

NB: Unofficial translation

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Sale of Goods Act

(355/1987)

Chapter 1— **General provisions**

Scope of application

Section 1

- (1) This Act applies to the sale of property other than real property (goods).
- (2) This Act applies, where applicable, also to barter.
- (3) This Act does not apply to the conveyance of a building or fixed installation or structure on the land of a third person if the lease of the land is simultaneously transferred.

Section 2

- (1) This Act applies to a contract for the supply of goods to be manufactured or produced unless the party who orders the goods undertakes to supply a substantial part of the materials needed for the manufacture or production. The Act does not apply to a contract for the construction of a building or other fixed installation or structure on land or in water.
- (2) This Act does not apply to a contract under which the party who furnishes the goods also undertakes to perform work or other services if the services constitute the preponderant part of the obligations of that party.

Freedom of contract

Section 3

The provisions of this Act are subject to the terms of the contract between the parties, to any practice which has been established between them and to any other usage which is to be considered binding on the parties.

Consumer contracts

Section 4

The provisions of this Act are subject to the provisions of the Consumer Protection Act (38/1978).

International sales of goods

Section 5

Certain international contracts for the sale of goods are governed by separate provisions.*

Chapter 2— **Delivery of the goods***Sale of goods to be collected by buyer*

Section 6

- (1) The goods shall be placed at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract or, if the seller did not have a place of business that had a relationship to the contract, at the seller's place of residence. If the parties, at the time of the conclusion of the contract, knew that the goods or the stock from which the goods were to be drawn were at a particular place, the goods shall be placed at the buyer's disposal at that place.
- (2) The goods are delivered when they have been taken over by the buyer.

Sale involving carriage of goods

Section 7

- (1) If the contract involves carriage of the goods to the buyer within the same locality or within an area where the seller normally arranges for the carriage of similar goods, the goods are delivered when they are handed over to the buyer.
- (2) If, in cases not within paragraph (1), the contract involves carriage of the goods and unless a trade term or other term of the contract stipulates otherwise, the goods are delivered when they are handed over to the carrier who has undertaken the carriage of the goods from the place of dispatch. If the seller himself undertakes the carriage of the goods, delivery does not take place until the goods are handed over to the buyer.
- (3) If the goods have been sold "free at", "delivered to" or "delivered free at" a particular place, the goods are not be considered delivered until they have arrived at that place.

* Finland has ratified the United Nations Convention on Contracts for the International Sale of Goods (1980), with the exception of Part II on the formation of the contract. Finland has made a declaration under article 94 of the Convention to the effect that the Convention does not apply to sales contracts where the parties have their places of business in Finland, Denmark, Iceland, Norway or Sweden.

Section 8

If the seller is bound to arrange for the carriage of the goods, he shall conclude contracts for their carriage to the place of destination by an appropriate means of transportation and according to the usual terms for such transportation.

Time of delivery

Section 9

- (1) Unless the goods are to be delivered on demand or without delay or at some other time fixed by or determinable from the contract, they shall be delivered within a reasonable time after the conclusion of the contract.
- (2) If the goods are to be delivered within a fixed period of time and the circumstances do not indicate that the buyer is to choose the time of delivery, it shall be chosen by the seller.
- (3) If the seller is to choose the time of delivery in a sale governed by section 6, he shall in due time inform the buyer as to when the goods will be available for the buyer to collect.

Right to withhold the goods

Section 10

- (1) Unless the seller has granted the buyer credit or a period of grace for the payment of the price, he is not required to hand over the goods nor, by handing over documents or otherwise, to release his control over the goods until the price is paid.
- (2) If the seller has undertaken to dispatch the goods to a particular place, he may not, by virtue of paragraph (1), refrain from dispatching the goods, but he may prevent the goods or a document relating to the goods from being handed over to the buyer until the price is paid.

Expenses relating to the goods

Section 11

The seller is responsible for expenses relating to the goods that arise before delivery, to the extent they are not caused by an act or omission of the buyer or any other reason attributable to the buyer.

Chapter 3— Risk for the goods

Risk

Section 12

If the goods are at the risk of the buyer, he must pay the price even if the goods deteriorate or are destroyed, lost or diminished, provided that the loss or damage is not due to an act or omission of the seller.

Passing of risk

Section 13

- (1) The risk passes to the buyer when delivery of the goods takes place under the contract or section 6 or 7.
- (2) If, because of an act or omission of the buyer or any other reason attributable to the buyer, the goods are not delivered when delivery is due, the risk passes to the buyer when the seller has fulfilled his obligations with regard to their delivery.
- (3) If the goods are to be placed at the buyer's disposal at a place other than the seller's place of business or residence, the risk passes when delivery is due and the buyer is aware that the goods have been placed at his disposal at that place.

Section 14

Notwithstanding the provisions of section 13, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by the transport documents or otherwise.

Goods in transit

Section 15

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

Sale with option to return

Section 16

If, under the contract, the buyer has the option to return the goods within a certain period of time and the goods have been delivered, they are at the risk of the buyer until returned.

Chapter 4— **Conformity of the goods***Conformity with contract*

Section 17

- (1) The goods must conform with the contract in regard to description, quantity, quality and other properties and be contained or packaged in the manner required by the contract.
- (2) Except where the parties have agreed otherwise, the goods must:
 - (1) be fit for the purpose for which similar goods are ordinarily used;
 - (2) be fit for any particular purpose for which the goods were intended if the seller knew or must have known of this purpose at the time of the conclusion of the contract and it was reasonable for the buyer to rely on the seller's skill and judgement;
 - (3) possess the qualities of goods which the seller has held out as a sample or model; and
 - (4) be contained or packaged in a manner that is usual or otherwise appropriate for similar goods, if packaging is necessary to preserve or protect the goods.
- (3) If the goods do not conform with the provisions of paragraph (1) or (2), they are defective.

Information relating to the goods

Section 18

- (1) The goods are also defective if (i) they do not conform with information relating to their properties or use which was given by the seller when marketing the goods or otherwise before the conclusion of the contract and (ii) the information can be presumed to have had an effect on the contract.**
- (2) The goods are also defective if (i) they do not conform with information relating to their properties or use which was given by a person other than the seller, either at a previous level of the chain of supply

** The tokens (i), (ii) etc. are used here and later in the text only to facilitate the reading and understanding of the translation. They do not appear in the original Finnish or Swedish texts and should therefore not be used to identify any references to the Act. (Subparagraphs of the original text are always marked by Arabic numerals.)

or on behalf of the seller, when marketing the goods or otherwise before the conclusion of the contract and (ii) the information can be presumed to have had an effect on the contract. However, the goods shall not be considered defective if the seller neither knew nor ought to have known of the information that was given.

- (3) The provisions of paragraphs (1) and (2) shall not be applied if the information has been corrected clearly and in time.

"As is" clause

Section 19

- (1) If the goods have been sold subject to an "as is" clause or a similar general reservation concerning their quality the goods shall, nevertheless, be considered defective if:
- (1) (i) the goods do not conform with information relating to their properties or use which was given by the seller before the conclusion of the contract and (ii) the information can be presumed to have had an effect on the contract;
 - (2) (i) the seller has, before the conclusion of the contract, failed to disclose to the buyer facts relating to the properties or the use of the goods which the seller could not have been unaware of and which the buyer reasonably could expect to be informed about and (ii) the failure to disclose the facts can be presumed to have had an effect on the contract; or
 - (3) the goods are in essentially poorer condition than the buyer reasonably could expect taking into account the price and other circumstances.
- (2) When second-hand goods are sold at an auction, they shall be considered sold "as is". When applying the provisions of paragraph (1)(3), regard shall be had to the asking price of the auction.

Examination of the goods before the conclusion of the contract

Section 20

- (1) The buyer may not rely on a defect which he cannot have been unaware of at the time of the conclusion of the contract.
- (2) If the buyer, before the conclusion of the contract, has examined the goods or, without acceptable reason, has failed to comply with the seller's exhortation to examine the goods, he may not rely on a defect that he ought to have discovered in the examination unless the seller's conduct was incompatible with honour and good faith.
- (3) The provisions of paragraph (2) shall apply also when the buyer, before the conclusion of the contract, had an opportunity to examine a sample of the goods and the defect relates to a property of the goods that appeared in the sample.

Relevant time for determining conformity

Section 21

- (1) Whether the goods are defective shall be determined with regard to their properties at the time when the risk passes to the buyer. The seller is liable for any defect that existed at that time even if it did not appear until later.
- (2) If the goods deteriorate after the risk has passed to the buyer, the goods shall be considered defective if the deterioration was due to a breach of contract by the seller. The same shall apply if the seller, by giving a guarantee or a similar promise, has assumed liability for the fitness or other properties of the goods for a fixed period of time and the deterioration relates to a property of the goods that falls within the scope of such promise.

Chapter 5— **Consequences of delay in delivery**

Buyer's remedies

Section 22

If the goods are not delivered or if their delivery is delayed and this is not due to an act or omission of the buyer or any other reason attributable to the buyer, the buyer is entitled, in accordance with the provisions of this chapter, (i) to require performance or (ii) declare the contract avoided as well as (iii) to claim damages. The buyer may also withhold payment in accordance with section 42.

Performance of the contract

Section 23

- (1) The buyer is entitled to hold to the contract and to require its performance. The seller is, nevertheless, not obliged to perform the contract if there is an impediment that he cannot overcome or if the performance would require sacrifices that are disproportionate to the buyer's interest in performance by the seller.
- (2) If the impediment or disproportion ceases to exist within a reasonable time, the buyer may, nevertheless, require performance of the contract.
- (3) The buyer loses his right to require performance of the contract if he defers his claim for an unreasonably long time.

Section 24

If the seller requests the buyer to make known whether he will, in spite of a delay in delivery, accept performance within a certain period of time or if the seller makes known that he will effect performance within a certain period of time and the buyer fails to respond within a reasonable time after he received the request or notification, the buyer may not declare the contract avoided if the seller performs the contract within the period of time so specified by the seller.

Avoidance of the contract

Section 25

- (1) The buyer may declare the contract avoided on account of the seller's delay in delivery if the breach of contract is of substantial importance to the buyer and the seller knew or ought to have known this.
- (2) If the buyer has fixed an additional period of time for the delivery and the time is not unreasonably short, the buyer is also entitled to declare the contract avoided unless the goods are delivered within the additional period of time.
- (3) During the additional time, the buyer may declare the contract avoided only if the seller makes known that he will not perform the contract within that time.

Section 26

Where the contract is for the supply of goods to be manufactured or acquired specially for the buyer, in accordance with his instructions or wishes, and the seller cannot, without considerable loss, make other use of the goods, the buyer may declare the contract avoided on account of the seller's delay in delivery only if the buyer's purpose with the contract has essentially failed because of the delay.

Damages

Section 27

- (1) The buyer is entitled to damages for losses that he suffers because of the seller's delay in delivery, unless the seller proves that the delay was due to an impediment beyond his control which he could not reasonably be expected to have taken into account at the time of the conclusion of the contract and whose consequences he could not reasonably have avoided or overcome.
- (2) If the delay is due to a third person whom the seller has engaged to perform the whole or part of the contract, the seller is exempt from liability only if that third person would also be exempt from liability under paragraph (1). The same shall apply if the delay is due to a supplier of the seller or to someone else at a previous level in the chain of supply.
- (3) Indirect losses specified in section 67 are not recoverable under paragraphs (1) and (2) of this

section.

- (4) The buyer is always entitled to damages, including indirect losses, if the delay or loss is due to negligence attributable to the seller.

Section 28

If the seller is unable to perform the contract in time, he must give the buyer notice of the impediment and its effect on his ability to perform. If the notice is not received by the buyer within a reasonable time after the seller knew or ought to have known of the impediment, the buyer is entitled to damages for losses that could have been avoided if he had received the notice in time.

Notice of avoidance or claim for damages

Section 29

If the goods have been delivered too late, the buyer is not entitled to declare the contract avoided or to claim damages on account of the delay unless he notifies the seller of the avoidance or of his intention to claim damages within a reasonable time after he learned of the delivery. If the buyer declares the contract avoided he is, nevertheless, not obliged to give a separate notice of a claim for damages.

Chapter 6— **Consequences of defect in the goods**

Buyer's remedies

Section 30

If the goods are defective and the defect is not due to any reason attributable to the buyer, the buyer is entitled, in accordance with the provisions of this chapter, (i) to require the seller to remedy the defect or to deliver substitute goods or (ii) to require a reduction in the contract price or (iii) to declare the contract avoided as well as (iv) to claim damages. The buyer may also withhold payment in accordance with section 42.

Examination of the goods after delivery

Section 31

- (1) When the goods have been delivered, the buyer must, as soon as is practicable in the circumstances, examine them in accordance with proper usage.
- (2) If it is evident that the goods will be transported from the place of delivery, the buyer may defer the

examination until after the goods have arrived at their destination.

- (3) If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

Notice of defect

Section 32

The buyer loses the right to rely on a defect if he does not give notice to the seller of the defect within a reasonable time after he discovered or ought to have discovered it (*notice of defect*).

Section 33

Notwithstanding the provisions of sections 31 and 32, the buyer is entitled to rely on a defect if the seller is guilty of gross negligence or conduct which is incompatible with honour and good faith.

Remedy of defect and substitute delivery

Section 34

- (1) The buyer has the right to require that the seller remedy the defect without expense to the buyer if the defect can be remedied without unreasonable cost or inconvenience to the seller. Instead of remedying the defect, the seller may deliver substitute goods.
- (2) The buyer may require the delivery of substitute goods if the breach of contract is of substantial importance to him and the seller knew or ought to have known this. The buyer is, however, not entitled to substitute delivery in the case of an impediment or disproportion described in section 23. If the contract is for goods which existed at the time of the conclusion of the contract and which, taking into account the properties of the goods and what the parties must be presumed to have intended, cannot be replaced by other goods.
- (3) If the seller fails to fulfil his duty to remedy the defect, the buyer is entitled to reimbursement for reasonable expenses incurred through having the defect remedied.

Section 35

The buyer loses his right to require that the defect be remedied or that substitute goods be delivered if he fails to give notice of such claim to the seller in conjunction with his notice of defect or within a reasonable time thereafter. Nevertheless, this paragraph does not apply if the seller has made himself guilty of gross negligence or conduct which is incompatible with honour and good faith.

Section 36

- (1) Even if the buyer does not require the seller to remedy the defect or to deliver substitute goods, the seller may, at his own expense, remedy the defect or deliver substitute goods if this can be done without substantial inconvenience to the buyer or uncertainty of reimbursement by the seller of any expenses advanced by the buyer.
- (2) The seller may not rely on the buyer's failure to give the seller an opportunity to remedy the defect or to deliver substitute goods in accordance with paragraph (1) if the buyer has had the defect remedied under circumstances in which it would not have been reasonable to require that he had waited for remedy by the seller.

Reduction of price and avoidance

Section 37

- (1) If remedy of the defect or delivery of substitute goods is out of the question or not effected within a reasonable time after the buyer has given notice of the defect, the buyer is entitled to require reduction of the price, calculated in accordance with section 38, or to declare the contract avoided in accordance with section 39.
- (2) The buyer is, nevertheless, not entitled to a reduction of the price if the goods were second-hand goods sold at an auction.

Section 38

When the buyer requires reduction of the price, the reduction shall be calculated so that the ratio of the reduced price to the contract price corresponds to the ratio of the value of the defective goods to the value of conforming goods at the time of delivery.

Section 39

- (1) The buyer may declare the contract avoided on account of a defect in the goods if the breach of contract is of substantial importance to him and the seller knew or ought to have known this.
- (2) The buyer loses the right to declare the contract avoided if he fails to give notice of the avoidance to the seller within a reasonable time (i) after he noticed or ought to have noticed the defect or (ii) after passage of the time within which the seller, under section 37, ought to have remedied the defect or delivered substitute goods. Nevertheless, this paragraph does not apply if the seller has made himself guilty of gross negligence or conduct which is incompatible with honour and good faith.

Damages

Section 40

- (1) The buyer is entitled to damages for losses that he suffers because of a defect in the goods unless the seller proves that there was an impediment referred to in section 27(1) or (2) against delivery of conforming goods. In the case of such an impediment, the provisions of section 28 on the duty of the seller to give notice of an impediment to performance apply correspondingly.
- (2) Indirect losses specified in section 67 are not recoverable under paragraph (1) of this section.
- (3) The buyer is always entitled to damages, including indirect losses, if the defect or loss is due to negligence attributable to the seller or if the goods did not, at the time of the conclusion of the contract, conform to an express warranty of the seller.

Chapter 7— **Third-party claims**

Section 41

- (1) If the goods are subject to a claim of a third party based on ownership, lien or other property right (*third-party claim*) and the buyer is not, under the contract, bound to accept the goods subject to the restrictions caused by the third-party claim, the provisions of chapter 6 apply, as well as section 42 on the right of the buyer to withhold payment. The provisions of section 31 shall not restrict the buyer's right to rely on a lack of conformity due to a third-party claim.
- (2) The buyer is always entitled to damages for losses incurred because of a third-party claim that existed at the time of the conclusion of the contract if he neither knew nor ought to have known of the claim.
- (3) The buyer is entitled to rely on the remedies provided for third-party claims also when a third party asserts that he has a claim referred to in paragraph (1) and there are reasonable grounds for the claim.

Chapter 8— **Provisions common to breaches of contract by seller**

Right to withhold payment

Section 42

If the buyer has a claim against the seller on account of a delay in delivery or a defect in the goods, the buyer may withhold payment of the price in an amount corresponding to his claim.

Partial breach of contract

Section 43

If only part of the goods are delayed or defective, the relevant provisions concerning such breach of contract shall be applied in respect of that part of the delivery. The buyer may declare the contract avoided in its entirety if the breach of contract amounts to a substantial breach with regard to the whole of the contract.

Avoidance in instalment contracts

Section 44

- (1) If the contract is for delivery of goods by instalments and any instalment is delayed or defective, the buyer may declare the contract avoided with respect to that instalment in accordance with the general provisions of this Act that govern avoidance.
- (2) If the delay or defect gives the buyer good grounds to conclude that a breach entitling him to avoidance will occur in respect of one or more future instalments, he may declare the contract avoided for such future instalments, provided he does so within a reasonable time.
- (3) A buyer who declares the contract avoided in respect of any instalment may, at the same time, declare it avoided in respect of previous or future instalments if, by reason of their interdependence, he would suffer substantial detriment if he had to remain bound by the contract in respect of those instalments.

Chapter 9— **Obligations of the buyer**

Section 45

If the contract does not expressly or implicitly fix or make provision for determining the price, the buyer shall pay a price which is reasonable taking into account the quality and the properties

of the goods, the price generally charged at the time of the conclusion of the contract and other circumstances.

Section 46

- (1) If the price is to be calculated according to the amount, measure or weight of the goods, the calculation shall be based on the quantity of the goods at the time when the risk passes to the buyer.
- (2) If the price is to be determined according to weight, it shall be determined by net weight.

Section 47

If the buyer has received an invoice, he is bound by the price indicated in the invoice unless he notifies the seller within a reasonable time that he does not accept the price or unless a lower price was expressly or implicitly agreed upon or the price required is unreasonable.

Payment of the price

Section 48

- (1) The price shall be paid at the seller's place of business. If payment is to be made against the handing over of the goods or of a document relating to the goods, payment shall, however, be made at the place where the handing over takes place.
- (2) The buyer's obligation to pay the price includes the obligation, as provided in the contract, to accept a bill of exchange, open a letter of credit, furnish a bank guarantee or other security or to take other steps required for the payment of the price.

Section 49

- (1) If the time of payment cannot be determined from the contract, the buyer must pay the price on the demand of the seller. Nevertheless, the buyer is not obliged to pay before the goods are made available for him or have been placed at his disposal in accordance with the contract.
- (2) Before paying the price, the buyer is entitled to examine the goods in the manner that is customary or appropriate under the circumstances, unless such examination is inconsistent with the terms of delivery and payment agreed upon.
- (3) If a bill of lading has been issued for the carriage of the goods to their destination or if the goods are otherwise carried subject to terms under which the seller may not dispose of the goods after payment, the buyer may, notwithstanding the provisions of paragraphs (1) and (2), be required to pay against the bill of lading or upon receipt of the freight bill or other document confirming that the goods are being transported under the above terms.

Taking delivery

Section 50

The buyer must:

- (1) cooperate in the seller's performance by doing all the acts which can reasonably be expected of him in order to enable the seller to make delivery; and
- (2) to collect or take over the goods.

Chapter 10— **Consequences of buyer's breach of contract**

Seller's remedies

Section 51

- (1) If the buyer fails to pay the price when it is due or to cooperate in the seller's performance as required in section 50(1), and this is not due to an act or omission of the seller or any other reason attributable to the seller, the seller is, in accordance with the provisions of this chapter, entitled to require payment or other performance of the contract or to declare the contract avoided as well as to claim damages. He may also withhold control over the goods in accordance with section 10 and claim interest in accordance with section 71.
- (2) If the buyer fails to fulfil his obligation to collect or take over the goods and this is not due to an act or omission of the seller or any other reason attributable to the seller, the provisions of section 55, of section 57(2) and of section 58 apply.

Demand for payment or other performance

Section 52

- (1) The seller has the right to hold to the contract and to demand payment of the price.
- (2) If the buyer cancels an order for goods that are to be manufactured, produced or acquired specially for him, the seller may, nevertheless, not hold to the contract by carrying on with the manufacture or with other preparations for the delivery of the goods and by demanding payment of the price, unless the cancellation would otherwise cause him substantial detriment or uncertainty of compensation for the loss caused by the cancellation. The provisions of chapter 13 apply in respect of the measure of damages on account of the cancellation.
- (3) If the goods have not yet been delivered, the seller loses his right to demand payment of the price if he defers his claim for an unreasonably long time.

Section 53

- (1) The seller also has the right to hold to the contract and to require that the buyer cooperate in accordance with section 50(1). The buyer is, nevertheless, not obliged to cooperate if there is an impediment that he cannot overcome or if the cooperation would require sacrifices that are disproportionate to the seller's interest in cooperation by the buyer.
- (2) If the impediment or disproportion ceases to exist within a reasonable time, the seller may, nevertheless, require the buyer's cooperation.

- (3) The seller loses his right to require the buyer's cooperation if he defers his claim for an unreasonably long time.

Avoidance of the contract because of delay in payment

Section 54

- (1) The seller may declare the contract avoided on account of the buyer's delay in payment if the delay is substantial.
- (2) If the seller has fixed an additional period of time for payment and the time is not unreasonably short, the seller is also entitled to declare the contract avoided unless the buyer pays the price within the additional period of time.
- (3) During the additional period of time the seller is entitled to declare the contract avoided only if the buyer makes known that he will not pay within that time.
- (4) If the goods have been handed over to the buyer, the seller may declare the contract avoided only if he has reserved himself such right in the contract or if the buyer rejects the goods.

Avoidance of the contract because of lack of cooperation

Section 55

- (1) The seller may declare the contract avoided if the buyer fails to cooperate in accordance with section 50(1), and the breach of contract is of substantial importance to the seller and the buyer knew or ought to have known this. Subject to the same conditions, the seller may declare the contract avoided if the buyer is delayed in collecting or taking over the goods and the contract or the circumstances indicate that it is of special interest to the seller that the goods are removed.
- (2) The seller is also entitled to declare the contract avoided if he has fixed an additional period of time for performance that is not unreasonably short and the buyer does not, within that period:
- (1) cooperate in accordance with section 50(1); or
 - (2) collect or take over the goods where the contract or the circumstances indicate that it is of special interest to the seller that the goods are removed.
- (3) During the additional period of time the seller is entitled to declare the contract avoided only if the buyer makes known that he will not perform his obligations within that time.

Avoidance in instalment contracts

Section 56

- (1) If the price is to be paid in instalments as deliveries of the goods are made and the payment of any

instalment is delayed, the seller may declare the contract avoided with respect to that instalment in accordance with the general provisions of this Act that govern avoidance.

- (2) The seller may also declare the contract avoided in respect of any future instalments unless the circumstances indicate that there is no reasonable cause to anticipate a reoccurrence of a delay that would constitute a ground for avoidance.

Damages

Section 57

- (1) The seller is entitled to damages for losses that he suffers because of the buyer's delay in payment unless the buyer proves that the delay was due to a provision of law, general interruption of communications or payment services or to other similar impediment which the buyer could not reasonably be expected to have taken into account at the time of the conclusion of the contract and whose consequences he could not reasonably have avoided or overcome.
- (2) Under conditions corresponding to those stipulated in section 27, the seller is also entitled to damages for losses that he suffers because of the buyer's failure to cooperate in accordance with section 50(1), or because of the buyer's delay in collecting or taking over the goods where the contract or the circumstances indicate that it is of special interest to the seller that the goods be removed.

Section 58

- (1) If the buyer is unable to perform the contract in time, he must give the seller notice of the impediment and its effect on his ability to perform. If the notice is not received by the seller within a reasonable time after the buyer knew or ought to have known of the impediment, the seller is entitled to damages for losses that could have been avoided if he had received the notice in time.
- (2) [repealed by 17/1994]

Notice of avoidance and claim for damages

Section 59

- (1) The seller may not declare the contract avoided on account of the buyer's delay in payment or in collecting or taking over the goods unless he notifies the buyer of the avoidance before the buyer has performed the obligation in question.
- (2) If the buyer has performed his obligation to cooperate as stipulated in section 50(1), but his performance has been late, the seller may not declare the contract avoided or claim damages on account of the delay unless he notifies the buyer of the avoidance or his intention to claim damages

within a reasonable time after he learned of the performance. If the seller declares the contract avoided he is, nevertheless, not obliged to give a separate notice of a claim for damages.

Specification of the features of the goods

Section 60

- (1) If under the contract the buyer is to specify the form, measurements or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may make the specification himself in accordance with the requirements of the buyer that may be known to him. This will not prejudice any other rights the seller may have.
- (2) If the seller makes the specification himself, he must inform the buyer of the details thereof and fix a reasonable period of time within which the buyer may make a different specification. If the buyer fails to make a specification within the time so fixed, the specification made by the seller is binding.

Chapter 11— **Anticipatory breach**

Right of stoppage

Section 61

- (1) If, after the conclusion of the contract, the conduct or financial circumstances of a party indicate that there are strong reasons to anticipate that he will fail to perform a substantial part of his obligations, the other party may suspend his performance.
- (2) If the seller has already dispatched the goods before the circumstances referred to in paragraph (1) become evident, he may prevent the handing over of the goods to the buyer. The seller may do so even if the buyer holds a document of carriage relating to the goods.
- (3) A party who suspends performance or prevents the handing over of the goods must immediately give notice thereof to the other party. If he fails to do so, the other party is entitled to damages for any loss incurred because he did not receive the notice in time.
- (4) A party who has suspended performance or prevented the handing over of the goods must continue with his performance if the other party provides adequate assurance of his performance.

Avoidance

Section 62

If it becomes clear that a breach of contract entitling a party to avoidance will take place, that party

may declare the contract avoided even prior to the date of performance. Such avoidance is, however, without effect if the other party immediately provides adequate assurance of his performance.

Bankruptcy

Section 63

- (1) If the assets of a party are surrendered in bankruptcy before he has performed the contract, the other party must request the administration of the bankrupt estate^{***} to notify him whether the estate wants to be bound by the contract. If the estate notifies the party within reasonable time that it wants to be bound by the contract and provides adequate assurance of its performance, the contract may not be declared avoided.
- (2) If the goods are handed over to the buyer or the administration of the bankrupt estate after the buyer's assets have been surrendered in bankruptcy, the seller is entitled to restitution of the goods. However, the goods need not be restituted if the price is immediately paid or, if payment is not yet due, the administration of the bankrupt estate provides adequate assurance of its payment within a reasonable time after request by the seller.
- (3) If, in the case referred to in paragraph (2), the administration of the bankrupt estate has sold the goods or otherwise disposed of them so that they cannot be restituted substantially unchanged and undiminished, the administration is bound by the contract.
- (4) [repealed by 17/1994]

Chapter 12— **Provisions common to avoidance and substitute delivery**

Effects of avoidance and substitute delivery

Section 64

- (1) Avoidance of the contract releases the seller from his obligation to hand over the goods and the buyer from his obligation to pay the price and to take delivery.
- (2) Insofar as the contract has been performed, each party is entitled to claim restitution from the other party of whatever the latter party has received. A party may suspend restitution until the other party fulfils his obligation of restitution and pays any damages and interest that the party may be liable to pay or provides adequate assurance of their payment.
- (3) If the seller is to deliver substitute goods, the buyer may suspend restitution of the goods he has

^{***} Receiver or trustee in bankruptcy.

received until the substitute goods are delivered.

Section 65

- (1) If the contract is declared avoided, the buyer must account to the seller for any yield he has derived from the goods as well as pay reasonable compensation for any other benefit he may have derived from the goods.
- (2) If the seller is to refund the price, he must pay interest on the amount to be refunded in accordance with section 3(2) of the Interest Act (633/1982) from the date on which he received the payment.

Loss of right to avoidance and substitute delivery

Section 66

- (1) The buyer is entitled to declare the contract avoided or to demand substitute delivery only if he can make restitution of the goods substantially unchanged and undiminished.
- (2) Nevertheless, the buyer does not lose his right to declare the contract avoided or to demand substitute delivery if:
 - (1) the goods have deteriorated or diminished because of their inherent properties or some other reason not attributable to the buyer;
 - (2) if the goods have deteriorated or diminished due to an act that was necessary in order to examine the conformity of the goods;
 - (3) the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the defect because of which he wants to declare the contract avoided or require substitute delivery; or if
 - (4) the contract is declared avoided due to a third-party claim and the buyer has, under the law, forfeited the goods or relinquished them.
- (3) Notwithstanding the provisions of paragraph (1) and (2), the buyer does not lose his right to declare the contract avoided or to require substitute delivery if he reimburses the seller for the loss in the value of the goods resulting from their deterioration or diminishing.

Chapter 13— **Measure of damages**

Direct and indirect loss

Section 67

- (1) Damages for breach of contract consist of compensation for expenses, price difference, lost profit

and other direct or indirect loss due to the breach.

- (2) Indirect loss consists of the following:
 - (1) loss due to reduction or interruption in production or turnover;
 - (2) other loss arising because the goods cannot be used as intended;
 - (3) loss of profit arising because a contract with a third party has been lost or breached;
 - (4) loss due to damage to property other than the goods sold; and
 - (5) other similar loss that is difficult to foresee.
- (3) Loss incurred by the injured party for mitigation of loss not covered by paragraph (2) shall, however, not be considered indirect loss.

Difference in price

Section 68

If the contract has been avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the price difference to be compensated shall be calculated on the basis of the difference between the contract price and the price in the substitute transaction.

Section 69

- (1) If the contract has been avoided but no substitute transaction under section 68 has been made and if there is a current price for the goods, the price difference to be compensated shall be calculated on the basis of the difference between the contract price and the current price at the time of avoidance.
- (2) The current price is the price prevailing for similar goods at the place where delivery was to take place.

Mitigation of loss and adjustment of damages

Section 70

- (1) The injured party must take reasonable measures to mitigate his loss. If he fails to do so, he must bear the corresponding part of the loss himself.
- (2) The amount of damages payable to the injured party may be adjusted if the amount is unreasonable taking into account the possibilities of the breaching party to foresee and prevent the loss as well as other circumstances.

Chapter 14— **Interest**

Section 71

The obligation of a party to pay interest on the price or other amount of money which is not paid in time is governed by the Interest Act.

Chapter 15— **Preservation of the goods**

Seller's duty to preserve the goods

Section 72

If the buyer is in delay in collecting or taking over the goods or if the goods are not handed over to the buyer due to a reason attributable to the buyer and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take reasonable steps to preserve the goods at the expense of the buyer.

Buyer's duty to preserve the goods

Section 73

- (1) If the buyer has received the goods but wants to exercise the right to reject them, he must take reasonable steps to preserve the goods at the expense of the seller.
- (2) If the goods have been dispatched to the buyer or placed at his disposal at their destination and the buyer wants to exercise the right to reject them, he must take steps to preserve the goods at the expense of the seller if this is possible without payment of the price and without unreasonable expense or unreasonable inconvenience. The buyer is, however, not obliged to preserve the goods if the seller or a person authorized to take charge of the goods on his behalf is present at the place of destination.

Depositing the goods with a third person

Section 74

If the party who is bound to preserve the goods has deposited them with a third person at the expense of the other party and has chosen the third person with due care, the party is free from liability for the goods when the third person has taken over the goods.

Reimbursement for preservation expenses

Section 75

A party who is bound to preserve the goods at the expense of the other party is entitled to reimbursement for necessary expenses incurred through the preservation. He may retain the goods until the reimbursement is received or an adequate assurance for it is provided.

Resale of the goods

Section 76

- (1) A party who is bound to preserve the goods may sell them if he cannot continue taking care of the goods without unreasonable expense or without unreasonable inconvenience or if there has been an unreasonable delay by the other party in taking possession of the goods, in paying the price or in reimbursing the costs of preservation.
- (2) If the goods are subject to rapid deterioration or if their preservation involves unreasonable expense, the goods must, if possible, be sold.
- (3) The party who sells the goods must observe reasonable care in effecting the sale. If possible, the party shall notify the other party of his intention to sell the goods.

Section 77

If a party has, under section 76, the right or duty to sell the goods but they cannot be sold or it is evident that the price that could be obtained would not cover the costs of the sale, the party may dispose of the goods in some other appropriate manner. If possible, he must notify the other party of his intention.

Section 78

An account must be given to the other party of the proceeds of the sale and of other benefits derived from the goods as well as of the costs incurred. Any balance belongs to the other party.

Chapter 16— **Yield from the goods**

Section 79

Any yield accruing from the goods before the agreed time of delivery belongs to the seller unless there were reasonable grounds to expect that the yield would accrue later. Any yield accruing from

the goods after the agreed time of delivery belongs to the buyer unless there were reasonable grounds to expect that the yield would accrue earlier.

Section 80

A sale of shares of stock includes any dividends that have not fallen due for payment before the conclusion of the contract as well as any right to subscribe for new shares if it has not been possible to exercise that right before the conclusion of the contract.

Section 81

A sale of an interest-bearing receivable includes any interest that has accrued but not fallen due for payment at the agreed time of delivery. An amount equal to such interest must be paid by the buyer to the seller in addition to the price unless the receivable was sold as uncertain.

Chapter 17— **Miscellaneous provisions**

Notices

Section 82

If a notice which the buyer is to give to the seller under section 23, 24, 29, 32, 35, 39, 47 or 61 has been sent by appropriate means, a delay or error in the transmission of the notice or its failure to arrive does not deprive the sender from the right to rely on the notice. The same shall apply to a notice which the seller must give to the buyer under section 52, 53, 59 or 61.

Entry into force

Section 83

- (1) This Act shall enter into force on 1 January 1988.
- (2) This Act shall repeal chapter 1, sections 2—4 and sections 6—8 of the Code of Commerce and section 48 of the Bankruptcy Act, with chapter 1, section 8 of the Code of Commerce as amended by Act of 13 June 1929 (1929/237).
- (3) Contracts concluded prior to the entry into force of this Act shall be governed by earlier law.