

# Contract Law of People's Republic of China

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## GENERAL PROVISIONS

### CHAPTER I BASIC PRINCIPLES

#### Article 1

This Law is enacted with a view to protecting the lawful rights and interests of the contractual parties, maintaining social economic order and promoting the socialist construction of modernization.

#### Article 2

A contract in this law is an agreement by which civil rights and duties relationship is established, modified or terminated between natural persons, legal persons or other associations that are subjects of equal status.

As to agreements concerning personal identity relationship such as marriage, adoption, guardianship etc., provisions in other laws shall apply.

#### Article 3

The contractual parties are of equal status. Neither party may impose its will on the other party.

#### Article 4

The contractual parties are free to enter into a contract according to law. No organization or individual may illegally interfere this right.

#### Article 5

The contractual parties shall ascertain their rights and duties in accordance with the principle of fairness.

#### Article 6

The contractual parties shall exercise their rights and perform their duties in accordance with the principle of good faith.

#### Article 7

The parties shall in conclusion and performance of a contract, abide by law and administrative regulations and respect social morality. They shall not disrupt the social economic order or harm the public interest.

#### Article 8

A contract legally formed is binding upon the parties. Each party shall perform its duties according to the terms of the contract. Neither party may unilaterally modify or discharge the contract.

## CHAPTER II CONCLUSION

#### Article 9

The parties concluding a contract shall have correspondent civil right capacity and civil conduct capacity.

Each party may authorize an agent to conclude a contract.

#### Article 10

A contract may be concluded in written, oral or other forms.

Where a contract is required to adopt written form by law or administrative regulations, the written form shall apply. Where the parties have agreed that the contract shall be in written form, that form shall apply.

#### Article 11

The written form refers to written contracts, letters, data message (including telegram, telex, telecopy, electronic data interchange, and electronic mail)etc. whose contents can be manifested in visible form.

#### Article 12

The contents of the contract shall be agreed upon between the parties. A contract shall contain clauses on the following terms:

- (1) name and address of the parties
- (2) the object of the contract
- (3) quantity
- (4) quality
- (5) price or remuneration
- (6) time limit, place and manner of performance
- (7) liabilities for breach of contract
- (8) method of disputes settlement

The parties may enter into a contract with reference to any type of model contracts.

#### Article 13

The parties shall conclude a contract by offer and acceptance.

#### Article 14

An offer is a manifestation of willingness to enter into a contract with another person. The manifestation of willingness shall be subject to the following conditions:

- (1) Its contents are ascertained;
- (2) In case of acceptance by the offeree, it will have binding force on the offeror.

#### Article 15

An invitation for offer is a manifestation of willingness to be sent an offer by another

person. The post of price list, an announcement for auction or bid, a prospectus and a commercial advertisement shall be deemed as an invitation for offer.

#### Article 16

An offer becomes effective at the time it reaches the offeree.

Where the contract is concluded in data message, the time of arrival for a data message is the time when the data message enters the designated system in case the addressee has designated an system for the purpose of receiving data messages; where the addressee has not designated an system, the time for arrival is the time when the data message enters any of the systems of the addressee for the first time.

#### Article 17

An offer may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

#### Article 18

An offer may be revoked if the revocation reaches the offeree before the latter has dispatched an acceptance.

#### Article 19

An offer cannot be revoked in case of the following conditions:

- (1) if it indicates, whether by stating a fixed time limit for acceptance or otherwise, that it is irrevocable
- (2) if it is reasonable for the offeree to rely on the offer as being irrevocable and the offeree has made some preparations for the performance of the contract

#### Article 20

An offer is avoid in case of the following conditions:

- (1) a rejection reaches the offeror
- (2) the offeror rescinds its offer in accordance with law
- (3) at the expiration of the time limit, the offeree does not make any acceptance
- (4) the offeree makes substantial modification to the content of the offer

#### Article 21

An acceptance is a manifestation of assent to an offer made by the offeree.

#### Article 22

Except for subject to trade usage or the offer indicates that the acceptance may be made by performing an act, an acceptance shall be made through giving notice.

#### Article 23

An acceptance must reach the offeror within the time limit fixed by the offer or, if no time limit is fixed, it shall reach the offeror according to the following conditions:

- (1) An oral offer must be accepted immediately unless that the parties have agreed otherwise
- (2) In case of a non-oral form offer, the acceptance shall reach the offeror within a reasonable time limit

#### Article 24

A time limit for acceptance fixed in a letter or telegram begins to run from the date shown in the letter or the date on which the telegram is handed in for dispatch. If no such date is shown in the letter, from the date indicated by the postmark on its envelope. Where an offer is made through telephone, telefax or other modes of fast communication, the time limit for acceptance begins to run from the date on which the offer reaches the offeree.

#### Article 25

A contract is formed when the acceptance takes effect.

#### Article 26

The acceptance becomes effective when it reaches the offeror. If a notice is not required for an acceptance, the acceptance becomes effective when an act indicating the acceptance is performed according to trade usage or the requirement of the offer.

In case the contract is made in data message, Paragraph 2 of Article 16 of this Law shall apply to the calculation of the time for the arrival of an acceptance.

#### Article 27

An acceptance may be withdrawn. The notice of withdrawal shall reach the offeror before or at the same time when the notice of acceptance reaches the offeror.

#### Article 28

A late acceptance sent by the offeree shall be taken as a new offer unless without undue delay the offeror informs the offeree that the late acceptance is effective.

#### Article 29

Where an acceptance sent by the offeree within time limit for acceptance and should have reached the offeror had it been in normal circumstances, reaches the offeror exceeding the time limit due to some other reasons, it shall be effective unless without undue delay, the offeror informs the offeree that it can not assent to the acceptance as the time limit acceptance has lapsed.

#### Article 30

The contents of the acceptance shall be in accordance with those of the offer. A substantial modification to the contents of the offer made by the offeree constitutes a new

offer. Modifications on contract object, quantity, price or remuneration, time limit, place and method of performance ,liabilities for breach of contract and methods of disputes settlement shall be deemed as substantial modifications to the contents of the offer.

#### Article 31

Unless the offeror, without undue delay, objects to the discrepancy or the offer has indicated that no modification to the contents of the offer is allowed in an acceptance, an acceptance which does not substantially alter the contents of the offer is effective. And in this case, the contents of the acceptance shall be taken as the contents of the contract.

#### Article 32

A contract concluded by the parties in written contract shall be formed as soon as it is signed or sealed by the parties.

#### Article 33

Where the parties conclude a contract in letters or data message, they may request a confirmation letter to be signed before the contract is formed. In this case the contract shall be formed at the time the confirmation letter is signed.

#### Article 34

The place where the acceptance takes effect shall be deemed as the place where the contract is formed.

Where a contract is concluded in data message, unless otherwise agreed upon by the parties, the principle place of business of the addressee is the place where the contract is formed. If the addressee does not have a place of business, its habitual residence shall be the place where the contract is formed.

#### Article 35

Where the contract is concluded through written contract, the place where the parties sign or seal the contract shall be regarded as the place where the contract is established.

#### Article 36

Where the parties fail to conclude a contract in written form as required by law, administrative regulations or any agreement between the parties, the contract shall be formed so long as one party has performed its major duty and its performance has been accepted by the other party.

#### Article 37

Where a contract concluded in written form has yet to be signed or sealed, it shall be deemed as formed so long as one party has performed his major duties and his performance has been accepted by the other party.

#### Article 38

In case the State issues a mandatory assignment or an assignment for government procurement according to its needs, related legal person and other associations shall conclude contracts between them in accordance with rights and duties as stipulated by laws and administrative regulations.

#### Article 39

Where a contract is to be concluded by standard clauses, the party providing the standard clauses shall ascertain the rights and duties of the parties pursuant to the principle of fairness .It shall also bring the attention of the other party to the clauses, which exempt or restrict its obligations. If required ,an explanation on the said clauses shall be duly made.

Standard clauses are clauses which are prepared in advance for repeated use by one party and which are used in the conclusion of a contract without negotiation with the other party.

#### Article 40

Where the Standard clauses satisfy any conditions prescribed in Article 52 or 53 of this Law, or the party who provides them exempts his major duties, increases the responsibilities of the other party or excludes the latter's main rights, the said standard clauses are void.

#### Article 41

Where the Standard clauses satisfy any conditions prescribed in accordance with usual understanding. In case there are above two interpretations to the Standard clauses, they shall be interpreted unfavorable to the party who provides them. In case of a discrepancy appears between a standard clause and a non-standard clause, the latter prevails.

#### Article 42

A party with the follows conducts in concluding a contract shall be liable for the losses caused to the other party:

- (1) under the guise of concluding a contract, to negotiates in bad faith
- (2) active concealment of important fact related to concluding the contract or supply false fact
- (3) other conducts in violation of the principle of good faith

#### Article 43

Where business secrets obtained by one party in the course of concluding a contract, whether the contract is formed or not, the other party shall not disclose that information or use it improperly. And he shall be liable for compensation where the disclosure or improper use of business secrets causes losses to the former party.

### CHAPTER III

## VALIDITY

### Article 44

A contract shall take effect at the moment it is formed according to law.

Where laws or regulations require a procedure of approval, registration etc., those provisions shall be followed.

### Article 45

The validity of a contract may be subject to conditions by agreement between the parties. A contract subject to conditions for validity becomes effective when the conditions are satisfied. A contract subject to conditions for avoidance becomes void in case those conditions are satisfied.

The conditions shall be deemed as having been satisfied when one party improperly prevent them from being satisfied; and they shall be deemed as unsatisfied when one party improperly impel them to be satisfied.

### Article 46

The validity of contract may be subject to time limit agreed upon between the parties. A contract subject to time limit for validity becomes effective when the time limit is mature. A contract subject to time limit for avoidance becomes void when the time limit is mature.

### Article 47

A contract concluded by a person with limited civil conduct capacity shall takes effect after it is ratified by his legal representative. A gratuitous contract or a contract concluded in conformity with his age, intelligence or mental health condition however does not need to be ratified by the legal representative.

The counterpart may urge the legal representative to conduct ratification within one month. A silence of the legal representative shall be deemed as a refusal. The counterpart in good faith has the right to revoke the contract before it is ratified .The revocation shall be made through a notification.

### Article 48

Where a contract is concluded in the name of the principle by a doer without agent rights or exceeding his authority or after the termination of the agency, the contract shall be invalid to the principle in the absence of his ratification and the doer shall be liable.

The counterpart may urge the principle to conduct ratification within one month. A silence of the principle shall be deemed as a refusal. The counterpart in good faith has the right to revoke the contract before it is ratified. The revocation shall be made through a notification.

#### Article 49

Where a contract is concluded in the name of the principle by a doer without agent rights or exceeding his authority or after the termination of the agency, this agency is effective so long as it is reasonable for the counterpart to believe that the doer has the agent right.

#### Article 50

If a contract is concluded by a legal representative or director of a legal person or other associations exceeding his power, the presentation shall be deemed as valid unless the counterpart knows or should have known that the legal representative or director has exceeded his power.

#### Article 51

A contract concluded by a person who is not entitled to dispose of the property of another person is effective after it is ratified by the entitled person or the person lack of right obtains the right of disposition after the conclusion of the contract.

#### Article 52

A contract which is in any of the following circumstances is void:

- (1) one which is concluded through fraudulence or duress of one party to harm the interests of the State
- (2) one which involves maliciously conspiring to injure the interests of the State, of a collective, or of a third party
- (3) one which uses a lawful form to conceal an illegal purpose
- (4) one which impairs the social public interests
- (5) one which violates the compulsory provisions of laws or administrative regulations

#### Article 53

The following exemption clauses in a contract is void:

- (1) one in connection with physical injury caused to the other party
- (2) one in connection with property losses caused to the other party due to a deliberation or gross negligence

#### Article 54

The party may request the People's Court or an arbitrary organ to modify or rescind a contract as follows:

- (1) one which is concluded under gross misconception
- (2) one which is obviously unfair when the contract is being concluded

Where a contract is concluded under circumstances where one party, by using deceit or duress, or by taking advantage of the other party's distress, causes the other party to act contrary to his real intention, the injured party has the right to request the People's Court

or an arbitrary organ to modify or rescind the contract.

If the party request modification of the contract, the People's Court or the arbitrary organ shall not revoke it.

#### Article 55

The right for withdraw shall extinguish in case of the following conditions:

(1) where a party who is entitled to revoke the contract fails to exercise his right of revocation within one year from the date on which he knows or should have known the reason for the revocation

(2) where a party who is entitled to revoke the contract expressly or through an act indicate that he gives up the right of revocation

#### Article 56

An avoided contract or a rescinded contract has no legal restraint from the time when it is concluded. Where the invalidity of a part of a contract does not affect the validity of the other parts. the other parts remain valid

#### Article 57

The avoidance, revocation and termination of a contact shall not affect the validity of the independent clauses in the contract in connection with dispute settlement.

#### Article 58

After a contract is avoided or is rescinded, the property acquired under the contract shall be returned. Property that can not be returned or is not necessary to be returned shall be reimbursed in money. The party who was at fault must compensate the other party for the loss caused thereby, where both parties were at fault, each must bear an appropriate amount of liability.

#### Article 59

Where the parties maliciously conspire to injure the interests of the State, of a collective, or of a third party, the property obtained thereby shall be recovered by the State or returned to the collective or the third party the property obtained thereby shall be recovered by the State or returned to the collective or the third party.

## CHAPTER IV PERFORMANCE

#### Article 60

The parties shall fully perform the obligation according to the contract.

The parties shall perform such duties as notification, assistance, confidentiality etc.,

observing the principle of good faith and in accordance with nature and purpose of the contract and trade usage.

#### Article 61

After a contract takes effect, the parties may negotiate through supplementary agreement as to such terms as quality, price or remuneration, place for performance etc. which are not agreed or of which the agreement is ambiguous. In case that no supplementary agreement can be reached, it shall be ascertained according to relevant contract provisions or trade usage.

#### Article 62

If the parties fail to agree on relevant contract items or the agreement is ambiguous and it cannot be determined in accordance with Article 61 of this Law, rules as followed shall apply:

- (1) If there is no explicit quality requirement, State standards and branch standards shall apply; in absence of State standards and branch standards, normal standards or special standards appropriate to the purpose of the contract shall apply
- (2) If there is no explicit price or remuneration provision, the market price of the place for performance at the time of contract formation shall apply. if the government, according to law, is to fix the price, or guide to fix the price, this price shall apply
- (3) If the place for performance is not explicit, payment shall be done at the receiver's place; delivery of real estate shall be made at the location of the real estate; other object shall be performed at the place of performing party
- (4) If the period for performance is not explicit, the debtor may perform at any time and the creditor may require performance at any time, but necessary time for preparation shall be allowed for the other party
- (5) If the way for performance is not explicit, the way favoring the realization of contract purpose shall apply;
- (6) If there is no explicit provision as to the bearing of the cost for performance, cost for performance shall be borne by the debtor

#### Article 63

Where the government price or the guidance price of the government applies, in case that the government adjusts the price within the period for delivery, the price at the time of delivery shall prevail. In case of a delayed delivery, the original price shall apply when the price rises, while the new price shall apply when the price drops. In case of a delay acceptance of subject matter or delayed payment, the new price shall apply when the price rises, while the original price shall apply when the price drops.

#### Article 64

The parties may agree that the debtor performs the obligation to a third party. The additional cost caused by the performance to the third party shall be borne by the creditor.

The third party may request performance from the debtor. The debtor shall be responsible to the creditor for the breach of contract if no performance has been made to the third party or the performance fails to conform to the agreement.

#### Article 65

The parties may agree that a third party may perform the obligation to the creditor. The debtor shall be responsible to the creditor for the breach of contract, if no performance has been made by the third party or the performance fails to conform to the agreement.

#### Article 66

The parties shall perform simultaneously if they owe obligation to each other and no time sequence for performance is required. One party is entitled to withhold performance before the other party tenders its performance or refuse relevant request for performance if the other party's performance fails to conform to the agreement.

#### Article 67

When the parties owe obligation to each other and are required to perform consecutively, the party to perform later is entitled to withhold its performance before the first party has performed and is entitled to withhold its relevant performance if the performance of the first party fails to conform to the agreement.

#### Article 68

The party who shall perform first may stop performance when there is evidence proving that the other party is under the following circumstances:

- (1) serious deterioration of management
- (2) transfer of property and capital to evade obligation
- (3) loss of commercial reputation
- (4) other circumstance where loss or possible loss of capacity for performance occurs

The parties who have no evidence to stop performance shall take liabilities for breach of contract.

#### Article 69

The party who stops performance according to Article 68 of this Law shall notify the other party in time and resume performance when the other party provides appropriate guarantee. After the stop of performance, if the other party neither recovers capacity for performance nor provides appropriate guarantee within a reasonable time, the party who stops performance may discharge the contract.

#### Article 70

The debtor may stop performance or deposit the subject matter when the creditor separates, combines or changes domicile without notice to the debtor and thereby causes difficulty in performance of obligation.

#### Article 71

The creditor may refuse the debtor's performance of obligation before due time, except that the performance before due time does no harm to the creditor's interests.

Additional cost incurred to the creditor by the debtor's performance before due time shall be borne by the debtor.

#### Article 72

The creditor may refuse the debtor's performance of obligation in part, except that the performance in part does no harm to the creditor's interests.

Additional cost incurred to the creditor by the debtor's performance in part shall be borne by the debtor.

#### Article 73

If the debtor's reluctance in exercising his obligatory right causes harm to the creditor, the creditor may apply to the people's court for the exercise of the debtor's court for the exercise of the debtor's obligatory right in his own name, except for the exclusive obligatory right for the debtor himself.

The right of subrogation shall be exercised within the scope of creditor's obligatory right. Necessary cost for exercising right of subrogation by the creditor shall be borne by the debtor.

#### Article 74

Is the debtor's waiver of matured obligatory right or free transfer of property causes harm to the creditor, the creditor may apply to the people's court for the rescission of the debtor's act. If the debtor's transfer of property in an obviously unreasonably low price causes harm to the creditor of which the transferee has the knowledge, the creditor may also apply to the people's court for rescission of debtor's act.

The right of rescission shall be exercised within the scope of the creditor's obligatory right. Necessary cost for exercising the right of rescission by the creditor shall be borne by the debtor.

#### Article 75

The right of rescission shall be exercised within one year after the creditor knows or shall know the cause for rescission. The right of rescission distinguishes if the creditor fails to exercise the right within five years after the occurrence of the debtor's act.

#### Article 76

After a contract takes effect, the parties are not excused to non-performance due to the modification of names or change of legal representatives, persons in charge or

undertakers.

## CHAPTER V MODIFICATION & TRANSFER

### Article 77

The parties may modify the contract upon agreement. If the procedure of approval or registration is required for the modification of contract by the laws or administrative regulations, provisions of the laws or administrative regulations shall apply.

### Article 78

If the modification made by the parties is ambiguous, it will be deemed as no modification is made.

### Article 79

The creditor may transfer whole or partial contractual rights to a third party, except for the following cases:

- (1) transfer is not permitted by the nature of contract
- (2) transfer is not permitted according to the parties' agreement
- (3) transfer is not permitted according to legal provisions.

### Article 80

The creditor shall notify the debtor in case of transfer of rights, otherwise, the transfer will not bind on the debtor.

Notice on the transfer of rights by the creditor shall not be rescinded, unless the transferee's consent is acquired.

### Article 81

If the creditor transfers the rights, the transferee acquires rights accessory to the creditor's right, unless the accessory rights are exclusive for the creditor himself.

### Article 82

Upon receiving the notice of transfer of creditor's right, the debtor's defense against the transferor may be claimed against the transferee.

### Article 83

Upon receiving the notice of transfer of creditor's right, the debtor may, according to Article 99 of this Law, claim for off-set if he has due obligatory right against the transferor.

### Article 84

The creditor's consent is required if the debtor transfers the contractual duty in whole or in

part to a third party.

#### Article 85

If the debtor transfers the duty, the new debtor may claim the defense of the original debtor against the creditor.

#### Article 86

If the debtor transfers the duty, the new debtor shall bear the accessory debt relevant to the main debt unless the accessory debt is exclusive for the original debtor himself.

#### Article 87

If the procedure of approval or registration is required for the transfer of the obligatory right by the creditor or the transfer of the debt by the debtor according to laws or administrative regulations, provisions of laws and administrative regulations shall apply.

#### Article 88

Upon the other party's consent, one party may transfer both contractual right and duty in general to a third party.

#### Article 89

Where the rights and duties are transferred in general, provisions of Article 79,81to83,85to 87 shall apply.

#### Article 90

If the party combines after the formation of a contract, the legal person or other organization after combination shall exercise contractual right and fulfill contractual duty. If the party separates after the formation of contract, except for otherwise agreed by the creditor and the debtor, the legal person or other organization after separation shall enjoy joint and several creditors' rights and bear joint and several debts.

## CHAPTER VI TERMINATION

#### Article 91

A rights and duties of contract terminate under the following circumstance:

- (1) the debt is fulfilled according to the agreement
- (2) the contract is discharged
- (3) debt is set off
- (4) the debtor deposits the subject matter according to law
- (5) the creditor relieves the debt
- (6) the obligatory right and debt are mixed to one party
- (7) other circumstance of termination provided by law or agreed by parties

#### Article 92

After the rights and duties of a contract terminate, the parties shall perform duties of notice, assistance, confidentiality etc. conforming to the principle of good faith and in accordance with trade usage.

#### Article 93

The parties may discharge contract upon negotiation.

The parties may agree on terms for discharge by one party. When the terms are fulfilled, the party may discharge the contract.

#### Article 94

The parties may discharge the contract in case of the following conditions:

- (1) if the contract purpose can not be realized due to force majeure
- (2) before the expiration of the period for the performance, if one party explicitly expresses or demonstrates through act that the performance of the main debt is not intended
- (3) if one party delays the performance of main duty and fails to fulfill the performance within reasonable period after summon exhortation
- (4) if due to the delay in performance of obligation or other breach of contract by one party, the purpose of the contract can not be realized
- (5) other conditions provided by law

#### Article 95

If there is a time limit for exercising right of discharge provided by law or agreed by the parties and the party fails to exercise the right before the expiration of contract, the right extinguishes.

The right of discharge extinguishes if the party fails to exercise the right within reasonable period after the other party's summon exhortation, though no time limit is provided by law or agreed by the parties.

#### Article 96

The party shall notify the other party if it suggests the discharge of the contract according to clause 2 of Article 93 and Article 94 of this law. The contract is discharged at the time the other party receives the notice. The other party may apply to the people's court or an arbitration body for affirming the effect of the contract in case of objection.

If the procedures of approval or registration is required by the laws or administrative regulations, the provisions of the laws of administrative regulations shall apply.

#### Article 97

After discharge of the contract, the part not yet performed shall stop performance as to the part already performed, the party may, according to the performance and the nature of the contract, claim for restitution, take other remedial measures and is entitled to

compensation of losses.

#### Article 98

The termination of the rights and duties of a contract does not affect the effect of provisions of settlement and liquidation.

#### Article 99

If the parties owe obligation due to each other and the type and nature of the subject matter of the obligation is the same, any party may set off his own duty against that of the other party unless the off-set is not permitted according to the nature of the contract or legal provisions.

The party suggesting off-set should notify the other party. The notice comes into effect at the time the other party receives. No condition or time limit shall be attached to the notice of off-set.

#### Article 100

If the parties owe obligation due to each other, though the type and nature of the subject matter is not the same, obligation may be set off upon the parties' agreement.

#### Article 101

The debtor may deposit the subject matter if the obligation is difficult to fulfill under following circumstances:

- (1) the creditor refuses the acceptance without reasonable ground
- (2) the creditor's whereabouts is unknown
- (3) the debtor dies and the heir is not yet determined or loses capacity for conduct and the successor or guardian is not yet determined
- (4) other circumstances provided by law

If the subject matter is not suitable for the deposit or the cost for the deposit is excessively high, the debtor may sell through auction or sell off the subject matter and deposit the price acquired

#### Article 102

After the deposit of the subject matter, the debtor shall notify in time the creditor or the successor or the guardian of the creditor unless the creditor's whereabouts is unknown.

#### Article 103

After the deposit of the subject matter, risk of damage and loss of the subject matter is borne by the creditor. The accruements of the subject matter during the deposit period belong to the creditor. Cost for the deposit is borne by the creditor.

#### Article 104

The creditor may take out deposited subject matter every time. But if creditor has matured debt to the debtor, before the creditor hasn't performed debt or supplied security, the competent authorities for submitted subject matter of an obligation shall forbid him to take out deposited subject matter according to the request of debtor.

The right for taking out deposited subject matter of creditor will extinguish. If he fails to exercise this right within 5 years from the date of debtor's submission of the subject matter of an obligation to competent authorities. Deposited subject matter after subtraction of cost for debtor's submission of the subject matter of an obligation to competent authorities shall belong to State.

#### Article 105

If the creditor relieves the debtor from the debt in whole or in part, the rights and duties of the contract terminate respectively in whole or in part.

#### Article 106

If the obligatory right and debt are mixed to one party, the rights and duties of the contract terminate unless the interest of a third person is involved.

### CHAPTER VII

#### LIABILITY FOR BREACH OF CONTRACT

#### Article 107

The party who fails to fulfill its contractual duty or whose performance of contractual duty fails to conform to the contract shall be liable for the breach of contract such as specific performance, adopting remedial measures, or compensation for losses etc.

#### Article 108

One party who explicitly expresses or demonstrates through his own act that the performance of the contractual duty is not intended, the other party may claim him to be liable for breach of contract before the expiration of the period for performance.

#### Article 109

If one party fails to pay the price or remuneration, the other party may claim the payment of the price or remuneration.

#### Article 110

If one party fails to perform the non-monetary obligation or the performance of the non-monetary obligation fails to conform to the agreement, the other party may claim for performance except for the following cases

- (1) the obligation cannot be performed in law or in fact
- (2) the object of the obligation is not suitable for enforcement or the cost for enforcement

is excessively high

(3) the creditor fails to claim for performance within reasonable period

#### Article 111

If the quality fails to conform to the agreement the liability for breach of contract shall be borne according to the agreement.

If terms of the liability for breach of contract is not agreed on or the term is ambiguous and cannot be determined according to Article 61 of this Law, the harmed party may choose reasonably repair exchange reproduction reduction of price return of goods remuneration and other liabilities for breach of contract from the other party according to the nature of the subject matter and extent of the losses.

#### Article 112

If the party fails to perform contractual duties or the performance of the duties fails to conform to the Agreement it shall after performing the duties or adopting remedial measures compensate for the losses to the other party in case the other party still suffers from other losses.

#### Article 113

Where one party fails to perform contractual duties or the performance fails to conform to the agreement and thereby causes losses to the other party the amount for losses compensated shall be equal to the losses caused by the breach of contract including possible profit realized if contract duly performed but shall not exceed the possible loss caused by breach of contract which can be foreseen by the breaching party at the time of contract formation.

Where the business operator has fraudulent conduct in supplying goods and service for consumer it shall take liability for compensation according to the provisions in "Law of the People's Republic of China on Protection of the Rights and Interests of Consumers".

#### Article 114

The parties may agree that one party pays liquidated damages to the other in case of breach of contract according to the circumstance of the breach they may also agree on the calculating manner of damages caused by the breach.

If the agreed liquidated damage is excessively higher than the actual loss the party may apply to the People's court or an arbitration body for suitable mitigation if the agreed liquidated damage is excessively lower than the actual loss the party may apply to the people's court or an arbitration body for a suitable extension.

#### Article 115

The parties may agree that one party pays deposit to the other as warranty for the creditor's right according to "Law of Guarantee of the People's Republic of China" After the

debtor performs the duties the deposit shall be balanced against the price or recovered. The party who pays the deposit fails to perform the agreed duties it has no right to recover the deposit, if the party who accepts deposit fails to perform the agreed duties, it shall return the deposit twice as much.

#### Article 116

Where the parties have agreed upon both liquidated damages and deposit, one party may choose either clause to apply when the other breaches the contract.

#### Article 117

If the non-performance is caused by force majeure, the liability shall be relieved in whole or in part in accordance with the effect of force majeure unless otherwise provided by law. If force majeure exists after the delay of performance, liability can not be relieved.

The force majeure in this law refers to the objective circumstances that can not be predicted, avoided or overcome.

#### Article 118

If the party fails in performance due to force majeure, he shall notify the other party in time to mitigate possible loss caused to the other party and shall provide verification within reasonable time.

#### Article 119

After one party's breach of contract, the other party shall take appropriate measure to avoid the extension of loss extended.

Reasonable cost paid by the party to avoid the extension of loss shall be borne by the breaching party.

#### Article 120

The parties shall take liability respectively if both are in breach.

#### Article 121

One party shall take the liability of breach of contract to the other party if the breach is caused by a third party. The dispute between the party and the third person shall be handled according to legal provisions or agreements.

#### Article 122

Where one party's breach of contract infringe upon the other party's personal or property interests, the aggrieved party is entitled to choose the liability for breach of contract according to this Law or the liability for tort according to other laws.

### CHAPTER VIII

## OTHER PROVISIONS

### Article 123

Where there are provisions concerning contract in other laws, the said provisions shall apply accordingly.

### Article 124

Where contracts are not explicitly provided by specific provisions of this Law or by other laws, the general provisions shall apply and the most similar provisions in the specific provisions of this Law or in other laws may be referred to.

### Article 125

When disputes arise as to the understanding of a contract provision, the true meaning of the provision shall be ascertained according to the wording of the provision in the contract, relevant contract provisions and the purpose of the contract, and in conformity with trade usage and principle of good faith.

Where the text of contract is concluded in over 2 languages and parties have agreed that they have equal effect, the wording in different texts shall be assumed to have the same meaning. Where the different texts use inconsistent wording, it shall be construed according to the purpose of the contract.

### Article 126

The parties to a foreign-related contract may choose the law applied to contract dispute, unless the law provides otherwise. Where the parties to a foreign-related contract have not made a choice, the law of the country having the closest connection with the contract shall apply.

Laws of the People's Republic China shall be applied to contracts concluded by Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture and Chinese-foreign cooperative exploration and development of natural resource, which is performed in the territory of the People's Republic of China.

### Article 127

The administration of industry and commerce and other competent administrative department concerned shall, within their functions and powers, supervise and deal with the illegal activities which take advantage of the contract to harm the State and social public interests according to the provisions provided by law and administrative regulations. If the activity constitutes a crime, it shall be prosecuted for the criminal responsibility according to law.

### Article 128

The parties may settle contract disputes through compromise or conciliation.

If the parties are unwilling to settle their dispute through compromise or conciliation, or if the compromise or conciliation proves unsuccessful, they may submit the dispute to an arbitration body for arbitration according to their arbitration agreement. The parties of foreign-related contracts may submit disputes for arbitration to Chinese arbitration body or other arbitration body according to their arbitration agreement.

If no arbitration agreement is reached or the arbitration agreement is void, the parties may bring suit in people's court. The parties shall perform judgements, arbitral awards and conciliation which have taken effect. In case of refusal by one party, the other party may claim to the People's court for enforcement.

#### Article 129

The time limit of bringing suit or applying for arbitration in a dispute over an international contract of sales of goods and contract of technology export and import shall be four years, counting from the day when the party is aware or ought to be aware of its rights' being infringed upon.

As to the time limit of bringing suit or applying for arbitration in other contract disputes, relevant legal provisions shall apply accordingly.

### SPECIFIC PROVISIONS

#### CHAPTER IX CONTRACTS FOR SALES

#### Article 130

A sales contract is a contract under which the seller transfers its ownership of the subject matter to the buyer, while the buyer pays for the price.

#### Article 131

Subject to Article 12 of this Law, the contents of a sales contract may contain clauses on manner of package, criteria and method for inspection, means of settlement of account, language used in the contract and validity etc.

#### Article 132

The subject matter sold shall be a matter owned by the seller or is subject to his disposition.

In case a subject matter is prohibited or restricted from being transferred by laws or administrative regulations, those laws and regulations shall be observed.

#### Article 133

Unless otherwise provided in law or agreed between the parties, the ownership of the subject matter transferred at the time the subject matter is delivered.

#### Article 134

The parties may in a sales contract agree upon a clause that the ownership of the subject matter shall belong to the seller in case the buyer fails to perform his duty of paying for price or other duties.

#### Article 135

The seller shall perform his duties of delivering the subject matter or any documents for taking delivery of subject matter, and transferring the ownership of the subject matter to the buyer.

#### Article 136

The seller shall, according to the agreement between the parties or trade usage, hand over to the buyer other relevant documents and materials in addition to the documents for taking delivery of the subject matter.

#### Article 137

Unless otherwise agreed upon between the parties or provided by law, if the subject matter to be sold is computer software or drawings etc. which possess intellectual property rights, the intellectual property rights of the subject matter does not belong to the buyer.

#### Article 138

The seller must deliver the subject matter within the time limit agreed upon; if a period of time for delivery is fixed at any time within that period.

#### Article 139

Where the time limit for delivery is not provided in the contract or the provision is ambiguous Article 61 and Item 4 of Article 62 of this Law shall apply.

#### Article 140

Where the subject matter has been in the buyer's possession before the conclusion of the contract, the time when the contract takes effect shall be deemed as the time of delivery.

#### Article 141

the seller shall deliver the subject matter at the place agreed upon.

Where the place of delivery is not provided in the contract or the provision is ambiguous and it still can not ascertained in accordance with Article 61 of this Law, the following provisions shall apply:

(1) If the subject matter needs to be transferred, the seller shall hand in the subject mater

over to the first r for transmission to the buyer

(2) where the subject matter doesn't need to be transferred, and at the time of conclusion of the contract. the seller and the buyer knew where the subject matter were, the seller shall deliver the subject mater at that place. If the particular place of the subject matter was not known to the parties. the subject matter hall be delivered at the place where the seller had his place of business at the time the contract was concluded

#### Article 142

The risk of damage or loss in respect of the subject matter shall be borne by the seller before delivery of the matter while by the buyer after delivery of the subject matter unless otherwise agreed upon between the parties or provided by law.

#### Article 143

where the subject matter is unable to be delivered within the time limit agreed upon due to the fault of the buyer bear the risk of damage or loss in respect of the subject matter from the date fixed for delivery.

#### Article 144

Unless otherwise agreed by the parties, when a subject matter which has been dispatched for transmission by the carrier is sold by the seller, the risk of damage or loss in respect passes to the buyer at the moment the contract takes effect.

#### Article 145

Where there is no place of delivery is provided in the contract or the provision is ambiguous and the subject matter need to be carried according to Item 1 of Paragraph 2 of Article 141 of this Law, the risk of damage or loss in respect of the subject matter shall pass to the buyer from the time the subject matter was handed carrier by the seller.

#### Article 146

In case the subject matter is placed at the place of delivery as agreed upon or according to Item 2 of Article 141 of this Law, while the buyer commits a breach of contract by failing to take of damage or loss in respect of the subject matter shall pass to the buyer from the date it breaches the contract.

#### Article 147

The fact that the seller has not delivered the documents and materials in respect of the subject matter as the passage of the risk of damage or loss to the subject matter.

#### Article 148

A(here the purpose of the contract fails to be achieved due to the unconformity of the quality of the subject flatter, the buyer may refuse to accept the subject mater or revoke the contract In case the buyer has refused to take delivery or revoked the contract, the risk of damage or loss to the subject matter shall be born by the seller.

#### Article 149

The fact that the risk of damage or loss to the subject matter is borne by the buyer does not impair its right to request the seller to bear the liability for breach of contract if the seller's performance of its obligation is not in accordance with the agreement between the parties.

#### Article 150

Unless otherwise provided by law, the seller shall guarantee the buyer being free from any claim of a third party.

#### Article 151

Where the buyer knows or should have known that a third party has a right in the subject matter at the time the contract is concluded, the seller shall not bear the liability as provided in Article 150 of this Law.

#### Article 152

Where the buyer has specific evidence to prove that the third party may claim a right in the subject matter, he is entitled to suspend payment of relevant price unless the seller has offered proper guaranty.

#### Article 153

The seller shall delivery a subject matter according to the quality requirement agreed upon. If the seller has supplied an explanation on the quality of the subject matter, the subject matter delivered shall be in conformity with the quality requirement noted in the explanation.

#### Article 154

If the quality requirement of the subject matter is not provided in the contract or the provision is ambiguous, and it still can not be ascertained according to Article 61 of this Law, Item 1 of Article 62 of this Law shall apply.

#### Article 155

Where the subject matter delivered by the seller does not meet the quality requirement, the buyer is entitled to request the seller to bear. liability for breach of the contract according to Article 111 of this Law.

#### Article 156

The seller shall deliver the subject matter according to the manner of package agreed upon. If the manner of package is not provided in the contract or the provision is ambiguous, and it still can not be ascertained according to Article 61 of this Law, the subject matter shall be packed in a usual manner; or where there is no such a usual manner, in a manner appropriate for the protection of the subject matter.

#### Article 156

Where the seller is not able to perform its duty of transferring part of the right that is owned by another person in the subject matter, the buyer may request to reduce the price or discharge the contract.

#### Article 157

The buyer after it takes delivery shall inspect the subject matter within the time limit for inspection as agreed upon. If no time limit is agreed upon, in due time.

#### Article 158

Where the parties has agreed upon time limit for inspection, the buyer shall notify the seller of the unconformity of the quantity or quality of the subject matter within the time limit for inspection. In case the buyer is reluctant to do so, the subject matter shall be deemed as in conformity.

Where no time limit for inspection is agreed upon, the buyer shall notify the seller within reasonable time after he has found or ought to have found the unconformity of the quantity or quality of the subject matter. In case the buyer fails to notify the seller within reasonable time or 2 years from the date of taking delivery, the quantity or quality of the subject matter shall be deemed as in conformity. However, where a period of quality guaranty for the subject matter has been set, the period of quality guaranty instead of the period of 2 years shall apply.

Where the seller knows or ought to have known the unconformity in the subject matter, the proceeding two Items on the restriction of time limit for notification shall not be binding on the buyer.

#### Article 159

The buyer shall pay for the price as agreed upon. If the price is not provided in the contract or the provision is ambiguous, Article 61 and Item 2 of Article 62 of this Law shall apply.

#### Article 160

The buyer shall pay for the price at a place agreed upon. If the place for payment is not provided in the contract or the provision is ambiguous, and it still can not be ascertained according to Article 61 of this Law, the buyer shall pay at the seller's place of business. However, if the parties have agreed that the payment shall be made only after the subject matter or the documents for taking delivery of the subject matter is delivered, the price shall be paid at the place where the subject matter or the documents for taking delivery is delivered.

#### Article 161

The buyer shall pay for the price at the time agreed upon. If the time for payment is not provided in the contract or the provision is ambiguous, and it still can not be ascertained according to Article 61 of this Law, the buyer shall pay for the price at the same time it accepts the subject matter or the documents for taking delivery of the subject matter.

#### Article 162

If the seller delivers a quantity of subject matter greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. In case of taking delivery of the excess quantity, the buyer shall pay for its price according to the price fixed in the original contract. In case the buyer refuses to take delivery of the excess quantity, shall inform the seller in due time.

#### Article 163

Profit accrued from the subject matter before the delivery shall belong to the seller, and that after delivery shall belong to the buyer.

#### Article 164

Where a contract is discharged as the main article of the subject matter lacks conformity with the agreement, the validity of discharge of the contract extends to the subordinated article of the subject matter. Where a contract is to be discharged as the subordinated article of the subject matter lacks conformity, the validity of discharge does not extend to the main article.

#### Article 165

Where the subject matter is composed of several articles and one of them lacks conformity with the agreement, the buyer may discharge that article. However, if the value of the subject matter is obviously impaired in case that article is separated from the other articles, the buyer may discharge the contract with respect to all the articles.

#### Article 166

Where the seller delivers the subject matter in batches, and one batch of them is undelivered or the delivery lacks conformity with the agreement and thus this batch does not meet the purpose of the contract, the buyer may discharge this batch of subject matter.

Where one batch of the subject matter fails to be delivered by the seller or the delivery lacks conformity with the agreement, and thus the other batches of the subject undelivered do not meet the purpose of the contract, the buyer therefore may discharge this batch and the batches undelivered.

Where one batch of the subject matter is discharged by the buyer and this batch is interdependent with the other batches, the buyer may discharge the batches of subject matter both delivered or undelivered.

#### Article 167

Where the nonpayment overdue for the buyer to a payment by installments has amounted to one fifth of the total price, the seller may request the buyer to pay the total price or discharge the contract.

Where the seller discharges the contract, he may request the buyer to pay for its use of the subject matter.

#### Article 168

The parties to a sale by sample shall seal up the sample and they may also make an explanation on the sample. The subject matter delivered by the seller shall be of the same quality to the sample.

#### Article 169

Where the buyer to a sale by sample does not know there is a concealed defect in the sample, even the subject matter delivered is identical to the sample, it shall be in conformity with the normal standard of the same kind of matters.

#### Article 170

The parties to a sale on approval may agree upon a period for approval of the subject matter. If the period for approval is not provided in the contract or the provision is ambiguous, and it still can not be ascertained according to Article 61 of this Law, the period shall be determined by the seller.

#### Article 171

The buyer to a sale on approval may purchase or refuse to purchase the subject matter within the period of approval. Its silence as to whether to purchase it or not at the expiration of the period is deemed as an indication to purchase.

#### Article 172

The rights and duties of the parties to a sale by bid invitation and bidding and the procedures for bid invitation and bidding shall be subject to related laws and administrative regulations.

#### Article 173

The rights and duties of the parties to an auction and the procedure of auction shall be subject to related laws and administrative regulations.

#### Article 174

Where other non-gratuitous contracts are provided in law, those provisions shall apply. Otherwise, the provisions on sales contracts shall be followed.

#### Article 175

The provisions relating to sales contracts shall be followed as to a barter trade agreed upon between the parties in which the ownership of the subject matters is transferred.

## CHAPTER X

## CONTRACTS FOR SUPPLY & USE OF WATER, ELECTRICITY, GAS & HEAT

### Article 176

A contract for the supply and use of electricity is a contract through which the electricity supplier supplies electricity to the electricity user and the electricity user pays for the price.

### Article 177

Contents of the contract for supply and use of electricity shall contain clauses on the manner, quality and time of the electricity supplied, the capacity, place, character, and method for calculation of the electricity used, the way of settling the electricity price and fee, the responsibilities for maintaining the electricity supply and use equipment etc.

### Article 178

The place of performance of the contract for supply and use of electricity shall be agreed upon between the parties. Where there is no agreement or the agreement is ambiguous, the place of performance shall be the boundary of the property rights of the electricity supply equipment.

### Article 179

The electricity supplier must supply electricity in a safe manner in accordance with the quality standard for the electricity supplied stipulated by the State and the agreement between the parties. Where the electricity supplier fails to supply electricity in a safe manner in accordance with the electricity supply standards stipulated by the State and the agreement between the parties, it shall compensate the electricity user for the losses caused thereby.

### Article 180

Where due to planned or temporary inspection or repair of electricity supply equipment, a lawful restriction on the supply of electricity, or illegal use of electricity by the electricity user etc. the electricity supplier needs to suspend the supply of electricity, it shall notify the electricity user in advance according to the relevant State stipulations. In case the electricity supplier suspends the electricity supply without notifying the electricity user in advance, the electricity supplier shall compensate the electricity user for the losses caused thereby.

### Article 181

In case the electricity supplied is cut off due to a natural disaster etc., the electricity supplier shall do rush repair according to relative stipulations of the State. If the repair is not done in due time and thus causes loss to the electricity user, the electricity supplier shall bear the liability of compensation.

### Article 182

The electricity user shall pay the electricity fee according to relative stipulations of the State and the agreement between the parties. Where the electricity user fails to pay the

overdue electricity fee, it shall pay the liquidated damages as agreed upon. In case the electricity user fails to pay the electricity fee of the liquidated damages after summon exhortation, the electricity supplier may suspend the supply of electricity according to procedures stipulated by the State.

#### Article 183

The user must use the electricity safely in accordance with the relative stipulations of the State and the agreement between the parties. In case it fails to do so and thus causes loss to the electricity supplier it shall be liable for compensation.

#### Article 184

Contracts for the supply and use of water, gas and heat shall be handled with reference to the provisions on the contract for the supply and use of electricity.

### CHAPTER XI

#### CONTRACTS FOR GIFTS

#### Article 185

A contract of gift is a contract under which the donor gratuitously assigns his property to the donee and the donee expresses his willingness to accept the gift.

#### Article 186

The donor may revoke the gift before his right on the property is transferred.

The Proceeding Paragraph shall not apply to contracts of gift with a character of social public benefit of moral duty such as disaster or poverty relief etc., and the contracts of gift which have gone through public notary.

#### Article 187

Where the property given needs to go through procedures such as registration etc., those procedures shall be conducted.

#### Article 188

Where the donor to the contracts of gift with a character of social public benefit or moral duty such as disaster or poverty relief etc. or the contracts of gift which have gone through public notary fails to deliver the property given, the donee may request delivery.

#### Article 189

Where the property given is damaged or lost due to the deliberation or gross negligence of the donor. the donor shall be liable for compensation.

#### Article 190

The gift may be made subject to duties.

Where the gift is made subject to duties, the donee shall perform the duties as agreed upon.

#### Article 191

The donor is not liable for the defects in the property given. In respect of a gift subject to duties, the donor shall, as to the defect in the property given, bear a seller's guaranty liability within the extent of the subject duties.

Where the donor deliberately fails to inform the donee of the defect in the property or guarantees that there is no defect in the property, he shall be liable for compensation if losses were caused to the donee thereof.

#### Article 192

The donor may revoke the gift in case the donee is subject to any of the following conditions:

- (1) having seriously injured the donor or the close relatives of the donor
- (2) in case he is under a duty to support the donor, having failed to perform such a duty
- (3) having failed to perform the duties agreed upon in the contract of gift

The donor's right of revocation shall be exercised within one year from the date on which he knows or ought to have known the ground for revocation.

#### Article 193

Where an illegal act of the donee causes death or loss of civil conduct capacity to the donor, the heir or guardian of the donor is entitled to revoke the gift.

The heir or guardian's right of revocation shall be exercised within six months from the date on which he knows the ground for revocation.

#### Article 194

In case a gift is revoked by the person who is entitled to the revocation, he may request the donee to return the property given.

#### Article 195

Where the donor's business operation or family life is seriously affected due to a major deterioration of his financial status. he may refuse to perform the duty of making a gift.

## CHAPTER XII CONTRACTS FOR LOAN

#### Article 196

A contract of loan is a contract by which the borrower borrows money from the lender

under an obligation to repay the money with interest when the term of loan expires.

#### Article 197

A contract of loan shall be concluded in written form' except for otherwise agreed upon between natural persons.

A contract of loan shall contain clauses on the type, currency, purpose, amount, interest rate, term and manner of repayment etc. of the loan.

#### Article 198

The lender, in the conclusion of a contract of loan, may require the borrower to provide guaranty. The guaranty shall be handled according to the provisions of the Guaranty Law of the People's Republic of China.

#### Article 199

In the conclusion of a contract, the borrower shall, according to the requirement of the lender, provide true information on its business activity and financial status in connection with the loan.

#### Article 200

The interest of the loan shall not be deducted and retained from the capital of the loan in advance. In case it is deducted, the loan shall be repaid and the interest shall be calculated according to the actual amount of loan.

#### Article 201

Where the lender fails to provide the loan according to the date and amount agreed upon, and thus causes loss to the borrower, it shall be liable for compensation

Where the borrower fails to accept the loan according to the date and amount as agreed upon, it shall pay the interest according to the date and amount as agreed upon.

#### Article 202

The lender may inspect or supervise the use of the loan according to the agreement between the parties. The borrower as agreed upon shall regularly provide the lender with materials such as financial accounting reports etc.

#### Article 203

Where the borrower fails to use the loan according to the purpose of the loan agreed upon, the lender may suspend the distribution of the loan, recover the loan before its term expires or discharge the contract.<sup>82</sup>

#### Article 204

The interest of a loan provided by a financial institution that handles loan business according to the limits of loan interest stipulated by the People's Bank of China.

#### Article 205

The borrower shall pay for the interest of the loan within the time limit as agreed. If the time limit for payment of interest is not provided in the contract or the provision is ambiguous, and it still can not be ascertained according to Article 61 of this Law, the borrower shall pay the interest at the same time he repays the loan in case the term of the loan is less than one year. Where the term of the loan exceeds one year, the borrower shall pay the interest at the expiration of each one year period with the balance for the left period less than one year paid at the at the same time he repays the loan.

#### Article 206

The borrower shall repay the loan in accordance with the time limit as agreed upon. If the time limit for repayment is not provided in the contract or the provision is ambiguous, and it still can not be ascertained according to Article 61 of this Law, the borrower may repay the loan at any time and the lender may urge the borrower to repay it within appropriate time limit.

#### Article 207

Where the borrower fails to repay the loan in accordance with the time limit as agreed upon, he shall pay overdue interest according to agreement or the relative stipulations of the State.

#### Article 208

Where the borrower repays the loan before the expiration of the time limit, the loan interest shall be calculated according to the actual term of the loan except for otherwise agreed upon between the parties.

#### Article 209

The borrower may apply for an extension of the term of the loan before the date for repayment expires. The term of the loan may be extended with consent of the lender.

#### Article 210

A contract of loan between natural persons shall take effect at the time the lender offers the loan.

#### Article 211

Where the payment of interest is not agreed upon or the agreement is ambiguous in a contract of loan between natural persons, the loan shall be deemed as without interest.

Where the payment of interest is agreed upon in a contract of loan between natural persons, the interest shall not violate restrictions on loan interest stipulated by the State.

### CHAPTER XIII

## CONTRACTS FOR LEASE

### Article 212

A contract of lease is a contract under which the lessor gives to the lessee the rights of use and profit of the leased thing during the term of the lease, while the lessee pays for the rent agreed upon.

### Article 213

A contract of lease shall contain provisions on the name, quantity and use of the leased thing, the term of the lease, the rent and its manner and time limit for payment, and the responsibility for maintenance of the leased thing etc.

### Article 214

The term of the lease agreed between the parties shall not exceed 20 years. Otherwise, the exceeded period is void.

When the term of the lease expires, the parties may renew the contract of lease, however, the term agreed upon shall not exceed 20 years from the date on which the contract is renewed.

### Article 215

A contract of lease shall be concluded in written form in case the term of the lease is above six months.

Where the parties fail to adopt a written contract and afterwards disputes arise on the term of lease, the lease shall be deemed as a non-fixed term lease.

### Article 216

The lessor shall deliver the thing leased to the lessee according to the contract and during the term of the lease keep it in conformity with its use agreed upon.

### Article 217

The lessee shall use the thing leased according to the method agreed upon. If the method of use is not provided in the contract or the provision is ambiguous, and it still can not be ascertained according to Article 61 of this Law, the leased thing shall be used in conformity with its nature.

### Article 218

Where the lessee uses the leased thing in a method agreed upon or in conformity with its nature and causes loss to the leased thing thereof, he shall not be liable for compensation.

### Article 219

Where the lessee fails to use the leased thing in a method agreed upon or in conformity

with its nature an caused loss to the leased thing thereof, the lessor may discharge the contract and request compensation

#### Article 220

The lessor shall perform his duty of maintenance of the thing leased except for otherwise agreed upon between the parties.

#### Article 221

Where the lessee needs a repair of the thing leased, he may request the lessor to do so in reasonable time.

In case the lessor fails to perform such a duty, the lessee may repair it himself with the cost borne by the lessor. If the lessee's use of the thing leased is affected due to the repair, the rent of lease shall be reduced accordingly or the term of the lease prolonged.

#### Article 222

The lessee shall take proper care of the thing leased. Where the lessee fails to take proper care and thus causes damage or loss to the thing leased thereof, he shall be liable for compensation.

#### Article 223

The lessee may make an improvement or add additional facilities to the thing leased with permission of the lessor.

Where the lessee makes an improvement or adds additional facilities to the thing leased without permission of the lessor, the lessor may request the lessee to restore the thing leased or pay compensation.

#### Article 224

The lessee may sublease the thing leased to a third party with permission of the lessor. In that case, the contract of lease between the lessor and the lessee keeps effective. And the lessee shall be liable for compensation in case loss is caused to the thing leased due to the fault of the third party.

In case the lessee subleases the thing leased without permission of the Lessor, the lessor may discharge the contract.

#### Article 225

Unless otherwise agreed upon between the parties, profit accrued from the lessee's possession and use of the thing leased during the term of lease shall belong to the lessee.

#### Article 226

The lessee shall pay the rent according to the time limit agreed upon. If the time limit is not provided in the contract or the provision is ambiguous, and it still can not be ascertained

according to Article 61 of this Law, the lessee shall pay the rent at the expiration of the term of lease. However, if the term of lease exceeds one year, the rent shall be paid at the expiration of each year period with the balance for the left period less than one year paid at the expiration of the term of the lease.

#### Article 227

Where the lessee fails to pay or delays in paying the rent without appropriate reasons, the lessor may require the lessee to pay in a reasonable time. If the lessee fails to pay within that time, the lessor may discharge the contract.

#### Article 228

Where the claim of right by a third party affects the lessee in his using and making profit out of the thing leased, the lessee may request a reduction or exemption of the rent.

In case a third party claims right in the thing leased, the lessee shall give notice to the lessor in due time.

#### Article 229

An alteration in the ownership of the thing leased during the term of the lease shall not affect the validity of the contract of lease.

#### Article 230

Where the lessor proposes to sell a house leased, he shall notify the lessee within reasonable time before the sale. The lessee has priority in purchasing the house with the same terms of purchase

#### Article 231

Where an incident that is not attributed to the lessee causes partial or entire destruction or loss to the thing leased, the lessee may request a reduction or exemption of the rent. In case the partial or entire destruction or loss to the thing leased causes failure in the realization of the purpose of the contract. the lessee may discharge the contract.

#### Article 232

Where the term of lease is not provided in the contract or the provision is ambiguous and it still an not be ascertained according to Article 61 of this Law, the lease is deemed as a non-fixed term lease The parties may at any time discharge the contract. The lessor however, shall notify the lessee before a reasonable time if he proposes to discharge the contract.

#### Article 233

Where the thing leased endangers the safety or health of the lessee, the lessee may a any me discharge the contract notwithstanding that he knows the thing leased is not qualified during the conclusion of the contract.

Article 234

If the lessee dies during the term of a house lease, persons who live with him before his death may lease the house according to the original contract of lease.

Article 235

The lessee shall return the thing leased at the expiration of the term of lease. The thing returned shall be in conformity with the condition of the thing leased as if it were used in a method agreed upon or in conformity with its nature.

Article 236

Where the lessee continues to use the thing leased after the expiration of the lease and the lessor does not object to that effect, the original contract of lease shall keep valid, however, the term of lease shall become a non-fixed term.

## CHAPTER XIV

### CONTRACTS FOR FINANCIAL LEASING

Article 237

A financial leasing contract is a contract under which the lessor according to the lessee's option on the seller and the thing leased buys the thing leased from the seller for the lessee's use, while the lessee pays the rent.

Article 238

A financial leasing contract shall contain clauses concerning the name, quantity, specification, technical function, method of inspection and lease term of the thing leased, the composition of rent and its term and manner of payment, types of currency for payment, and the attribution of the thing leased at the expiration of the lease term etc.

A financial leasing contract shall be in written form.

Article 239

Where the lessor according to the option of the lessee on the seller and the thing leased has concluded a sales contract, the seller shall deliver the subject matter to the lessee according to the agreement, while the lessee has rights as a buyer with respect to the acceptance of the subject matter.

Article 240

The lessor, the seller and the lessee may agree upon that the right of claim shall be exercised by the lessee if the seller fails to perform his duties in the sales contract. In this case the lessor shall give assistance.

Article 241

Where the lessor has concluded a sales contract according to the options of the lessee on

the seller and the thing leased. without permission of the lessee, the lessor shall not modify any content of the contract with respect to the lessee.

Article 242

The lessor has ownership of the thing leased. In case the lessee goes bankrupt, the thing leased does not become bankruptcy property.

Article 243

Unless otherwise agreed upon between the parties, the rent of the financial leasing contract shall be ascertained according to the major part or the full cost for the purchase of the thing leased and the reasonable profit that may be accrued to the lessor.

Article 244

In case the thing leased is not in conformity with the agreement or the use of the thing itself, the lessor shall not be liable unless that the lessee has relied on the skill of the lessor in designating the thing leased or the lessor has intervened in the selection of the thing leased.

Article 245

The lessor shall guarantee the right of the lessee to the possession and use of the thing leased.

Article 246

If the thing leased causes property damage or physical injury to a third party during the period it is possessed by the lessee, the lessor is not liable.

Article 247

The lessee shall take proper care and use of the thing leased.

The lessee shall perform his duty of keeping the thing leased in good repair during the period it is in his possession.

Article 248

The lessee shall pay the rent as agreed upon. Where after summon exhortation the lessee fails to pay in due time, the lessor may request full payment of rent or discharge the contract and recover the thing leased.

Article 249

Where the lessor and the lessee have made an agreement upon that the thing leased shall belong to the lessee at the expiration of the lease, and the lessee has already paid most of the rent, but is unable to afford the residual rent, in this case if the lessor discharges the contract and recovers the thing leased, the lessee may request partial reimbursement so long as the returned thing is of higher value than the rent unpaid and other cost.

#### Article 250

The lessor and the lessee may agree upon the attribution of the thing leased at the expiration of the lease. If the attribution is not provided in the contract or the provision is ambiguous, and it still can not be ascertained according to Article 61 of this Law, the thing leased shall belong to lessor.

### CHAPTER XV CONTRACTS FOR WORK

#### Article 251

A contract for work is a contract under which the contractor undertakes work and transfers its achievement of work to the customer according to the latter's requirement, and the customer is bound to pay remuneration thereof.

The work contracted includes processing, production on order, repair, reproduction, test, examination and etc.

#### Article 252

A contract of work shall contain clauses on the object, quantity, quality, remuneration, manner of work, supply of materials, time limit for performance, inspection standard and method of the work etc.

#### Article 253

Unless otherwise agreed upon between the parties, the contractor shall use its own equipment, technology and labor force to complete the main part of the work.

In case the contractor assigns the main part of his contracted work to a third party, he shall be responsible to the customer with respect to that part of work completed by the third party; if the assignment is made without agreement of the customer, the customer may discharge the contract.

#### Article 254

The contractor may assign the auxiliary part of the work contracted to a third party. Where the contractor has assigned the auxiliary part of the work to a third party, he shall be responsible to the customer on that part of work.

#### Article 255

Where the materials are to be supplied by the contractor, he shall select materials as agreed upon and subject to the inspection of the customer.

#### Article 256

Where the materials are to be supplied by the customer, the customer shall supply as

agreed upon, the contractor shall inspect the materials supplied by the customer in due time and if he discovers that they are not in conformity with the agreement, he shall notify the customer in due time to make a replacement or supplement.

The contractor may not, without permission, replace any materials supplied by the customer or change any spare parts that do not need to be repaired.

#### Article 257

Where the contractor discovers that the drawings or technical requirements are not appropriate, he shall notify the customer in due time. If the contractor was caused loss due to the customer's reluctance to make a reply etc., the customer shall be liable for compensation.

#### Article 258

Where the customer modifies his requirement to the contracted work during the course of construction and thus causes loss to the contractor, the customer shall compensate for the loss of the contractor.

#### Article 259

Where the contracted work needs assistance from the customer, the customer shall perform his duty of assistance.

In case the contracted work is unable to be completed due to the customer not performing his duty of assistance, the contractor may urge the Customer to perform his duty within reasonable time; the contractor in this case may postpone his performance as well. Where the customer does not perform his duty overdue, the contractor may discharge the contract.

#### Article 260

The contractor shall during the course of construction, accept necessary inspection and supervision by the customer. The customer shall not obstruct the contractor's normal work by his inspection and supervision.

#### Article 261

On completion of the contracted work, the contractor shall deliver the achievement of work and the necessary technical materials and relevant quality certificates to the customer. The latter shall inspect and accept the achievement of work.

#### Article 262

Where the achievement of work delivered by the contractor does not meet the quality standard, the customer may request the contractor to bear the liability of repair, replacement, reduction of the remuneration or compensation for loss etc.

#### Article 263

The Customer shall pay the remuneration according to the time limit agreed upon. If the time limit for payment is not provided or the provision is ambiguous, and it still can not be ascertained according to Article 61 of this Law, the customer shall pay at the time of the delivery of the achievement of work. If the achievement of work is to be delivered by parts, the customer shall pay the remuneration for each part accordingly.

#### Article 264

Unless otherwise agreed upon between the parties, in case the customer does not pay the remuneration or the price of materials etc., the contractor has a lien on the achievement of the work.

#### Article 265

The contractor shall take proper care of the materials supplied by the customer and the achievement of work. In case the materials or the achievement of work was caused damage or loss due to the lack of proper care the contractor shall be liable for compensation.

#### Article 266

The contractor shall keep confidential in accordance with the requirement of the customer He shall not, without permission of the customer keep duplications and technical materials in respect of the contracted work.

#### Article 267

Unless otherwise agreed upon between the parties, the joint contractors shall bear joint and several liability to the customer.

#### Article 268

The customer may at any time discharge a contract for work, however he shall be liable for compensation if loss is caused to the contractor thereof.

### CHAPTER XVI

### CONTRACTS FOR CONSTRUCTION PROJECTS

#### Article 269

A contract for construction projects is a contract under which the contractor undertakes project construction and the employer pays for the price.

Contracts for construction projects include survey design and building contracts.

#### Article 270

A contract for construction projects shall be concluded in written form.

#### Article 271

The bid invitation and bidding activities in construction projects shall be carried out openly, fairly and justly according to the provisions of relevant laws.

#### Article 272

The employer may conclude a contract for construction projects with a general contractor or respectively sign a survey, design and building contract with the surveyor, designer and builder.

The employer may not divide a contract which shall be completed by one contractor into parts and then issue them to several contractors.

With permission of the employer, the general contractor or the contractor for survey, design or building may assign the part of work he contracted to a third party. The third party shall bear joint and several liabilities to the employer with the general contractor or the contractor for survey, design or building with respect to that part of work completed by himself. The contractor shall not assign the entire construction project he has contracted to a third party or divide it into parts and then assign them to a third in the name of subcontract.

The contractor is prohibited from subcontracting the construction projects to any institutions without equivalent qualifications. The subcontractor is prohibited from re-subcontracting. The construction for the main part of the project must be completed by the contractor himself.

#### Article 273

Contracts for major construction projects of the State shall be concluded in accordance with procedures prescribed by the State and the investment plans and feasibility research report approved by the State.

#### Article 274

Survey and design contracts shall contain clauses on time limit for delivery of related basic materials and documents (including an estimated budget), quality requirements, cost and other terms for cooperation etc.

#### Article 275

A construction contract shall contain provisions on the scope of the projects, the construction period, the start and completion time for the interim construction projects, the quality of the project, the cost of the project, the time for delivery of technical data, the responsibilities for supply of materials and equipment, the allocation of funds and settlement of accounts, the inspection and acceptance of projects, the scope of quality guarantee, the period of quality warranty, the cooperation between the parties etc..

#### Article 276

Where the construction projects are supervised, the employer shall conclude a written

mandate contract for supervision with the supervisor. The rights, duties and legal liabilities of the employer and the supervisor shall be in accordance with the provisions on contracts in this Law and those of other relevant laws and regulations.

Article 277

Under a situation not to obstruct the normal work of the contractor, the employer at any time may inspect the progress and quality of the construction work.

Article 278

Before a concealed project is to be concealed, the contractor shall inform the employer to inspect the project. In case the employer fails to conduct an inspection in due time, the contractor may postpone the dead line for construction and request compensation for stop and delay of work as well.

Article 279

The employer shall inspect the construction projects upon completion according to the construction drawings and written instructions and projects inspection regulations and quality examination standards issued by the State.

Construction projects may be delivered for use only after it has been inspected upon completion. Projects without inspection or found unqualified in inspection may not be delivered for use.

Article 280

Where the quality of survey or design is not in conformity with the agreement or the survey or design documents are not submitted in due time, the construction period is thus prolonged and losses are thereby caused to the employer, the surveyor or designer shall continue to improve the survey or design, reduce or forfeit his survey or design fee and make compensation for the losses.

Article 281

Where due to the fault of the constructor, the quality of the project is not in conformity with the agreement, the employer is entitled to demand that the project be repaired, remedied or reconstructed within reasonable time by the constructor without extra payment. And if such repair, remedy or reconstruction causes overdue delivery of the project, the constructor shall be liable for breach of contract.

Article 282

Where due to the fault of the contractor, the construction projects causes physical and property loss in the reasonable term of use, the contractor shall be liable for compensation.

Article 283

Where the employer fails to supply the raw materials, equipment, site, funds, technical

materials etc. according to the time and requirements agreed upon, the contractor may request to postpone the dead line for completion of the project. He may also request compensation for stop and delay of work as well.

#### Article 284

Where due to the fault of the employer, the project is stopped or postponed in the course of the construction, the employer shall adopt measures to offset or reduce the losses and at the same time compensate the contractor for losses and actual expenses incurred thereof due to stop or delay of work, changes in the transportation, transfers for machinery and equipment, overstocking of materials and spare parts etc.

#### Article 285

Where the plans are modified, the data supplied are not accurate or the conditions for survey and design work are not provided in due time and, as a result thereof, the survey and design work has to be redone or suspended, or the design revised, the employer shall pay additional expenses for the amount of work actually undertaken by the contractor.

#### Article 286

Where the employer fails to pay the construction price, the contractor may urge the employer to pay within reasonable time. If the employer fails to pay with the time limit, except for those not suitable to be converted into money or auctioned in accordance with their character, the contractor may convert the project into money after negotiation with the employer. He may also apply to the People's Court for auction the project in accordance with governing law. The construction price shall be reimbursed out of funds from the conversion or auction of the project with priority.

#### Article 287

Relevant provisions on contract of work shall apply in absence of provisions in this Chapter.

## CHAPTER XVII

### CONTRACTS FOR CARRIAGE

#### Section 1

##### Basic Principles

#### Article 288

A carriage contract is a contract under which the carrier undertakes to carry the passenger or goods to the agreed place, while the passenger, sender or consignee pays fare or freight.

#### Article 289

Carriers engaged in public transportation shall not refuse the normal and reasonable

requirement for carriage by the passenger or the sender.

#### Article 290

The carrier shall carry passengers or goods to the agreed place safely within the agreed period or reasonable period.

#### Article 291

The carrier shall carry the passenger or goods to the agreed place in an agreed or usual line of carriage.

#### Article 292

The passenger, the sender or the consignee shall pay for the agreed price or freight. If the carrier fails to carry in an agreed or reasonable line which incurs the additional price or freight, the passenger, the sender or the consignee may refuse the payment of the additional fare or freight.

### Section 2

#### Contracts for Carriage of Passengers

#### Article 293

A contract of carriage of passengers is formed at the time when the carrier delivers the ticket to the passenger, except for otherwise agreed by parties or provided by trade usage.

#### Article 294

Any passenger boarding shall hold a valid passenger ticket. A passenger traveling without a ticket or taking a higher class berth than booked or going beyond the distance paid for or taking an invalid ticket shall pay for the fare or the excess fare, and the carrier may, according to the relevant regulations, charge additional fare. Should any passenger refuse to pay, the carrier may refuse carriage.

#### Article 295

If the passenger is unable to ride conforming to the time stated on the ticket due to his own cause, he shall return or change the ticket within the agreed time. If the return or change is overdue, the carrier may refuse the refund for return of the ticket and be relieved from the duty for carriage.

#### Article 296

The passenger shall take luggage within the limited quantity agreed. Procedure for consignment shall be conducted if the luggage exceeds the limited quantity.

#### Article 297

No passenger may take on board or pack in their luggage any article of an inflammable, explosive, poisonous, corrosive or radioactive nature or other dangerous goods that would endanger the safety of life and property on board or other contraband goods.

The carrier may have the contraband by the passenger in breach of the provisions of the preceding paragraph discharged, destroyed or sent over to the appropriate authorities. Where the passenger insists on taking or packing in luggage the contraband, the carrier may refuse carriage.

#### Article 298

The carrier shall inform the passenger the important causes concerning the inability of usual carriage and safety items that shall be paid attention to.

#### Article 299

The carrier shall carry the passenger in accordance with the time and vehicle number stated in the passenger ticket. If the carrier delays, it shall, as requested by the passenger, make arrangement for another number of vehicle or refund the amount of ticket fare.

#### Article 300

If the carrier changes carriage vehicle without the passenger's consent and thereby reduces the service standard, it shall, as requested by the passenger, refund or reduce the ticket fare. If the service standard is improved due to the change, no additional fee shall be imposed.

#### Article 301

The carrier shall, during the period of carriage, try best to help passengers with emergent disease, in childbirth or in danger.

#### Article 302

The carrier shall be liable for the injury to or death of the passenger during the period of carriage, except for the case where the carrier can prove that the injury or the death is caused due to the passenger's intentional act, material negligence or the health condition of his.

The preceding paragraph is applied to passengers exempted from ticket or holding preferential ticket according to regulations or passengers without ticket upon the carrier's consent.

#### Article 303

The carrier at fault shall be liable for the compensation for the damage or loss of the passenger's articles taken along with during the process of the carriage, except for the case where the carrier proves no fault in himself.

As to the damage or loss of luggage consigned, relevant provisions of carriage of goods shall be applied.

### Section 3

## Contracts for Carriage of Goods

### Article 304

The sender shall declare accurately to the carrier, when having the goods consigned, such necessary items relevant to the carriage as the name of the consignee or the consignee by instruction, the name, nature, weight and quantity of the goods, receiving place etc.

The sender shall be liable for the compensation of damages to the carrier caused by the inaccurate declaration or important omission.

### Article 305

If the procedure of review, approval and inspection is required for the carriage of goods, the sender shall deliver documents with completed relevant procedures to the carrier.

### Article 306

The sender shall pack the goods in an agreed way. If the way of package is not provided in the contract or the provision is ambiguous, provisions of Article 156 of this Law shall be applied.

The carrier may refuse the carriage in case that the sender violates the preceding paragraph.

### Article 307

At the time of consignment of dangerous articles of inflammable, implosive, poisonous, corrosive or radioactive nature, the sender shall, in compliance with the state's regulations governing the carriage of dangerous goods, have them properly packed, distinctly marked and labeled and notify the carrier in writing of the name and nature of the goods and precautions to be taken.

If the sender violates the preceding paragraph, the carrier may refuse the carriage, and may adopt relevant measures to avoid the occurrence of losses and the cost caused thereby shall be borne by the sender.

### Article 308

Before the delivery of goods to the consignee by the carrier, the sender shall have right to request the carrier to stop carriage, return goods, change destination place or deliver the goods to another consignee, but shall compensate the carrier losses caused thereby.

### Article 309

Upon the arrival of shipped goods, the carrier, in knowledge of the consignee, shall notify the consignee in time and the consignee shall claim the goods in time. The consignee shall pay due charge for deposit if the claim to the goods exceeds the time limit.

#### Article 310

The consignee shall inspect the goods within the period agreed when claiming the goods. If the period for inspecting the goods is not provided in the contract or the provision is ambiguous, and can not be ascertained according to Article 61 of this Law, the consignee shall inspect the goods within reasonable period. In absence of objection by the consignee to the quantity, damage etc. of the goods within the agreed period or reasonable period, the delivery of the goods shall be deemed to be prima facie evidence of the delivery of the goods by the carrier as described in the transport documents.

The consignee's right for compensation for losses by the carrier extinguishes if the consignee fails to exercise the right within 6 months after the claim of the goods.

#### Article 311

The carrier shall be liable for compensation for the damage and loss of goods during transportation, except the cases under which the carrier proves that the damage or loss of the goods is caused by force majeure, or the natural quality or reasonable loss and damage of the goods itself or the fault of the consignor or the consignee.

#### Article 312

If the parties agree on the amount of compensation for the damage or the loss of the goods, the agreement shall be applied; if the parties fails to reach an agreement or the agreement is ambiguous and the amount of compensation can not be ascertained according to Article 61 of this Law, the market price of the goods at the destination place at the time of delivery or at the time that the goods is to be delivered shall apply. Where laws or administrative regulations provide otherwise as to the calculating manner and limits for the amount of the compensation, the said provisions shall apply accordingly.

#### Article 313

Where a joint carriage by two or above carriers with a same transportation means is adopted, the carrier who concludes the contract with the consignee shall be liable for the whole period of carriage. If losses occur in a certain stage of carriage, the carrier concluding contracts with the consignee and the carrier for that certain stage shall be liable jointly and severally.

#### Article 314

The carrier shall not claim for the payment of freight if the goods perishes due to force majeure during the process of carriage and the freight has not been paid yet. The consignee may claim the refund of the freight if the payment has been made.

#### Article 315

If the sender or the consignee fails to pay the freight, deposit fees or other transport charges, the carrier shall have the right of lien on the relevant goods transported, except for otherwise agreed by the parties.

#### Article 316

If the consignee is not clear or the consignee refuses to claim the goods without fare excuse, the carrier may, according to Article 101 of this Law, deposit the goods.

#### Section 4

##### Contracts for Multi-modal Transport

#### Article 317

The multi-modal transport operator is responsible for the performance of a multi-modal transport contract or the procurement of the performance therefore, and enjoys a carrier's right and take a carrier's duty over entire transport.

#### Article 318

The multi-modal transport operator may agree with the carriers of the different modes defining their responsibilities with regard to the different sections of the transport under the multi-modal transport contracts. However, such agreement shall not affect the responsibility of the multi-modal transport operator with respect to the entire transport.

#### Article 319

When the goods are taken in charge by the multi-modal transport operator, it shall issue a multi-modal transport document which, at the option of the consignor, shall be in either negotiable or non negotiable form.

#### Article 320

The consignor shall be liable for compensation for the losses incurred to the multi-modal transport operator due to the wrongdoing done by the consignor at the consignment of the goods, even if the consignor has already transferred the multi-modal transport document.

#### Article 321

If loss of or damage to the goods has occurred in a certain section of the transport, the provisions of the relevant laws and regulations governing that specific section of the multi-modal transport shall be applicable to matters concerning the liability of the multi-modal transport operator and the limitation thereof. If the section of the transport where loss of or damage to the goods occurs cannot be ascertained, the liability for damages shall be borne according to this Chapter.

### CHAPTER XVIII

#### CONTRACTS FOR TECHNOLOGY

##### Section 1

##### Basic Principles

#### Article 322

A technology contract is a contract concluded by parties to determine rights and duties of each other as to technology development, transfer, consultancy or service.

#### Article 323

The conclusion of a technology contract shall facilitate the progress of science and technology, and accelerate the transfer, application and dissemination of the achievements of science and technology.

#### Article 324

The provisions of a technology contract shall be agreed upon by the parties, and normally contain the following'.

- (1) title of the project
- (2) contents, scope and requirements of the object
- (3) plan, schedule, time limits, place, region and manner of performance
- (4) maintenance of confidentiality of technological information and materials
- (5) liability for risks
- (6) ownership of technical achievements and measures for sharing of profits
- (7) standards and methods of inspection and acceptance
- (8) price or remuneration and means of payment
- (9) liquidated damages or methods for computing the amount of damages
- (10) methods for settling disputes
- (11) interpretation of terms and technical expression

Background materials on the technology, reports on feasibility studies and technological appraisal, project descriptions and plans, technological standards, technological norms, original designs and documents on technological processes and other technical documents, that are pertinent to the performance of the contract may, by agreement between the parties, become an integral part of the contract.

Where a patent is involved in a technology contract, it shall be indicated as to the name, patent applicant and patentee of inventions and creations, the date and number of application, patent number and valid period for the right of patent.

#### Article 325

Parties of technology contract shall agree on the manner for the payment of price, remuneration or use fee. Either calculation or payment in one time or calculation in one time and payment by installments or payment by a percentage deduction or payment by a percentage deduction plus advance payment for starting may be adopted.

Where the measure of payment by a percentage deduction is adopted, certain percentage may be deducted according to the product price, value added by the implementation of patent and use of technical secrets, profit or the amount of product sales. It may also

adopt other measure agreed. The Percentage deducted may choose fixed percentage, percentage increased by years or percentage reduced by years.

Where a percentage deduction 5 adopted, parties shall provide in the contract relevant measures concerning the inspection of accounts.

#### Article 326

Where the right to use or to transfer a job-related technological achievement belongs to a legal entity or other organization, the legal entity or other organization may conclude technology contracts concerning such a technological achievement. The legal entity or other organization shall deduct a certain percentage from the proceeds realized from the use and transfer of the job-related technical achievements and reward or pay remuneration to the individuals who accomplished the technological achievement. Where the legal entity or other organization concludes a technology contract to transfer the job-related achievements, the individual who accomplished the achievements shall enjoy a right of priority under same condition.

The job-related technological achievement is a technological achievement obtained by a person in carrying out a task of a legal entity or other organization or mainly through using the technological and material means of such a legal entity or other organization.

#### Article 327

The right to use and transfer a non 紀 b-related technological achievement shall belong to the individuals who accomplished it. who may conclude technology contracts concerning such a non-job-related technological achievement.

#### Article 328

An individual who has accomplished a technological achievement is entitled to be named as such in the documents related to the technological achievement and to receive certificates of honor and awards.

#### Article 329

A technology contract that illegally monopolizes technology, impedes technical progress or infringes upon other's technical achievements is void.

### Section 2

#### Contract for Technology Development

#### Article 330

Technology development contract refers to a contract concluded between parties for the purpose of conducting research in and development of new technologies, new products, new processes and new materials as well as their systems.

Technology development contract includes commission development contract and

cooperative development contract.

The contract of technology development shall adopt a written form.

Contracts concluded by parties to implement the transfer of scientific and technical achievements that have a value of industrial application shall refer to provisions concerning technology development contract.

#### Article 331

The commissioning party of the commission development contract shall, according to contract, pay funds and remuneration for research and development, provide technical materials and original data, accomplish coordinated undertakings and accept the result of research and development on schedule.

#### Article 332

The party undertaking research and development of the commission development contract shall, according to the contract, work out and implement research and development plans, use research and development funds in a rational way, complete research and development work and deliver the result on schedule, provide relevant technical materials and necessary technical guidance, and help the commissioning party master the results of research and development.

#### Article 333

The commissioning party shall be liable for the breach of contract where it breaches the contract and thereby causes a standstill, delay or failure in research and development work.

#### Article 334

The party undertaking research and development shall be liable for the breach of contract where it breaches the contract and thereby causes a standstill or delay in research and development work.

#### Article 335

The parties to a cooperative contract shall, according to the contract, make investment including contribution of technology as investment, take part in research and development according to the division of work, and cooperate and coordinate with research and development work.

#### Article 336

Parties to a cooperative contract shall be liable for the breach of contract if they breach the contract and thereby causes a standstill, delay or failure in research and development work.

#### Article 337

If the performance of a technology development contract is senseless because the technology that is the object of the technology development contract has been made public by others, the parties may discharge the contract.

#### Article 338

The liability for risks involved in a failure or partial failure in research and development caused by insurmountable technical difficulties occurring in the process of performing a technology development contract shall be agreed by the parties in the contract. If the parties fail to agree on such a provision or the agreed provision is ambiguous, and it cannot be ascertained under Article 61 of this Law, liability shall be rationally shared by the parties.

When one party discovers that the situation mentioned in the preceding paragraph is likely to cause a failure or partial failure in research and development, it shall promptly inform the other party of the situation and take appropriate measures to reduce losses; if it fails to inform promptly and to take appropriate measures and as a result the losses are aggravated, it shall bear the liability for the aggravated part of the losses.

#### Article 339

With respect to inventions and creations made in execution of a commission for development, the right to apply for a patent shall, unless otherwise provided in the contract, belong to the party that undertakes research and development. If the party that undertakes research and development is granted a patent right, the depositor may exploit that patent freely.

If the party that undertakes research and development assigns the right to apply for a patent, the commissioning party shall enjoy a right of priority under same condition.

#### Article 340

With respect to inventions or creations made through cooperative development, the right to apply for a patent shall, unless otherwise provided for in the contract, be jointly owned by the parties that carry out the cooperative development. If one party assigns its part of jointly owned right to apply for a patent, other parties may have priority to the assignment under same condition.

If one party to a cooperative development contract declares that it renounces its part of the joint right to apply for a patent, the other party may apply for it alone or the other parties may apply for it jointly. If the right of patent is granted, the party that has renounced its right to apply for the patent may exploit the patent freely.

If one party to a cooperative development contract does not agree to apply for a patent, the other party or parties may not apply for it.

#### Article 341

The right to use and transfer non-patent technological achievements made through commission development or cooperative development and the methods of distributing benefits shall be agreed by the parties in the contract.

If the parties fails to agree on such a provision or the provision agreed is ambiguous, and it can not be ascertained according to Article 61 of this Law, each party shall have the right to use and transfer the achievements, but the party undertaking research and development under a commission development

contract may not transfer the results of research and development to a third party before delivery to the depositor.

### Section 3

#### Contracts for Technology Transfer

##### Article 342

Technology transfer Contracts include the transfer of patent rights, the transfer of rights to apply for patents, the transfer of non-patent technology, the licensing of patent exploitation and the import of technology.

Technology transfer contract shall adopt a written form.

##### Article 343

Technology transfer contracts may stipulate the scope of patent exploitation or of the use of technical secrets by the transferor or the transferee, except that no restriction on technological competition or technological development may be placed in any contract clause.

##### Article 344

A contract for patent exploitation license shall be valid only within the duration of that patent right Upon the termination or invalidation of the patent right, the patentee may not conclude with others any contract for patent exploitation license.

##### Article 345

The transferor of a contract for patent exploitation license shall, according to the contract. permit the transferee to exploit the patent, deliver the technical materials related to the exploitation of the patent and provide necessary technical guidance.

##### Article 346

The transferee of a contract for patent exploitation license shall, according to the contract, exploit the patent and not to permit any third party except as provided for in the contract, and pay use fees accordingly.

##### Article 347

The transferor of a contract for the assignment of technical secrets shall, according to the contract, provide technical materials and technical guidance, guarantee the practical applicability and reliability of the technology, and undertake the obligations of maintaining confidentiality.

#### Article 348

The transferee of a contract for the assignment of technical secrets shall, according to the contract, use the technology, pay use fees and undertake the obligations of maintaining confidentiality.

#### Article 349

The transferor of a technology transfer contract shall ensure that it is the lawful owner of the technology to be provided and that the technology provided is complete, accurate, effective and capable of attaining the technical targets specified in the contract.

#### Article 350

The transferee of a technology transfer contract shall undertake the obligation to preserve, in accordance with the scope and duration agreed upon by the parties, the non-open technical secrets contained in the technology provided by the transferor.

#### Article 351

If the transferor fails to transfer technology according to the Contract, it shall, in addition to returning part or all of the use fees, be liable for the breach of Contract; if the transferor exploits the patent or uses the technical secrets beyond the scope stipulated in the contract, or unilaterally permits, in violation of contractual stipulations, a third party to exploit the patent or use the technical secrets, it shall stop its breaching acts and be liable for the breach of contract; if the transferor violates the obligations of maintaining confidentiality stipulated in the contract, it shall be liable for the breach of contract.

#### Article 352

If the transferee fails to pay the use fees in accordance with the contract, it shall make up such payment and, in addition, pay liquidated damages according to the contract; if it fails to pay such overdue use fees or to pay liquidated damages, it must stop exploiting the patents or using the technical secrets, return the technical materials, and be liable for the breach of contract; if it exploits the patents or uses the technical secrets beyond the scope stipulated in the contract, or permits, without the consent of the transferor, a third party to exploit the patents or use the technical secrets, it shall stop its breaching acts and be liable for the

breach of Contract; if it violates the obligation of maintaining confidentiality stipulated in the contract, it shall be liable for the breach of contract.

#### Article 353

If the exploitation of a patent or the use of the technical secrets by the transferee in

accordance with the contract leads to an infringement upon the lawful rights and interests of others, the transferor shall bear the liability, unless otherwise agreed upon by the parties.

#### Article 354

The parties may, in accordance with the principle of mutual benefit, stipulated in a contract the method of sharing technological achievements obtained from follow-up improvements made in the exploitation of a patent or the use of technical secrets. In the absence of such contractual stipulations, and it can not be ascertained according to Article 61 of this Law, neither party shall have the right to share the technological achievements made by the other party from follow-up improvements.

#### Article 355

Where laws or administrative regulations provide otherwise to contracts of technology introduction or contracts of patent and patent application, the said provisions shall apply accordingly.

#### Section 4

##### Contracts for Technical Consultancy

##### Contracts for Technical Service

#### Article 356

Technical consultancy contracts include contracts providing feasibility studies, technological forecasts, special technical investigations and analytical evaluation reports regarding a specific technological project.

Technical Service Contracts refer to contracts under which one party undertakes to solve particular technical problems for the other party by utilizing its technical knowledge, excluding contracts for construction projects and contracts for works.

#### Article 357

The commissioning party of a technical consultancy contract shall, according to the contract, elucidate the questions posed for consultation, provide for technological background information as well as the relevant technical material and data, and accept from the consulting party the result of its work and to pay the remuneration.

#### Article 358

The consulting party of a technical consultancy contract shall, within the terms provided in the contract, complete consultation reports or answer questions from the commissioning party and provide consultation reports that meet the requirements stipulated in the contract.

#### Article 359

If the commissioning party under a technical consultancy contract fails to provide

necessary data and materials in accordance with the contract and thereby affects the progress and quality of work, or refuse to accept or delay the acceptance of the achievements, it shall not claim the refund of the remuneration already paid and shall pay the outstanding remuneration.

If the consulting party under a technical consultancy contract fails to provide its report according to the schedule or if the report provided does not conform to the stipulations of the contract, it shall take such liability for breach of contract as reduction or forfeiture of its remuneration.

Any losses resulting from the decisions made by the depositor under a technical consultancy contract on the basis of the consultation reports and advice of the consulting party that meet the requirements stipulated in the contract shall, unless otherwise agreed in the contract, be borne by the depositor.

#### Article 360

The commissioning party of a technical service contract shall, according to the contract, provide the servicing party with work facilities, accomplish coordinated undertakings, accept the result of work and pay remuneration.

#### Article 361

The servicing party of a technical service contract shall, according to the contract, accomplish services, solve technical problems, guarantee the quality of its work and impart to the other party its knowledge concerning the solution of technical problems.

#### Article 362

If the commissioning party under a technical service contract breaches the contract and thereby affects the progress and quality of the work, or fails to accept the result of the work from the servicing party or fails to accept it according to schedule, it shall not refund the remuneration already paid and shall pay the outstanding remuneration.

If the servicing party under a technical service contract fails to accomplish its services in accordance with the contract, it shall take the liability of forfeiting its remuneration.

#### Article 363

Unless otherwise provided for in the contract, any new technical achievements made by the consulting party or the servicing party in performing a technical consultancy contract or a technical service contract by utilizing the technical materials and work facilities provided by the commissioning party shall belong to the consulting party or the servicing party, and any new technical achievements made by the commissioning party by utilizing the results of work of the consulting party or the servicing party shall belong to the commissioning party.

#### Article 364

Where laws or administrative regulations provide otherwise as to contracts of technology intermediary and technology training, the said provisions shall apply accordingly.

## CHAPTER XIX CONTRACTS FOR DEPOSIT

### Article 365

A deposit contract is a contract under which the depository stores and returns articles delivered by the depositor.

### Article 366

The depositor shall pay deposit fees to the depository according to stipulations of the contract.

If the deposit fee is not provided in the contract or the provision is ambiguous, and can not be ascertained under Article 61 of this Law, the deposit will be gratuitous.

### Article 367

A deposit contract is formed upon the delivery of the deposited article by the depositor, except for otherwise agreed on by the parties.

### Article 368

The depository shall issue document for deposit upon delivery of deposited article by the depositor, unless otherwise provided by trade usage.

### Article 369

The depository shall take good care of the deposited article.

The parties may agree' on the place and manner for the deposit, which shall not be changed except for emergent case or for the interest of the depositor.

### Article 370

If there is defect in the deposited article or special deposit measures need to be taken according to the nature of the deposited article, the depositor shall inform to the depository. If the depositor fails to inform, which causes loss of the deposited article, the depository isn't liable for compensation; if the depository suffers loss therefore, the depositor shall bear the liability for compensation except for the case under which the depository, in knowledge of or who should have knowledge of the circumstance, fails to adopt any remedial measures.

### Article 371

The depository shall not deliver the deposited article to a third party for deposit except for otherwise agreed on by the parties.

The depository shall be liable for the compensation for the losses if, in violation of the preceding paragraph, the depository delivers the deposited article to a third party for deposit and thereby causes losses to the deposited article.

#### Article 372

The depository shall not use or permit a third party to use the deposited article, except for otherwise agreed on by the parties.

#### Article 373

In case that a third party claims right to the deposited article, except for preservation or enforcement executed according to law, the depository shall fulfill the duty of returning the deposited article to the depositor.

In case that a third party brings a suit against the depository or applies for detention of the deposited article, the depository shall notify the depositor in time.

#### Article 374

During the period of deposit, the depository shall be liable for compensation if the deposited article is damaged or lost due to the imperfect care taken by the depository, but in the case that the deposit is gratuitous and the depository proves himself without material fault, the liability for compensation will not be borne by the depository.

#### Article 375

The depositor shall declare to the depository as to the deposit of currencies, securities or other precious articles, and the depository shall accept upon inspection or accept after seal. In absence of such declaration by the depositor, the depository may compensate for, if the deposited article is damaged or lost, according to normal articles.

#### Article 376

The depositor may claim the deposited article at any time.

If the duration of the deposit is not agreed upon by the parties or is ambiguous, the depository may, at any time, request the depositor to claim the deposited article; in case of duration of the deposit agreed by the parties, the depository shall not, with exception to special causes, request the depositor to claim the deposited article before time due.

#### Article 377

The depository shall return the deposited article and its accruements to the depositor when the duration of deposit expires or the depositor claims the deposited article before due time.

#### Article 378

If the deposited article is currency, the depository may return the currency of same kind

and amount. If the deposited article is another kind of article that can be substituted, the depository may, according to the contract, return the article of a same kind, quality and quantity.

#### Article 379

In case of a paid deposit contract, the depositor shall pay the depository charges according to the time limit provided in the contract.

If the time limit is not provided in the contract or the provision is ambiguous, and it can not be ascertained according to Article 61 of this Law, the payment shall be made simultaneously with the claiming of the deposited article.

#### Article 380

Where the depositor fails to pay the deposit fees and other charges according to the agreement, the depository shall have right to lien on the deposited article, unless otherwise agreed on by the parties.

### CHAPTER XX

#### CONTRACTS FOR WAREHOUSE

#### Article 381

A warehouse contract is a contract under which the warehouseman keeps the stored goods delivered by the depositor, while the depositor pays warehouse charges.

#### Article 382

A warehouse contract comes into effect when it is formed.

#### Article 383

The depositor shall explain the nature of the stored article and provide relevant material if the stored article is dangerous goods of inflammable, explosive, poisonous, corrosive and radioactive nature etc. or goods susceptible to deterioration.

In case of violation of the preceding paragraph by the depositor, the warehouseman may refuse to accept the stored article, or may adopt relevant measures to avoid the occurrence of the loss and the cost caused thereby shall be borne by the depositor.

Where the depository stores dangerous goods of inflammable, explosive, poisonous, corrosive and radioactive nature etc., it shall have corresponding conditions for the deposit.

#### Article 384

The warehouseman shall, according to the contract, inspect the goods stored into the warehouse. If the warehouseman, upon the inspection, discovers the unconformity of the

goods to the contract. it shall notify the depositor in time. After the inspection of the warehouseman, if the unconformity of the kind, quantity or quality of the stored article occurs, the warehouseman shall be liable for the compensation of losses.

#### Article 385

The warehouseman shall issue warehouse document upon the delivery of the stored article by the depositor.

#### Article 386

The warehouseman shall sign on or attach seal to the document. The document includes the following items.

- (1) name and address of the depositor
- (2) kind, quantity, quality, package, number and marks
- (3) standard for the natural damage and loss of the stored article
- (4) place of the warehouse
- (5) duration for the storage
- (6) warehouse charges
- (7) insurance amount and duration and the name of the insurer if the stored article is insured
- (8) person, place and date for the issuance of the document

#### Article 387

The warehouse document is the document for claiming the stored article. The depositor may transfer the right of claiming the stored article upon the endorsement by the depositor or the holder of the warehouse document on the warehouse document and the signing or sealing by the warehouseman.

#### Article 388

The warehouseman shall permit the depositor or the holder of the warehouse document, upon its request, to inspect the stored article or take samples.

#### Article 389

If the warehouseman discovers the deterioration or other damage of the stored article in the warehouse, it shall notify the depositor or the holder of the warehouse document in time.

#### Article 390

If the warehouseman discovers the deterioration or other damage of the stored article in the warehouse that endangers the safety or normal storage of other articles, it shall notify through summon exhortation the depositor or the holder of the warehouse document to make necessary disposition. The warehouseman may make necessary disposition under emergent circumstances, but it shall, after the disposition, notify in time the matter to the depositor or the holder of the warehouse document.

#### Article 391

If the parties fails to stipulate the duration of the storage in the Contract or the stipulation is ambiguous, the depositor or the holder of the warehouse document may claim the stored article at any time. And the warehouseman may also request the depositor or the holder of the warehouse document to claim the stored goods, but necessary time for preparation shall be given.

#### Article 392

Upon the expiration of the storage duration, the depositor or the holder of the warehouse document shall claim the stored article with the warehouse document. In case of overdue claiming of goods by the depositor or the holder of the warehouse document, additional storage fees will be charged; in case of claiming of goods before due time, the original storage fees will be maintained without deduction.

#### Article 393

Upon the expiration of the storage duration, if the depositor or the holder of the warehouse document fails to claim the stored article, the warehouseman may notify if through summon exhortation to claim the goods within a reasonable period, If the goods is not claimed overdue, the warehouseman may deposit the goods.

#### Article 394

The warehouseman shall be liable for compensation if damage or loss is incurred to the stored goods due the imperfect care taken by the depository during storage period.

The warehouseman is not liable for compensation if the deterioration or the damage caused to the stored article due to the unconformity of nature and package of the stored goods to the contract or the exceeding of valid storage duration.

#### Article 395

Relevant provisions of deposit contract shall be applied in absence of a provision in this chapter

### CHAPTER XXI

#### CONTRACTS FOR MANDATE

#### Article 396

A mandate contract is a contract under which the mandator and the mandatory agree that he mandatory handles the affairs of the mandator.

#### Article 397

The mandator may have its one piece or several pieces of affairs trusted to the mandatory through special mandate, or have all the affairs trusted to the mandatory generally.

#### Article 398

The mandator shall pay the cost in advance, for the handling of trusted affairs. Necessary cost for the handling of trusted affairs paid by the mandatory and its interests shall be returned by the mandator

#### Article 399

The mandatory shall handle the trusted affairs according to the mandator's instruction. The mandator's consent shall be acquired when the mandator's instruction needs to be modified; in an urgent case where it is difficult to contact with the mandator, the mandatory shall handle the trusted affairs appropriately, and shall notify the circumstance in time to the mandator

#### Article 400

The mandatory shall handle the trusted affairs by itself. Upon the mandator's consent, the mandatory may have the trusted affairs mandated to a third party. If the mandate by the mandatory to a third party is upon the mandator's Consent, the mandator may give direct instruction to the third party as to the trusted affairs. and the mandatory is only liable for the choice of the third party and its direction to the third party.

If the mandate by the mandatory to a third party is not upon the mandator's consent, the mandatory shall be liable for the act of the third party, except for the case under which the mandate by the mandatory to a third party is needed for the protection of the mandator's interest under urgent circumstance.

#### Article 401

The mandatory shall, in conformity with the request of the mandator, report the handling of the trusted affairs. Upon termination of the mandate contract, the mandatory shall report the result of the handling of the trusted affairs.

#### Article 402

Where the mandatory, in the name of himself, concludes a contract with a third party within the scope authorized by the mandator, the contract is directly binding over the mandator and the third party if the third party has the knowledge of the relationship of agency between the mandator and the mandatory, unless definite evidence is given to prove that the contract is binding over only the mandatory and the third party.

#### Article 403

Where the mandatory, in the name of himself, concludes a contract with a third party and the third party has no knowledge of the relationship of agency between the mandator and mandatory, if the mandatory fails to perform duties to the mandator due to the cause of the third party, the mandatory shall inform the mandator about the third party, and the mandator thereby can exercise the mandatory's right to the third party, except for the case where the third party wouldn't conclude the contract with the mandatory given the

knowledge of the mandator.

#### Article 404

Property acquired from the handling of the trusted affairs by the mandatory shall be delivered to the mandator.

#### Article 405

The mandator shall pay the remuneration to the mandatory upon the completion of the trusted affairs. The mandator shall pay relevant remuneration to the mandatory if the discharge of the mandate contract or the failure in completing trusted affairs can not be attributed to the cause of mandatory. In case of otherwise agreed by the parties, the agreement shall be applied.

#### Article 406

If losses are caused to the mandator due to the mandatory's fault under a paid contract of mandate, the mandator may claim damages. If losses are caused to the mandator due to the mandatory's intentional act or material fault under a gratuitous contract of mandate, the mandator may claim damages.

If the mandatory exceeds the authority and thereby causes losses to the mandator, it shall compensate for the losses.

#### Article 407

If the mandatory, in handling the trusted affairs, suffers losses due to causes not attributable to itself, it may claim damages to the mandator.

#### Article 408

Upon the mandator's consent, the mandator may mandate the trusted affairs to a third party besides the mandatory. The mandatory may claim damages for losses caused thereby.

#### Article 409

The two or above mandatory who jointly handle the trusted affairs shall take joint and several liability.

#### Article 410

The mandator or the mandatory may discharge the contract at any time. One party shall compensate for the losses to the other party caused by the discharge except that the losses is caused not attributable to the party.

#### Article 411

The mandate contract terminates if the mandator or the mandatory dies, loses conduct capacity or goes bankrupt, unless otherwise agreed by the parties or cases under which the termination is not appropriate according to the nature of the trusted affairs.

#### Article 412

If the mandator dies, loses conduct capacity or goes bankruptcy, and the termination of the contract thereby will harm the interest of the mandator, the mandatory shall continue the handling of the trusted affairs before the successor, the legal representative or the liquidating organization of the mandator takes the trusted affairs.

#### Article 413

If the mandatory dies, loses conduct capacity or goes bankruptcy and the contract thereby terminates, the successor, the legal representative or the liquidating organization of the mandatory shall notify the mandator in time. If the termination of contract will harm the interest of the mandator, the successor, the legal representative or the liquidating organization of the mandatory shall, before the mandator makes the arrangement for the trusted affairs, adopt necessary measures.

### CHAPTER XXII

#### CONTRACTS FOR COMMISSION

#### Article 414

A commission contract is a contract under which the factor engages in trade activity in its own name for the principal, while the principal pays remuneration.

#### Article 415

Cost for handling the trusted affairs by the factor is borne by the factor except for otherwise agreed by the parties.

#### Article 416

The factor shall take good care of the trusted article if it is in the factors possession.

#### Article 417

If the trusted article delivered to the factor is defective or susceptible to rot or deterioration, the factor may, upon the principal's consent, dispose the article; if the contact with the principal is unable to be made in time, the factor may make rational disposition.

#### Article 418

If the factor sells at a price lower than that designated by the principal or buys at a price higher than that designated by the principal, the principal's consent shall be acquired. In the absence of the principal's consent, the sale will be valid to the principal if the factor makes up the balance.

If the factor sells at a price higher than that designated by the principal or buys at a price lower than that designated by the principal, additional remuneration may be paid according to the provision agreed. If the additional remuneration is not provided in the

contract or the provision is ambiguous, and it can not be ascertained according to Article 61 of this Law, the interest belongs to the principal.

In case of special instruction to the price given by the principal, the factor shall not violate the instruction when buying or selling.

#### Article 419

The factor itself may be the buyer or the seller if the factor sells or buys commodities with a market price, unless contrary intention is given by the principal.

The factor shall still have right for the remuneration under the circumstance provided in the preceding paragraph.

#### Article 420

The principal shall accept the trusted article bought by the factor according to the contract. If, upon the summon exhortation of the factor, the principal refuses to accept without excuse, the factor may deposit the trusted article in accordance with Article 101 of this Law.

If the trusted article cannot be sold out or the principal withdraws the sale, the principal fails to take back or handle with the article upon the factor's summon exhortation, the factor may deposit the trusted article in accordance with Article 101 of this Law.

#### Article 421

If the factor concludes a contract with a third party, the factor enjoys rights and bears liabilities directly under the contract.

If the third party fails to fulfill the duty and losses are caused thereby to the principal, the factor shall be liable for damages, unless otherwise agreed by the factor and the principal.

#### Article 422

The principal shall pay relevant remuneration to the factor upon its completion or partial completion of trusted affairs. If the principal fails to pay the remuneration overdue, the factor shall have the right of lien on the trusted article, unless otherwise agreed by the parties.

#### Article 423

Relevant provisions of the mandate contract shall be applied in absence of provisions in this Chapter.

## CHAPTER XXIII CONTRACTS FOR BROKERAGE

Article 424

A brokerage contract is a contract under which the broker reports to the principal chances for the conclusion of contracts or provides intermediary services for contract conclusion, while the principal pays the remuneration.

Article 425

The broker shall, in honesty to the fact, report matters concerning the conclusion of the contract.

If the broker intentionally conceals important facts relevant to contract conclusion or provides false information and harms thereby the principal's interests, it can not claim for the remuneration and shall be liable for damages.

Article 426

If the broker succeeds in facilitating the conclusion of a contract, the principal shall pay remuneration according to the agreement. If the remuneration is not provided in contract or the provision is ambiguous, and it can not be ascertained according Article 61 of this Law, the remuneration shall be ascertained rationally according to the work of the broker. Where the intermediary services for contract conclusion by the broker facilitates the conclusion of the contract, parties to the contract shall equally bear the remuneration for the broker.

Article 427

Where the broker fails to facilitate the contract conclusion, it shall not claim for remuneration, but it may ask the principal to pay for the necessary expenses cost by the activity of brokerage.

CHAPTER XXIV

SUPPLEMENTARY PROVISIONS

Article 428

This law shall be enforced from October 1, 1999 and the Law of Economic Contract of the People's Republic of China, the Law of Foreign-related Economic Contract of the People's Republic of China and the Law of Technology Contract of the People's Republic of China shall be simultaneously abolished.