged for shipment by water, delivery shall consist in depositing the goods either on board or alongside the vessel, according to the terms of the contract, unless the contract or custom entitles the vendor to submit a bill of lading or similar document to the purchaser.

§ 1. Obligations of the vendor as to the date and place of delivery

A. Date of Delivery

Article 22

When the date of delivery has been fixed by the parties or is based on custom, the vendor shall be required to deliver the goods on that date without further formality, provided that the date fixed is determined or determinable by t h e calendar or is linked with a definite event the exact day of whose occurrence may be ascertained by the parties.

Article 23

When the parties have agreed that delivery shall bo affected at a certain period (such and such a month or season), it rests with the vendor to fix the precise date of delivery, unless it is clear from the circumstances that this right is reserved t o the purchaser.

Article 24

When the date of delivery has not been fixed in accordance with Articles 22 and 23, the vendor must deliver the goods within a reasonable time of the conclusion of the contract, having regard to the nature of the goods and the circumstances.

B. Place of Delivery

Article 25

When conveyance of the goods is not implicit in the contract of sale, the vendor shall, unless otherwise agreed explicitly or implicitly, and in the absence of custom, deliver the goods at the place where he had his establishment or, in the absence of an establishment, his habitual residence at the time of concluding the contract.

If the sale concerns a specific article, and if the parties know the place where this article is at the time when t h e contract is concluded, it is at that place t h a t the vendor must deliver it. The same shall.apply if the goods sold are goods of a certain category and may be taken out of a definite stock or bulk quantity, or if they must be manufactured or produced in a place known to the parties at t h e time when the contract is concluded.

Article 26

Where the contract of sale implicitly assumes conveyance of the goods, if it is not stipulated that delivery shall be at the place of destination, the act constituting delivery in accordance with Article 21, paragraph 1, shall be performed at the place where, owing to the circumstances, conveyance on the purchaser's account must begin.

Should the contract provide for shipment by water, the goods shall be delivered at t h e place where the vessel is being loaded, even if there must first be conveyance by another means of transport unless the vendor is obliged by the contract of sale or by custom to conclude one or more shipment contracts covering the whole process of shipment.

C. Penalties for failure of the vendor to fulfil his obligations as to the date and place of deliver

Article 27

When the vendor has not fulfilled his delivery obligations in accordance with the contract and this law, either by failing to deliver anything by the date prescribed, or b y delivering the goods at a place other than the one prescribed, the purchaser shall be entitled, as laid down in the following articles, to demand satisfaction in kind where this is possible and is recognised by the municipal law of the court to which the matter is referred, or, if the present law does not provide for rescission, ipso jure, to rescind the contract by a simple declaration.

The purchaser may also obtain damages in the cases set forth below.

In no event may the vendor obtain a respite from the judge.

Article 28

Even when the municipal law of the court to which the matter is referred recognises his right to demand satisfaction in kind, the purchaser may not demand such satisfaction if the sale concerns goods for which the purchase of a replacement is customary.

(a) Penalties relating to the date of delivery

Article 29

When failure to deliver on the date prescribed is a vital breach of the contract, the purchaser may either demand satisfaction in kind, in accordance with Articles 27 and 28, or declare the contract rescinded. He must notify his decision to the vendor within a short period, failing which the contract shall be rescinded ipso jure.

If the vendor offers delivery before the purchaser has revealed his intentions, the latter may either accept delivery, or within the short period mentioned in the previous paragraph, declare the contract rescinded.

Article 30

When failure to deliver on the date prescribed is not a vital breach of the contract, the vendor shall retain the right to effect delivery and the purchaser the right to demand satisfaction in kind in accordance with Articles 27 and 28. Nevertheless, the purchaser may assign a new date which allows the vendor a .reasonable extension period and may inform the vendor that after t h at date he will refuse the goods. If the period thus laid down by the purchaser is not of reasonable duration, the vendor may, within a short period, inform the purchaser t h a t he will not effect delivery until the expiry of a period fixed by himself, which must be of reasonable duration ; failing such a declaration, the vendor shall be assumed to have accepted the period stipulated by the purchaser. If the vendor fails to deliver the goods on the expiry of the extension period, the contract shall be rescinded ipso jure.

Article 31

In applying the previous two Articles, failure to deliver on the date prescribed shall always be deemed to be a vital breach of the contract when the goods concerned are quoted on markets to which the purchaser may apply in order to obtain them.

In the case of contracts of sale signed on a stock exchange, failure to deliver on the date prescribed shall entail de jure rescission of the contract in accordance with stock exchange custom.

Article 32

Where the vendor has fulfilled his obligation to deliver after the date prescribed, the purchaser shall be entitled to claim the damages provided for in Article 94, even if he has accepted delivery and even if the vendor has availed himself of the extension period mentioned in Article 30.

Article 33

If the contract is rescinded for failure to deliver on the date prescribed, the purchaser shall be entitled to claim the damages provided for in Articles 96 t o 100.

Article 34

If the vendor offers to deliver the goods before the date prescribed, the purchaser shall have the option either of demanding delivery on the date prescribed or of accepting and, should occasion arise, claiming the damages provided for in Article 94.

(b) Penalties relating to the place of delivery

Article 35

If failure to deliver at the agreed place is a vital breach of the contract, the purchaser may either demand delivery at the agreed place in accordance with Articles 27 and 28, or, whenever failure to deliver by the date prescribed is also a vital breach of the contract and the goods have not been delivered at the agreed place on the date prescribed, declare the contract rescinded. The purchaser must notify his choice within a short period, or the contract shall be rescinded ipso jure.

Article 36

In other cases, if the purchaser is not prepared to accept delivery at the place where the goods have been delivered, he may only give the vendor a reasonable period within which to deliver the goods at the agreed place. If the period thus stipulated by the purchaser is not of reasonable duration, the vendor may, within a short period, inform the purchaser t h a t he will not effect delivery at the agreed place until the expiry of a period fixed by himself, which must be of reasonable duration; failing such a declaration the vendor shall be assumed to have accepted the period stipulated by the purchaser. If, on expiry of the extension period, the vendor has still not delivered the goods at the agreed place, the contract shall be rescinded ipso jure.

Article 37

Where delivery consists in handing over t h e goods to a forwarding agent and this has been done elsewhere than at the agreed place, if the purchaser does not wish to accept such delivery, he may declare the contract rescinded whenever failure to deliver at the agreed place is a vital breach of the contract ; he shall forfeit this right if he does not declare the contract rescinded within a short period.

The purchaser shall have the same right, in the cases and under the conditions defined in the previous paragraph, if the goods have been sent elsewhere than to the agreed place.

If despatch from or to a place other than that agreed is not a vital breach of the contract, the purchaser may only claim damages.

Article 38

If the vendor delivers the goods elsewhere than at the agreed place, the purchaser shall be entitled to claim the damages provided for in Article 94, even if he has accepted such delivery and even if the vendor has availed himself of the extension period mentioned in Article 36.

Article 39

If the contract is rescinded for failure to deliver at the agreed place, the purchaser may claim the damages provided for in Articles 96 to 100.

§ 2. Obligations of the -vendor as to conformity of the goods

A. Irregularity

Article 40

The vendor shall be deemed not to have supplied goods in conformity with the contract :

1. when he has supplied only part of the goods sold or has supplied t h em in larger or smaller quantities than promised in the ontract ;
2. when he has supplied goods other than, or of a different type from, those specified in the contract ;
3. when he has supplied goods unlit for normal or commercial use ;

4. when he has supplied goods unfit for a special use explicitly or implicitly mentioned in the contract ;

5. 5. by and large, when he has supplied goods lacking the properties and characterstics explicitly or implicitly mentioned in the contract.

Differences of quantity and the absence of a part, quality or characterstic shall not be taken into account when they are of no significance for the interests of the purchaser or are accepted by custom.

Article 41

In the cases mentioned in the previous Article, the rights conferred on the purchaser by the present law shall exclude all other grounds for claim which the purchaser might put forward, particularly those based on error.

Article 42

In sales based on sample or pattern, the properties of the goods must conform with those of the sample or pattern.

If there is any inconsistency between the sample or pattern and the description of the goods in the contract, the sample or pattern shall prevail ; if there are differences but no inconsistency, the goods must have the combined properties of the sample or pattern and of the description.

Article 43

A sale shall not be deemed to have been based on a sample or pattern when the vendor proves that the sample or pattern was shown to the purchaser merely as an indication, without commitment as to conformity.

Article 44

Conformity with the contract, including conformity with the sample or pattern, shall be determined by the state of the goods at the time of the transfer of risks. However, if, as a result of a declaration of rescission or of a request for replacement, no transfer of risks occurs, conformity shall be determined by the state of the goods at the time when the risks would have been transferred if the goods had been in accordance with the contract.

The vendor shall be held responsible for the effects of any irregularity which may arise after the time mentioned in the previous paragraph, if the defect is due t o an act of the vendor or of a person for whom he is responsible.

Article 45

The vendor shall not be.held responsible for the results of the defects specified in Article 40, points 3 to 5, if he can prove that , at the time when the contract was concluded, the purchaser knew of, or should have hnown of, those defects; when the vendor proves t h a t the purchaser did not know of the defect but should have known of it, the purchaser may nevertheless base a claim on the defect, if he can prove that the vendor promised non-existent properties or dishonestly concealed the defect.

Article 46

If the purchaser accepts early delivery, the vendor shall retain until the agreed delivery date the right either to supply the missing part or quantity or new goods in accordance with the contract, or to remedy the defect in the goods supplied.

B. Discovery and notification of irregularity

Article 47

As soon as the purchaser has an opportunity to do so, he must inspect the goods or have them inspected within a short period.

If the goods have been transported, the purchaser must inspect them at the place of destination.

If the goods are forwarded by the purchaser without trans-shipment and if the vendor knew, or should have known, when the contract was signed, of the possibility of their being forwarded, the goods sold shall not be inspected until they reach their new destination.

The form of inspection shall be settled by agreement between the parties, or, failing agreement, by the law or custom of the place where the inspection is to take place. A purchaser intending to invoke the results of the inspection must in good time invite the vendor or his representative to attend the inspection, unless there is a risk that the goods will perish.

Article 48

The purchaser shall forfeit the right to invoke an irregularity if he does not notify the vendor of the defect within a short period after he discovered or should have discovered it.

When notifying an irregularity, the purchaser must specify the nature of the defect in a manner consistent with custom and honest dealing.

Article 49

The vendor may not invoke the terms of Articles 46 to 48 when the irregularity is connected with acts which he concealed dishonestly.

C. Penalties for irregularity

Article 50

A purchaser who has duly notified an irregularity has the choice, subject to Articles 53 and 56, of one of t h e following courses of action :

a. to declare the contract rescinded, subject to Articles 55 and 57, and claim t h e damages provided for in Articles 96 to 100 ;

b. to reduce the price by an amount equivalent to the loss, in relation to the purchase price, to which the irregularity subjected the value of the goods as assessed at the time of concluding t h e contract, without prejudice to any damages which may arise under Article 94 ;

c. t o claim simple compensation for the prejudice suffered by lack of conformity, by claiming the damages provided for in Article 94.

Article 51

When satisfaction in kind is both feasible and accepted by the municipal law of the court t o which the matter is referred, a purchaser who has duly notified an irregularity may also :

a. ask the vendor for the goods specified in the contract, or the missing part, if the goods sold are specific articles and the vendor has supplied goods other than those specified in the contract or only part thereof ;

b. ask the vendor to supply new goods or the missing part or quantity , if the goods sold are goods of a certain category ;

c. ask for the defects to be repaired by t h e vendor, provided that they are repairable by him, if the goods sold are goods which the vendor had to manufacture or produce.

If the purchaser does not obtain satisfaction under the previous paragraph within a reasonable period of time, he shall retain the right conferred on him by Article 50.

Article 52

Subject to the rights conferred on the vendor by Article 46, the purchaser may avail himself of the rights conferred on h im by Articles 50 and 51, even before the specified time of delivery, if he discovers that the goods to be supplied do not conform with the contract.

Article 53

If the failure to deliver the goods on the specified date is not a vital breach of the contract, the vendor shall retain, after the delivery date, the right to supply either the missing part or quantity , or new goods conforming to the contract; and when the goods sold are specific articles or goods to be manufactured or produced, he may repair the defects provided that this causes the purchaser no inconvenience or appreciable expense.

However, if the vendor avails himself of his rights under the previous paragraph, a purchaser who has duly notified an irregularity may, for the second delivery or the completion of the repair, stipulate a period of reasonable duration, after which, if he has still not obtained satisfaction, he may avail himself of the rights conferred on him by Article 50.

The terms of the foregoing paragraphs shall not apply to the cases mentioned in Article 31.

Article 54

If, in the cases mentioned in Articles 46, 51 and 53, the purchaser has suffered prejudice by reason of a defective first consignment or of delay, he may claim the damages provided for in Article 94.

Article 55

When the vendor supplies only part of the goods or when only part of the goods supplied fails to conform with the contract, the purchaser may declare the contract rescinded in respect of that part of the goods which has not been supplied or does not conform with the contract. He may not declare the whole contract rescinded unless t h e failure t o perform the contract in every detail is a vital breach of the contract. The purchaser must declare all or part of the contract rescinded within a short period.

Article 56

When the vendor supplies the purchaser with a greater quantity of the goods than stipulated in the contract, the purchaser may decline or accept the excess quantity. If he declines, the vendor may only be held to the damages provided for in Article 50 (c). If he accepts the whole consignment, the price payable shall be increased proportionately to the quantity supplied.

Article 57

If the purchaser accepts delivery of goods which do not conform with the contract, he may only avail himself of his rights under Articles 50 (a) and 51 if, within a short period of notifying the irregularity, he declares the contract rescinded as laid down in Article 50 (a) or if, within the same short period, he asks the vendor to perform one of the services mentioned in Article 51.

Article 58

The purchaser must institute proceedings within a year of the notification mentioned in Article 48, except where he has been prevented from so doing by fraud on the part of the vendor.

After expiry of this period, the purchaser may no longer invoke an irregularity, even exceptionally. If, however, he has not paid for the goods and provided that he notifies the irregularity within the short period mentioned in Article 48, the purchaser may raise an objection in law to the demand for payment by filing a claim for a reduction of the price or for damages.

SECTION II - Transmission of Documents

Article 59

When it is customary for the vendor to transmit to the purchaser documents relating to the goods sold ; the vendor is required t o hand over those documents to the purchaser as well as to supply the goods. This shall be done with the greatest possible speed and despatch at the place specified in the contract or hallowed by custom.

The purchaser is not required to accept the documents unless they are in accordance with the contract.

Article 60

When failure to hand over the documents at the agreed time or place is a vital breach of the contract, the purchaser may either demand transmission of the documents in accordance with the terms of the contract, where this is possible and is accepted by the municipal law of the court to which the matter is referred, or rescind the contract by a simple declaration. If the purchaser possesses this option, he must let the vendor know of his decision within a short period, or the contract shall be rescinded ipso jure. If the purchaser is only entitled to rescind the contract by à simple declaration, he must make such declaration within a short period.

When the documents concerned relate to a sale concluded on a stock exchange, failure to deliver them at the agreed time or place shall ipso jure entail rescission of the contract according t o stock exchange practice.

Failure to transmit the documents shall always be regarded as a vital breach of the contract when those documents are bills of lading or other forms of certificate needed to obtain delivery of the goods or dispose of them.

If the contract is rescinded for failure to transmit the documents, the purchaser may claim the damages provided for in Articles 96 to 100.

Article 61

If failure to transmit the documents is not a vital breach of the contract, or if the purchaser has not called for the rescission mentioned in the previous Article, he may claim t h e damages provided for in Article 94.

SECTION III - Transfer of ownership

Article 62

The vendor shall assume the obligation t o transfer to the purchaser ownership of the goods as understood by municipal law.

When, as a result of a flaw affecting the right of the vendor and unknown to t h e purchaser on conclusion of t h e contract, the purchaser cannot obtain possession of the goods free of all third party rights, he must inform the vendor of the right or claim of the third party and ask him to rectify the situation within a reasonable time or supply other goods not encumbered by third party rights.

If the vendor complies with this request, the purchaser who has suffered prejudice may nevertheless claim the damages provided for in Article 94.

If the vendor does not comply with this request, the purchaser may, if the result is a vital breach of the contract, declare t h e contract rescinded and claim t h e damages provided for in Articles 96 to 100. If the purchaser does not call for the contract to be rescinded ot if the flaw affecting t h e right of the vendor does not result in a vital breach of the contract, the purchaser may claim t h e damages provided for in Article 94.

Article 63

In the case covered by the previous Article, the purchaser shall forfeit the right to rescind the contract if he fails to send the vendor the notification provided for in this text within a short period of the time when he discovered or should have discovered the right or claim of the third party to the goods.

He shall likewise forfeit his right to rescind the contract if, having notified the right or claim of the third party, he does not institute proceedings against the vendor within a reasonable period of t h e time when the right of the third party is finally established.

SECTION IV - Other obligations of the vendor

Article 64

If the vendor is under contractual obligation to despatch the goods, he must, in the usual manner and circumstances, conclude contracts for the conveyance of the goods to the place specified in the contract of sale.

If the vendor must know from the circumstances that transport insurance is customary and he is not obliged to contract such insurance himself, or if the purchaser asks him for information which will help to arrange such insurance, the vendor must supply the purchaser with all necessary information.

Article 65

If the vendor has not fulfilled his obligations under the contract other than those mentioned in Sections I to III, the purchaser mayclaim the damages provided for in Article 94.

If such non-fulfilment is a vital breach of the contract, the purchaser may declare the contract rescinded and claim the damages provided for in Articles 96 to 100. He must make this declaration within a short period of discovering the non-fulfilment, or he shall forfeit the right to rescind the contract.

CHAPTER IV - Obligations of the purchaser

Article 66

The purchaser shall be obliged to pay the charge and take delivery of the goods.

SECTION I - Payment of the charge

A. Fixing of the price

Article 67

When the sale is concluded but the price is not fixed by the contract, the purchaser shall pay the price normally charged by the vendor at the time of concluding the contract, or, if the vendor has not fixed such a price, a reasonable price calculated if possible in the light of the normal prices ruling at the time of concluding t h e contract. The parties may not invoke the terms of a municipal law in order to claim that t h e contract is null and void through failure to stipulate a price.

Article 68

When the price of the goods is fixed by weight, the net weight shall be the determining factor in case of doubt.

Article 69

If customs or other duties on imported goods are payable by the vendor and if, after conclusion of the contract, there in an increase in such duties, this increase shall be added to the price.

However, if the consignment affected by these duties is delayed by fault of the vendor or of a person under his responsibility, the increase in duty shall be borne by the vendor when the purchaser can establish that the additional duty would not have been payable if the goods had been delivered within the period specified in Articles 22 to 24.

In all cases, a reduction of duty shall be deducted from the price.

B. Time and place of payment

Article 70

The purchaser shall pay for the goods at the ofllces of the vendor or, when payment is in return for transfer of the goods or papers, at the place of such transfer.

When, owing to a change in the establishment or residence of the vendor after conclusion of the contract, the costs of payment are increased, the vendor must bear the additional cost.

Article 71

When the parties have agreed on a date for payment or such date is established by custom, this agreement or custom shall finally and without further formality fix the date on which the parchaser must pay.

C. Penalties for failure to pay

Article 72

If the purchaser fails to pay in accordance with the terms of the contract and of the present law, the vendor may demand payment on these terms, if his right to do so is recognised by the municipal law of the court to which the matter is referred.

The vendor may not demand payment when custom requires a compensatory sale ; in this case the contract shall be rescinded ipso jure as soon as this sale is to be held.

Instead of demanding payment, the vendor may declare the contract rescinded, either immediately after payment falls due, if it is clear from the circumstances that failure to pay punctually is a vital breach of the contract, or within a short period, in other cases.

The vendor may also secure on the ground of delay the damages provided for in Article 95 or, on the ground of rescission, those provided for in Articles 96 to 100.

The purchaser may in no circumstances obtain a respite from the judge.

D. Obligation in addition to payment.

Article 73

The purchaser shall also, subject to the penalties provided for in Article 79, take all steps required by the contract, by custom or by current regulations to prepare for or guarantee payment, as, for instance, the acceptance of a bill of exchange, the opening of an advance on warrant or the granting of a banker's or other security.

SECTION II - Taking of delivery

Article 74

The purchaser shall take delivery by performing the acts of acceptance incumbent on him by virtue of the nature of the contract, and thereafter by completing the formalities required to withdraw the goods.

Article 75

When t h e purchaser does not take delivery of the goods in the manner prescribed in the contract, the vendor may declare the contract rescinded if failure to take delivery is a vital breach thereof, or if the failure of the purchaser gives him good grounds for fearing that he will not pay the charge. The vendor must then declare the contract rescinded within a short period or he shall forfeit the right covered by this Article.

Article 76

If the vendor cannot declare the contract rescinded or if, finding himself in either of the two circumstances described in the previous Article, he does not do so, he may still claim the damages provided for in Article 94.

Article 77

If t h e vendor declares the contract rescinded, the purchaser shall pay the damages provided for in Articles 96 to 100.

Article 78

If in the contract the purchaser has reserved the right to specify at a later date the form, measurements or other characteristics of the goods (sale according to specification) and has not supplied such specifications either by the date explicitly or implicitly agreed, or within a reasonable time of receiving an injunction from the vendor, the latter may declare the contract rescinded and claim the damages provided for in Articles 96 to 100, without himself producing a specification.

When it is consistent with the municipal law of the court to which the case is referred to demand performance of the contract in kind, the vendor may himself produce a specification according t o the best of his knowledge of the purchaser's needs. In that case the vendor must let the purchaser know the characteristics of the goods as specified b y him and allow him a reasonable period in which t o submit a different specification. If the purchaser does not avail himself of this period, t h e specification produced by the vendor shall be binding.

SECTION III - Other obligations of the purchaser

Article 79

If the purchaser is required by the contract or by custom to fulfil other obligations than payment of the charge and the taking of delivery and he fails to fulfil those obligations, the vendor may claim the damages provided for in Article 94.

If this non-fulfilment is a vital breach of the contract, the vendor may declare the contract rescinded and claim the damages provided for in Articles 96 to 100. He shall make this declaration within a short time of discovering the non-fulfilment, or shall forfeit the right to rescind the contract.

CHAPTER V - Clauses concerning the obligations of both vendor and purchaser

SECTION I - Correlation betiveen delivery and payment

Article 80

Unless the contract or custom otherwise determine, payment shall be an accompaniment of delivery of the goods, although the purchaser shall not be obliged to pay before having an opportunity of inspecting the goods sold.

In the case mentioned in the previous paragraph, the vendor shall have the right to withhold delivery of the goods until he receives payment and the purchaser to withhold payment until the goods are delivered.

Article 81

In contracts of sale which assume conveyance of the goods, if there is no provision for delivery at the place of destination, and if neither the contract nor custom demand that payment shall be on a date subsequent to delivery, the vendor may postpone despatch on the ground that payment has not been effected, whenever the shipping contract docs not reserve to him the right to dispose of the goods during transit. If the vendor has despatched the goods because he was entitled to dispose of t h em during transit, he may still refuse to deliver t h e goods to the purchaser at the place of destination, so long as payment is not effected.

If there has been issued a bill of lading or some other certificate needed to obtain possession of the goods or to dispose of them, payment may not be demanded until the documents required by the contract or by custom have been handed over. In that case, the purchaser shall have no right to refuse payment on the plea that he has been unable to inspect the goods.

Article 82

The vendor may withhold delivery of the goods even if the purchaser has been granted a period in which to pay, unless the purchaser gives him adequate guarantee of payment, whenever the financial position of the purchaser has become so difficult since signature of the contract that the vendor has good reason to fear that payment will not be forthcoming on the agreed date.

Article 83

If, in the case mentioned in the previous Article, the vendor is required to despatch the goods and if he has already despatched them when the change in the financial position of the purchaser comes to his notice, he may withhold delivery of t he goods to the purchaser even if the latter already holds the bill of lading or other certificate enabling him to obtain possession of the goods.

However, the vendor may not refuse delivery if it is requested b y a third party duly bearing the above mentioned bill of lading or certificate unless the said bill or certificate contain reservations concerning the effects of their transmission or the vendor proves that the bearer knowingly acted in a manner prejudicial to the vendor by acquiring the bill of lading or certificate.

Article 84

A purchaser under contractual obligation to pay before delivery of the goods may postpone payment, unless the vendor gives him adequate guarantees, whenever the financial position of the latter has become so difficult since signature of the contract that the purchaser has good reason to fear that delivery will not be effected on the agreed date.

SECTION II - Release from obligations

Article 85

When a party fails to fulfil one of his obligations, he shall not be held responsible for this failure if he can prove that it was due to an obstacle which, in the light of the intentions of the parties when concluding the contract, he was not expected to take into consideration, avoid or overcome ; if the parties had no particular intentions, i t will be necessary to discover the normal intentions of people of the same type placed in identical circumstances.

If the obstacle is such as to produce only temporary release from obligations, such release shall nevertheless be regarded as final whenever, as a result of postponing fulfilment of the obligation, its nature becomes so radically changed that it would be a question of fulfilling quite a different obligation from the one envisaged in the contract.

The release of either of the parties under this Article shall not prevent the contract from being rescinded ipso jure nor deprive the other party of the right either to declare i t rescinded, or to reduce t h e price, where such penalties are prescribed by the present law, unless the obstacle justifying the release was caused by the other party or by a person under his responsibility.

In the event of explicit or implicit guarantee, an obstacle prior to the conclusion of the contract shall not form a ground for release from obligations.

SECTION III - Further rules governing rescission of the contract

A. Farther grounds for rescission.

Article 86

In contracts providing for a sequence of deliveries, when, as a result of non-performance or faulty performance of any of the services required of one of the parties, the other party has good reason to fear that future services will also fail to be performed or be faultily performed, he may within a short period declare the contract rescinded thenceforward.

The purchaser may also, within the same period, declare the contract rescinded in respect of either future consignments or consignments already received, or both, if he can prove that, owing to their inter-connection, such consignments are of no value to him without those which were not delivered or were faulty.

Article 87

When, before the date agreed for execution of the contract, one of the parties behaves in such a manner as t o suggest his intention to commit a vital breach of the terms of the contract, the other party may declare the contract rescinded, provided that he makes this known within a short period.

Article 88

When the contract is rescinded in pursuance of the above two Articles, the party which has declared it rescinded may claim the damages provided for in Articles 96 to 100.

B. Effects of rescission

Article 89

Rescission of the contract releases both parties from their obligations under the contract, subject to any damages which may be payable.

If one party has performed the contract in whole or in part, he may claim restitution of what he has supplied.

If both parties have performed the contract , either may refuse to restore his part until the other has done likewise.

Article 90

Whenever the vendor is required to return the charge, he must also pay interest thereon, at the rate fixed by Article 95, as from the date of payment.

Article 91

The purchaser shall forfeit his right to declare the contract rescinded when he is unable to restore the goods in the state in which he received them.

This rule shall not apply :

a. if all or part of the goods have perished or deteriorated as a result of the fault forming the ground for rescission ;

b. if the purchaser, before discovering the irregularity, has consumed all or part of the goods in accordance with normal practice ;

c. if the inability to restore the goods or return them in the state in which they were received is due to no act on the part of the purchaser or any person under his responsibility.

If the inability to restore the goods or return them in the state in which the purchaser received them occurs after the declaration rescinding the contract, the declaration shall become null and void when such inability is due to an act on the part of the purchaser or any person under his responsibility.

Article 92

The purchaser shall forfeit his right to declare the contract rescinded whenever the goods have been altered before the declaration rescinding the contract, unless :

a. the whole or part of t h e goods were not altered before the purchaser discovered the defect on the ground of which he declared the contract rescinded ;

b. the alteration to the goods is of no significance.

If the alteration was made after the declaration rescinding the contract, the declaration shall become null and void.

Article 93

A purchaser who has forfeited the right to declare the contract rescinded in pursuance of the above two Articles, shall nevertheless retain the right to claim the damages provided for in Article 94.

SECTION IV - Further rules governing damages

A. Damages where the contract has not been rescinded

Article 94

Where t h e contract has not been rescinded, damages shall be equal to the loss actually suffered and the profit forgone. They may not, however, outweight the prejudice, calculated in this manner, resulting from events which were known, or should have been known at the time of concluding the contract, to the person liable for damages. In cases regarded as of wilful misrepresentation or fraud under municipal law, that law shall determine the amount of the damages, which may be greater.

Article 95

In the event of delay in payment the purchaser shall pay interest at a rate 1 % above the official bank rate of the country of the vendor ; compound interest shall not be reckoned unless there is a current account between the purchaser and the vendor.

Nevertheless, if, owing to delay in payment, the loss suffered or profit forgone by the vendor outweighs the interest due, the purchaser must indemnify the vendor whenever the delay is caused by events which were known to him, or should have been known to him at the time of concluding the contract.

B. Damages where the contract has been rescinded

Article 96

Where the contract has been rescinded, if the goods have a listed price, damages shall be equal to the difference between the price stated in the contract and the listed price ascertained on the day when the right t o declare the contract rescinded could be exercised or the contract was rescinded ipso jure ; the normal costs of purchasing a replacement or holding a compensatory sale shall also be taken into account.

In calculating the damages due to the purchaser, the price applicable shall be that of the market to which the purchaser would turn in t h e normal course of business when wishing to purchase the goods covered by the contract.

In calculating the damages due to the vendor, the price applicable shall be tha t of the market to which the vendor would turn in the normal course of business when wishing to sell t h e goods covered by the contract.

Article 97

If the purchaser has purchased a replacement or if the vendor has carried out a compensatory sale with proper despatch and business caution, the price at which the goods were purchased or sold shall be taken into account when calculating the damages.

Article 98

The damages fixed in accordance with the above two Articles may be increased to the full amount of the loss actually suffered or profit forgone, if the injured party can establish that , at the time of concluding the contract, the other party was, or should have been, aware of the events which caused the prejudice.

Article 99

If the goods have no listed price, damages shall be equal to the loss actually suffered or profit forgone by the party who has declared the contract rescinded ; they may not, however, exceed t h e prejudice, calculated in this manner, caused by events of which the other party was, or should have been, aware at the time of concluding the contract.

Article 100

In the event of an anticipated breach of the contract, as defined in Article 87, if a dale was specified in the contract for fulfilment of the void obligation, and if the goods had a listed price, damages shall be based on the price quoted for the goods on the date specified in the contract.

If no date was specified in the contract, damages shall be based on the price quoted for t h e goods on the day when, as a result of the anticipated breach of contract defined in Article 87, the injured party was able to declare the contract rescinded.

However, damages may exceed neither the price actually paid for the previous purchase of a replacement nor the difference between the contract price and the price actually received at a previous compensatory sale.

If the goods had no listed price, Article 99 shall apply.

C. Measures for reducing the damage

Article 101

The party which pleads non-execution of the contract must take all reasonable steps to reduce the loss suffered, provided that such steps cause him no appreciable inconvenience or expense. If he neglects to do this, the defaulting party may demand a reduction of the damages on the ground of such negligence.

In particular, neither the purchaser nor the vendor shall be entitled to the increase in damages provided for in Article 98 if he fails to take prompt steps to purchase a replacement or hold a compensatory sale, where custom so requires, or when he could do so without appreciable inconvenience or expense.

SECTION V - Costs

Article 102

The costs of delivering the goods shall be borne by the vendor; all costs subsequent to delivery shall be borne by the purchaser.

SECTION VI - Custody of the goods

Article 103

When the purchaser delays in taking delivery of or paying for the goods, the vendor must arrange for their storage on his behalf; the vendor has the right to withhold the goods until he has been indemnified by the purchaser for the costs of storage he has incurred.

Article 104

When the purchaser has received the goods sold, it is his responsibility, should he wish to refuse them, to arrange for their storage on behalf of the vendor; the purchaser has the right to retain the goods until he has been indemnified by the vendor for the costs of storage he has incurred.

When the goods despatched to the purchaser have been placed at his disposal at the place of destination, the purchaser must, if he wishes to avail himself of the right to refuse them, take possession of them on behalf of the vendor, provided that this can be done without payment of the charge and without appreciable inconvenience or expense. This provision shall not apply when the vendor or a person qualified to take charge of the goods is present at the place of destination.

Article 105

The party responsible for storing the goods shall be entitled to deposit them in the warehouse of a third party at the expense of the other party.

Article 106

When the goods have a listed price, the party responsible for storing them in the cases mentioned in Articles 103 and 104 shall be entitled, on demand, to arrange for them to be sold on behalf of the other party by a broker officially authorised to hold such sales or by a qualified public auctioneer.

AVhen the goods have no listed price, the party responsible for storing them in the cases mentioned in Articles 103 and 104 shall be entitled, on demand, to sell them by private contract. If the other party can prove that the goods could have been sold at a higher price, he shall be paid that price.

Article 107

In the cases mentioned in Articles 103 and 104, when the goods are liable to loss or rapid deterioration or when safe custody thereof would be too costly, the party responsible for storing them must sell them in accordance with the previous Article.

CHAPTER VI - Transfer of risks

Article 108

When the risks are transferred to the purchaser, the latter is required to pay the charge, notwithstanding any loss or change in the value of the goods.

Article 109

The risks are transferred to the purchaser as from the time when the goods are delivered in accordance with the terms of the contract and of the present law.

If the goods supplied do not conform with the contract, the risks shall be transferred to the purchaser as from the time when the goods are delivered in accordance with the terms of the contract and of the present law, when the purchaser has neither declared the contract rescinded nor demanded replacement of the goods

Article 110

The risks shall likewise be transferred to the purchaser as from the day on which he takes belated delivery.

If the sale concerns goods of a certaincategory, delay on the part of the purchaser shall not entail transfer of the risks unless the vendor has put aside goods patently earmarked for performance of the contract and has sent him notice of this specification.

When goods of a certain category are such that the vendor cannot put some of them aside until the purchaser takes delivery, it shall be sufficient if the vendor has performed all the formalities required to enable the purchaser to take delivery.

Article 111

If the sale concerns goods in transit, the purchaser shall take over the risks incurred by the goods as from the moment when delivery is effected by transferring them to the forwarding agent.

This rule shall not apply if, when the contract was concluded, the vendor was, or should have been, aware that the goods had perished or were damaged.

Article 112

The introduction of a clause relating to costs, and more particularly making the costs chargeable to the vendor, shall not in itself be sufficient to transfer the risks.

Article 113

Where goods are loaded in bulk, the risks shall pass to each of the purchasers in proportion to his share, as from the moment when delivery is effected by transferring the goods to t h e forwarding agent, provided that the vendor has sent him the bill of lading or other form of notification that the goods have been loaded.