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Chapter I: General Provisions

No. I.1 - Good faith and fair dealing in international trade

The parties must act in accordance with the standard of good faith and fair dealing in international trade.

No. I.2 - Standard of reasonableness

The parties always have to act according to what is reasonable in view of the particular nature of their transaction and the circumstances involved, in particular the economic interests and expectations of the parties.

No. I.3 - Trade usages

The parties are bound by any usages to which they have agreed and by any practice which they have established between themselves. Unless agreed otherwise, they are considered to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

No. I.4 - No advantage in case of own unlawful acts

No one may derive an advantage from his own unlawful acts ("nullus commodum capere potest de injuria sua propria").

No. I.5 - Limitation of transfer of rights

No one may transfer more rights than he actually has ("nemo plus iure transferre potest quam ipse habet").

No. I.6 - Forfeiture of rights

A right that has been forfeited may not be raised.

No. I.7 - Venire contra factum proprium

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No one may set himself in contradiction to his own previous conduct ("non concedit venire contra factum proprium"; "l'interdiction de se contredire au détriment d'autrui").

No. I.8 - No damage claim in case of consent

A party suffering damage or another prejudice may not raise claims arising out of this if it has consented to the act leading to the damage or prejudice ("volenti non fit iniuria").

No. I.9 - Presumption of professional competence of parties

There is a presumption for the professional competence of the parties to an international commercial contract. The parties may therefore not argue that they were not aware of the significance of the contractual obligations to which they have agreed.

No. I.10 - Lex specialis-principle

Specialized laws prevail over general laws ("lex specialis derogat legi generali").

Chapter II: Agency

No. II.1 - Prerequisites and effects of agency

Where an agent acts on behalf of a principal within the scope of his authority which has been granted to him expressly or can be implied from the circumstances, his acts bind the principal and the third party unless it follows from the circumstances of the case, for example by a reference to a contract of commission, that the agent undertakes to bind himself only.

No. II.2 - Agent acting on behalf of group of companies

A corporate entity acting on behalf of a group of corporate entities binds all entities that belong to the group.

No. II.3 - Agent acting without or outside his authority

The principal is not bound if an agent acts without or outside his authority (falsus procurator) unless he ratifies, expressly or impliedly through his conduct, the acts of the

agent. In the latter case, the act produces the same effects as if it had initially been carried out with authority.

No. II.4 - Principle of estoppel

Where the conduct of the principal causes the third party reasonably and in good faith to believe that the agent has authority to act on behalf of the principal and the agent is acting within the scope of that authority, the principal may not invoke against the third party the lack of authority of the agent ("agency by estoppel", "Anscheinsvollmacht").

No. II.5 - Attribution of knowledge to principal

Facts which the agent knows or ought to have known are attributable to the principal.

Chapter III: Set-Off; Assignment

No. III.1 - Set-off

If parties have mature and liquidated claims of an identical nature vis-à-vis each other, each party may declare the set-off of these claims. The parties may also agree on the set-off of these claims by contractual consent.

No. III.2 - Assignment of debt

Unless prohibited by the contract out of which the claim arises or by public policy, the creditor (assignor) may assign his claim by contract to the assignee.

Chapter IV: Contract

Section 1: General principles

No. IV.1.1 - Freedom of contract

The parties are free to enter into contracts and to determine their contents (principle of party autonomy).

No. IV.1.2 - Sanctity of contracts (pacta sunt servanda)

A valid contract is binding upon the parties. It can only be modified or terminated by consent of the parties or if provided for by the law ("pacta sunt servanda").

Section 2: Conclusion of Contract

No. IV.2.1 - Contractual consent

A valid contractual consent requires that the parties intend to be legally bound and that they have sufficiently identified the terms of the contract with respect to the parties and the subject matter.

No. IV.2.2 - Silence by offeree

Silence by the offeree does not in and of itself amount to acceptance unless the offeree begins with the performance of his contractual obligations or is required to reject the offer due to a long-standing business relationship with the offeror or is subject to a practice which the parties have established between themselves or a trade usage requiring rejection of the offer ("qui tacet consentire videtur").

No. IV.2.3 - No repudiation of contractual consent by state party

A state or state controlled entity may not invoke its sovereignty or internal law to repudiate contractual consent.

Section 3: Form requirements

No. IV.3.1 - Principle of informality

Contractual declarations are valid even when they are not evidenced in writing.

Section 4: Interpretation

No. IV.4.1 - Intentions of the parties

The construction of a contract has to determine the common intention of the parties or, if no such intention can be determined, the meaning that reasonable persons of the same

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kind as the parties would give to it in the same circumstances, taking into account, in particular, the nature and purpose of the contract, the conduct of the parties and the meaning commonly given to contract terms and expressions in the trade concerned.

No. IV.4.2 - Interpretation in favour of effectiveness of contract

Where there is doubt about the meaning of a contract term, an interpretation should be preferred that makes the contract lawful or effective ("ut res magis valeat quam pereat"; "effet utile").

No. IV.4.3 - Contra proferentem rule

Where there is doubt about the meaning of a contract term that has not been individually negotiated, an interpretation against the party who supplied it should be preferred ("contra proferentem").

No. IV.4.4 - Context-oriented interpretation

Contractual stipulations shall be interpreted taking into account the whole contract in which they appear.

No. IV.4.6. - Rights and Duties of the parties under "FOB", "FAS", "CIF", and "CF"

If the parties have agreed on a sale "FOB", "FAS", "CIF" or "CF", the respective rights and duties of the parties under the contract are to be determined according to the latest version of the the International Commercial Terms (INCOTERMS) issued by the International Chamber of Commerce (ICC) unless the parties have indicated that a different meaning is to be attributed to the term used.

Section 5: Contractual obligations

No. IV.5.1 - Subsequent fixing of contract price

If the contract does not contain a provision fixing the price or a method for determining it, the parties are to be treated as having agreed to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned, or, if no such price is available, to a reasonable price.

No. IV.5.2 - Fixing of price by third party

If the contract provides that the price is to be fixed or determined by a third party, and this determination is manifestly unreasonable, a party may apply to a court or arbitral tribunal to have a reasonable price fixed, notwithstanding any agreements to the contrary.

No. IV.5.3 - No contract to detriment of third party

Contracts may not be concluded to the detriment of a third party ("res inter alios acta alteri non nocet").

No. IV.5.4 - Best efforts undertakings

If a party promises its "best efforts" in the performance of its contractual duties, that party owes to the promisee all efforts which can be expected from a reasonable person of the same kind in the same circumstances, taking into account the particular nature of the contract and the interests of the parties.

No. IV.5.5 - Time is of the essence

Unless otherwise agreed by the parties or contrary to the intrinsic nature of the contract, time limits and other contractual stipulations as to the timely performance of the parties' obligations have to be strictly complied with ("time is of the essence").

No. IV.5.6 - Holidays and non-business days

If a notice, letter or other communication cannot be delivered at the address of the addressee on the last day of a period set by law or contractual stipulation, because that day falls on an official holiday or non-business day at the place of business of the addressee, the period is extended until the first business day which follows.

No. IV.5.7 - Duty to renegotiate

Each party has a good faith obligation to renegotiate the contract if there is a need to adapt the contract to changed circumstances and the continuation of performance can reasonably be expected from the parties.

No. IV.5.8 - Duty to notify

Each party is under a good faith obligation to notify the other party of any problems that occur in the performance of the contract and to cooperate with the other party when such cooperation can reasonably be expected for the performance of that party's obligations.

Section 6: Invalidity of Contract

No. IV.6.1 - Invalidity of contract due to fraud

A contract that violates boni mores is void ("fraus omnia corrumpit").

No. IV.6.2 - Invalidity of Contract due to Bribery

Contractual obligations based on or involving the payment or transfer of bribes ("corruption money", "secret commissions", "pots-de-vin" "kickbacks") are void. Any intentional offer, promise or transfer of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official or private party, for the benefit of that official or private party or for a third party, in order that the official or private party acts or refrains from acting in relation to the performance of official or other duties, in order to obtain or retain business or other improper advantages in the conduct of international business constitutes bribery.

No. IV.6.3. - Right to avoid the contract for mistake in fact or law

(a) A part may avoid a contract based on a mistake of fact or law existing at the moment the contract was concluded if:

- i) the mistake was caused by information given by the other party, or
- ii) the other party knew or ought to have known of the mistake and it was contrary to
- iii) the other party made the same mistake

provided that the other party knew or ought to have known that a reasonable person in the same situation as the party in error would not have entered into the contract or would have concluded the contract on materially different terms.

(b) A party's right to avoid the contract for mistake is excluded if

ii) it was grossly negligent in committing the mistake.

Section 7: Precontractual liability

No. IV.7.1 - Principle of pre-contractual liability

A party who breaks off contract-negotiations in bad faith (i.e. when the other party was justified in assuming that a contract would be concluded) is liable for the losses caused to the other party ("culpa in contrahendo").

Section 8: Limitation period

No. IV.8.1 - Limitation periods

Contractual claims are subject to limitation periods.

Chapter V: Performance

No. V.1 - Principle of simultaneous performance

If the parties to a contract are required to render their respective performances simultaneously and have not agreed otherwise, each party may withhold performance until tender of performance by the other party ("exceptio non adimpleti contractus").

Chapter VI: Non-Performance

No. VI.1 - Termination of contract in case of fundamental non-performance

If a party's failure to perform its obligation amounts to a fundamental non-performance, the other party may terminate the contract. Both parties may then claim restitution, in re or in money, of whatever they have supplied to the other party. The exceptio non adimpleti contractus rule applies.

No. VI.2 - Deadline for notice of defects

Notice of defects has to be given within two years of delivery of the goods.

No. VI.3 - Force majeure

If non-performance of a party is due to an impediment which is beyond the control of that party and could not have reasonably been foreseen by that party at the time of conclusion of the contract, such as war, civil war, strike, acts of governments, accidents, fire, explosions, natural disasters etc, and neither the impediment nor its consequences could have been avoided or overcome ("acts of God; "force majeure", "höhere Gewalt"), that party's non-performance is excused. If non-performance is temporary, performance of the contract is suspended during that time and that party is not liable for damages to the other party. If the period of non-performance becomes unreasonable and amounts to a fundamental non-performance, the other party may claim damages and terminate the contract.

No. VI.4 - Promise to pay in case of non-performance

When the contract contains a clause providing that a party who fails to perform is to pay a specified sum to the aggrieved party for such non-performance ("penalty clause"; "clause pénale"; "Vertragsstrafeversprechen"), the aggrieved party is entitled to that sum irrespective of its actual loss. If the amount is grossly excessive in relation to the loss resulting from non-performance, and the other circumstances, the specified sum may be reduced to a reasonable amount notwithstanding any agreements of the parties to the contrary.

Chapter VII: Damages

No. VII.1 - Damages in case of non-performance

The aggrieved party is entitled to damages for loss caused by the other party's non-performance of its contractual obligations.

No. VII.2 - Principle of foreseeability of loss

Claims for damages are limited to the loss which the non-performing party foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being the likely result of its non-performance.

No. VII.3 - Limits to claims for damages

Damages may not exceed the actual loss and are available only for loss which is proved by the claimant.

No. VII.4 - Duty to mitigate

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If it fails to take such measures, the party in breach may claim a reduction in the damages in the amount which the loss should have been mitigated.

No. VII.5 - Liability for damages for legal opinions

A party is liable for damages if it solicits a legal opinion in the case according to the agreement of the parties and the other party, who has reasonably believed in the verity of the legal opinion, suffers damages because it has performed its obligation or has made other financial dispositions.

Chapter VIII: Hardship

No. VIII.1 - Definition and legal consequences of Hardship

- (a) Any event of legal, economic, technical, political or financial nature
- i) which occurs after the conclusion of the contract,
 - ii) which could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract and
 - iii) which fundamentally alters the equilibrium of the contractual obligations, thereby rendering the performance of the contract excessively onerous for that party provided that party has not, through express stipulation or by the nature of the contract, assumed the risk of that event

constitutes hardship ("Wegfall der Geschäftsgrundlage", "clausula rebus sic stantibus", "frustration of purpose").

- (b) In case of hardship, the aggrieved party may claim renegotiation of the contract. If the parties fail to reach agreement within reasonable time, either party may apply to a court or arbitral tribunal in order to have the contract adapted to the changed circumstances or terminated at a date and on terms to be determined by the court or arbitral tribunal.

Chapter IX: Payment and Non-Payment of Money Debts

No. IX.1 - Payment in currency of place of payment

Unless otherwise agreed by the parties, payment may always be made in the currency of the place for payment.

No. IX.2 - Conversion of money debts

Conversion of the money of account into a different money of payment has to be made according to the exchange rate prevailing at the time when payment is due. If the debtor is in arrears, the creditor may require payment either at the rate when payment is due or at the rate of the time of actual payment.

No. IX.3 - Nominal-value principle

Unless otherwise agreed by the parties, each party bears the risk of currency depreciation (nominal-value principle).

No. IX.4 - Distribution of currency risk

The distribution of the currency risk follows from Art. VIII (2)(b) IMF-Agreement.

No. IX.5 - Duty to pay interest

(a) If the parties have not agreed otherwise, the debtor, who does not pay a sum of money when it falls due has to pay to the creditor interest on that sum from the time when payment was due.

(b) The rate of interest is to be determined on the basis of the average bank short-term lending rate to commercial borrowers prevailing for the currency of payment at the place of payment.

No. IX.6 - Right to charge compound interest

Compound interest may be charged on interest.

No. IX.7. - Payment of Contract Price through Documentary Credit

An agreement by the parties to payment through Documentary Credit (Letter of Credit).

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L/C) means any arrangement, however named or described, whereby a bank (the "Issuing Bank") acting at the request and on the instructions of a customer (the "Applicant") or on its own behalf,

- i) is to make a payment to or to the order of a third party (the "Beneficiary"), or is to accept and pay bills of exchange (Draft(s)) drawn by the Beneficiary, or
- ii) authorises another Bank to effect such payment, or to accept and pay such bills of exchange (Draft(s)), or
- iii) authorises another Bank to negotiate,

against stipulated document(s), provided they appear, on their face, to be in compliance with the terms and condition of the credit, to be determined according to international standard banking practices as reflected in the UCP issued by the International Chamber of Commerce provided that the terms and conditions of the Credit are complied with.

Chapter X: Unjust Enrichment

No. X.1 - Unjust enrichment

If a party is unjustifiably enriched at the expense of another, that party has to pay a sum of money equal to the value of the enrichment to be determined according to the contractually agreed price or market price, including full compensation for the use (usufruct) of the subject matter of the enrichment ("Nemo sine causa alterius jactura locupletari debet"; "condictio indebiti"; "unjust enrichment").

No. X.2 - No reclaim in case of knowledge of illegality of performance

No one may reclaim what he has rendered to the other party while knowing the illegality of his performance ("nemo turpitudinem suam allegans auditur").

Chapter XI: Corporations

No. XI.1 - Foreign corporate entities

The existence of foreign corporate entities is acknowledged.

No. XI.2 - Piercing the corporate veil

Principle of "piercing the corporate veil" in international corporate law in case of clear

under-capitalization and a mingling of corporate and financial spheres, especially in case of total control of the parent company over the business and financial affairs of its subsidiary.

No. XI.3 - Liability in case of corporate de-facto successions

In case of corporate de-facto succession liability continues.

No. XI.4 - Liability of corporate founders

The founders are liable for debts incurred in the pre-incorporation phase.

Chapter XII: Expropriation

No. XII.1 - Compensation for Expropriation

(a) A state may not nationalize or expropriate foreign private investment except for a purpose which is in the public interest, not discriminatory, carried out under due process of law and against *"appropriate" compensation*.

(b) "Appropriate" compensation must be based on the "fair market value" of the expropriated assets to be determined immediately before the time at which the taking occurred or the decision to take the asset became publicly known (*"full compensation standard"*).

(c) Absent an agreement of the parties, if a going concern is expropriated, the amount of compensation is to be determined according to the "going concern"-value, based on the discounted cash flow value of the enterprise (*"discounted cash flow method"*, "DCF").

(d) Absent an agreement of the parties, if a non-profitable enterprise is expropriated, the amount of compensation is to be determined according to the *liquidation value*, i.e. the sum of the sale prices of the individual assets under condition of liquidation.

(e) Absent an agreement of the parties, if other assets are expropriated, the amount of compensation is to be determined according to their *replacement value*, i.e. the cash amount required to replace the individual assets of the enterprise in their actual state as of the date of the taking or the book value, i.e. the balance of the enterprise's assets and liabilities as recorded on its financial statements or the amount at which the taken tangible assets appear on the balance sheet of the enterprise.

(f) The standard of compensation may be adjusted to the *individual circumstances* of the case.

(g) Payment of compensation shall include interest and has to be made "*effectively*", i.e. in freely convertible currency on the basis of the market rate of exchange existing for that currency on the valuation date or in any other currency accepted by the investor, and "*prompt*", i.e. without undue delay or, in case of established foreign exchange stringencies, by payment in installments within a period which will be as short as possible not exceeding five years from the time of the taking.

Chapter XIII: Proof, Means of Evidence

No. XIII.1 - Distribution of burden of proof

The burden of proof rests on the claimant viz. on the party who advances a proposition affirmatively ("*actori incumbit probatio*").

No. XIII.2 - Proof of written contract

A written contract may be proved through any means of modern telecommunication (Telex, Telefax, btx, EDI etc.), if it provides a record of the information contained therein and can be reproduced in written form.

No. XIII.3 - Circumstantial evidence

Circumstantial evidence is permissible.

Chapter XIV: Arbitration

No. XIV.1 - Principle of separability of the arbitration clause

The invalidity of the main contract does not automatically extend to the arbitration clause contained therein (principle of separability). The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

No. XIV.2 - No suspension of arbitration proceedings in case of bankruptcy of a party

Arbitration proceedings are not suspended if one of the parties goes bankrupt.

Chapter XV: Private International Law

No. XV.1 - Closest connection/Center of gravity-test

Absent a choice of law by the parties, the contract is governed by the law with which the contract has the closest connection ("center of gravity test"; "engster Zusammenhang"; "liens les plus étroits").

No. XV.2 - Rule of validation/Lex validitatis

If a contract has contacts to more than one jurisdiction and the parties have not agreed on the applicable law, it is in the presumed interest of the parties to apply the law, both as to form and to substance, that validates the contract ("favor negotii"; "lex validitatis"; "rule of validation").