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SCHEDULES

SCHEDULE 1

THE UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS

CHAPTER V

PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

Section I—Concurrence between delivery of the goods and payment of the price

ARTICLE 71

Except as otherwise provided in Article 72, delivery of the goods and payment of the price shall be concurrent conditions. Nevertheless, the buyer shall not be obliged to pay the price until he has had an opportunity to examine the goods.

ARTICLE 72

- 1 Where the contract involves carriage of the goods and where delivery is, by virtue of paragraph 2 of Article 19, effected by handing over the goods to the carrier, the seller may either postpone despatch of the goods until he receives payment or proceed to despatch them on terms that reserve to himself the right of disposal of the goods during transit. In the latter case, he may require that the goods shall not be handed over to the buyer at the place of destination except against payment of the price and the buyer shall not be bound to pay the price until he has had an opportunity to examine the goods.
- 2 Nevertheless, when the contract requires payment against documents, the buyer shall not be entitled to refuse payment of the price on the ground that he has not had the opportunity to examine the goods.

ARTICLE 73

- 1 Each party may suspend the performance of his obligations whenever, after the conclusion of the contract, the economic situation of the other party appears to have become so difficult that there is good reason to fear that he will not perform a material part of his obligations.
- 2 If the seller has already despatched the goods before the economic situation of the buyer described in paragraph 1 of this Article becomes evident, he may prevent the handing over of the goods to the buyer even if the latter holds a document which entitles him to obtain them.
- 3 Nevertheless, the seller shall not be entitled to prevent the handing over of the goods if they are claimed by a third person who is a lawful holder of a document which entitles him to obtain the goods, unless the document contains a reservation concerning the effects of its transfer or unless the seller can prove that the holder of the document, when he acquired it, knowingly acted to the detriment of the seller.

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Section II—Exemptions

ARTICLE 74

- 1 Where one of the parties has not performed one of his obligations, he shall not be liable for such non-performance if he can prove that it was due to circumstances which, according to the intention of the parties at the time of the conclusion of the contract, he was not bound to take into account or to avoid or to overcome ; in the absence of any expression of the intention of the parties, regard shall be had to what reasonable persons in the same situation would have intended.
- 2 Where the circumstances which gave rise to the non-performance of the obligation constituted only a temporary impediment to performance, the party in default shall nevertheless be permanently relieved of his obligation if, by reason of the delay, performance would be so radically changed as to amount to the performance of an obligation quite different from that contemplated by the contract.
- 3 The relief provided by this Article for one of the parties shall not include the avoidance of the contract under some other provision of the present Law or deprive the other party of any right which he has under the present Law to reduce the price, unless the circumstances which entitled the first party to relief were caused by the act of the other party or of some person for whose conduct he was responsible.

Section III—Supplementary rules concerning the avoidance of the contract

A—Supplementary grounds for avoidance

ARTICLE 75

- 1 Where, in the case of contracts for delivery of goods by instalments, by reason of any failure by one party to perform any of his obligations under the contract in respect of any instalment, the other party has good reason to fear failure of performance in respect of future instalments, he may declare the contract avoided for the future, provided that he does so promptly.
- 2 The buyer may also, provided that he does so promptly, declare the contract avoided in respect of future deliveries or in respect of deliveries already made or both, if by reason of their interdependence such deliveries would be worthless to him.

ARTICLE 76

Where prior to the date fixed for performance of the contract it is clear that one of the parties will commit a fundamental breach of the contract, the other party shall have the right to declare the contract avoided.

ARTICLE 77

Where the contract has been avoided under Article 75 or Article 76, the party declaring the contract avoided may claim damages in accordance With Articles 84 to 87.

B—Effects of avoidance

ARTICLE 78

- 1 Avoidance of the contract releases both parties from their obligations thereunder, subject to any damages which may be due.
- 2 If one party has performed the contract either wholly or in part, he may claim the return of whatever he has supplied or paid under the contract. If both parties are required to make restitution, they shall do so concurrently.

ARTICLE 79

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- 1 The buyer shall lose his right to declare the contract avoided where it is impossible for him to return the goods in the condition in which he received them.
- 2 Nevertheless, the buyer may declare the contract avoided:
 - (a) if the goods or part of the goods have perished or deteriorated as a result of the defect which justifies the avoidance ;
 - (b) if the goods or part of the goods have perished or deteriorated as a result of the examination prescribed in Article 38 ;
 - (c) if part of the goods have been consumed or transformed by the buyer in the course of normal use before the lack of conformity with the contract was discovered ;
 - (d) if the impossibility of returning the goods or of returning them in the condition in which they were received is not due to the act of the buyer or of some other person for whose conduct he is responsible ;
 - (e) if the deterioration or transformation of the goods is unimportant.

ARTICLE 80

The buyer who has lost the right to declare the contract avoided by virtue of Article 79 shall retain all the other rights conferred on him by the present Law.

ARTICLE 81

- 1 Where the seller is under an obligation to refund the price, he shall also be liable for the interest thereon at the rate fixed by Article 83, as from the date of payment.
- 2 The buyer shall be liable to account to the seller for all benefits which he has derived from the goods or part of them, as the case may be:
 - (a) where he is under an obligation to return the goods or part of them ;
 - (b) where it is impossible for him to return the goods or part of them, but the contract is nevertheless avoided.

Section IV—Supplementary roles concerning damages

A—Damages where the contract is not avoided

ARTICLE 82

Where the contract is not avoided, damages for a breach of contract by one party shall consist of a sum equal to the loss, including loss of profit, suffered by the other party. Such damages shall not exceed the loss which the party in breach ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters which then were known or ought to have been known to him, as a possible consequence of the breach of the contract.

ARTICLE 83

Where the breach of contract consists of delay in the payment of the price, the seller shall in any event be entitled to interest on such sum as is in arrear at a rate equal to the official discount rate in the country where he has his place of business or, if he has no place of business, his habitual residence, plus 1%.

B—Damages where the contract is avoided

ARTICLE 84

- 1 In case of avoidance of the contract, where there is a current price for the goods, damages shall be equal to the difference between the price fixed by the contract and the current price on the date on which the contract is avoided.

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- 2 In calculating the amount of damages under paragraph 1 of this Article, the current price to be taken into account shall be that prevailing in the market in which the transaction took place or, if there is no such current price or if its application is inappropriate, the price in a market which serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

ARTICLE 85

If the buyer has bought goods in replacement or the seller has resold goods in a reasonable manner, he may recover the difference between the contract price and the price paid for the goods bought in replacement or that obtained by the resale.

ARTICLE 86

The damages referred to in Articles 84 and 85 may be increased by the amount of any reasonable expenses incurred as a result of the breach or up to the amount of any loss, including loss of profit, which should have been foreseen by the party in breach, at the time of the conclusion of the contract, in the light of the facts and matters which were known or ought to have been known to him, as a possible consequence of the breach of the contract.

ARTICLE 87

If there is no current price for the goods, damages shall be calculated on the same basis as that provided in Article 82.

C—General provisions concerning damages

ARTICLE 88

The party who relies on a breach of the contract shall adopt all reasonable measures to mitigate the loss resulting from the breach. If he fails to adopt such measures, the party in breach may claim a reduction in the damages.

ARTICLE 89

In case of fraud, damages shall be determined by the rules applicable in respect of contracts of sale not governed by the present law.

Section V—Expenses

ARTICLE 90

The expenses of delivery shall be borne by the seller; all expenses after delivery shall be borne by the buyer.

Section VI—Preservation of the Goods

ARTICLE 91

Where the buyer is in delay in taking delivery of the goods or in paying the price, the seller shall take reasonable steps to preserve the goods ; he shall have the right to retain them until he has been reimbursed his reasonable expenses by the buyer.

ARTICLE 92

- 1 Where the goods have been received by the buyer, he shall take reasonable steps to preserve them if he intends to reject them; he shall have the right to retain them until he has been reimbursed his reasonable expenses by the seller.
- 2 Where goods despatched to the buyer have been put at his disposal at their place of destination and he exercises the right to reject them, he shall be bound to take possession of them on behalf of the seller, provided that this may be done without payment of the price and without unreasonable inconvenience or unreasonable

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expense. This provision shall not apply where the seller or a person authorised to take charge of the goods on his behalf is present at such destination.

ARTICLE 93

The party who is under an obligation to take steps to preserve the goods may deposit them in the warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

ARTICLE 94

- 1 The party who, in the cases to which Articles 91 and 92 apply, is under an obligation to take steps to preserve the goods may sell them by any appropriate means, provided that there has been unreasonable delay by the other party in accepting them or taking them back or in paying the costs of preservation and provided that due notice has been given to the other party of the intention to sell.
- 2 The party selling the goods shall have the right to retain out of the proceeds of sale an amount equal to the reasonable costs of preserving the goods and of selling them and shall transmit the balance to the other party.

ARTICLE 95

Where, in the cases to which Articles 91 and 92 apply, the goods are subject to loss or rapid deterioration or their preservation would involve unreasonable expense, the party under the duty to preserve them is bound to sell them in accordance with Article 94.