

中华人民共和国合同法
CONTRACT ACT OF THE PEOPLE'S
REPUBLIC OF CHINA

(1999年3月15日第九届全国代表大会
第二次会议通过 Adopted at the Second Session of the
Ninth National People's Congress on March 15, 1999)

高谊顾问有限公司英文版本
English Edition by Harmony Consultants Limited

目录

Contents

总则

General Enactment

第一章 一般规定

Chapter 1 General Provisions

第二章 合同的订立

Chapter 2 Conclusion of Contracts

第三章 合同的效力

Chapter 3 Taking Effect of Contracts

第四章 合同的履行

Chapter 4 Performance of Contracts

第五章 合同的变更和转让

Chapter 5 Variation and Transfer of Contracts

第六章 合同权利义务的终止

Chapter 6 Termination of Rights and Obligations of Contracts

第七章 违约规定

Chapter 7 Liabilities for Breach of Contract

第八章 其他规定

Chapter 8 Miscellaneous Provisions

分则 Specified Contracts

第九章 买卖合同

Chapter 9 Contracts for Sale and Purchase

第十章 供用电、水、气、热力合同

Chapter 10 Contracts for Supply and Use of Electricity, Water, Gas or Heating

第十一章 赠与合同

Chapter 11 Contracts of Donations and Gifts

第十二章 借款合同

Chapter 12 Loan Agreements

第十三章 租赁合同

Chapter 13 Hiring Contracts

第十四章 融资租赁合同

Chapter 14 Finance Leases

第十五章 承揽合同

Chapter 15 Contracts With Contractors

第十六章 建设工程合同

Chapter 16 Construction Contracts

第十七章 运输合同

Chapter 17 Transportation Contracts

第十八章 技术合同

Chapter 18 Technology Contracts

第十九章 保管合同

Chapter 19 Custody Contracts

第二十章 仓储合同

Chapter 20 Storage Contracts

第二十二章 委托合同

Chapter 21 Agency Contracts

第二十二章 行记合同

Chapter 22 Contracts of Consignment

第二十三章 居间合同

Chapter 23 Broker Contracts

附则

Supplemental Provision

第一章 一般规定

Chapter 1 General Provisions

第一条 为了保护合同当事人的合法权益，维护社会经济秩序，促进社会主义现代化建设，制定本法。

Article 1 This Act is enacted with a view to protecting the lawful rights and interests of the parties to contracts, maintaining the social economic order and promoting the development of the socialist modernization.

第二条 本法所称合同是平等主体的自然人、法人、其他组织之间设立、变更、终止民事权利义务关系的协议。

婚姻、收养、监护等有关身份关系的协议，适用其他法律的规定。

Article 2 The word “contract” referred to in this Act means an agreement between natural persons, legal entities or other organizations of equal status establishing, modifying or terminating their relationship in respect of civil rights and obligations.

Agreements regarding matrimony, adoption, guardianship and other personal relationship, shall be governed by other enactments.

第三条 合同当事人的法律地位平等，一方不得将自己的意志强加给另一方。

Article 3 The legal status of the contracting parties shall be equal.

No party shall unilaterally impose his own will on any other party.

第四条 当事人依法享有自愿订立合同的权利，任何单位和个人不得非法干预。

Article 4 A party shall have the right by law to enter into any contract at his own will free from any unlawful interference by any other units or individuals.

第五条 当事人应当遵循公平原则确定各方的权利和义务。

Article 5 The parties shall abide by the principle of fairness in determining their respective rights and obligations.

第六条 当事人行使权利、履行义务应当遵循诚实信用原则。

Article 6 In exercising his rights or performing his obligations, a party shall act in good faith.

第七条 当事人订立、履行合同，应当遵守法律、行政法规，尊重社会公德，不得扰乱社会经济秩序，损害社会公共利益。

Article 7 When entering into or performing a contract, a party shall abide by the laws and administrative regulations with respect to social ethics, and refrain from disrupting the social-economic order or impairing public interests.

第八条 依法成立的合同，对当事人具有法律约束力。当事人应当按照约定履行自己的义务，不得擅自变更或者解除合同。

依法成立的合同，受法律保护。

Article 8 A contract entered into in compliance with the laws

shall be binding on the parties. A party shall perform his own obligations as agreed, and shall not unilaterally modify or rescind the contract.

A lawful contract shall be protected by law.

第二章 合同的订立

Chapter 2 Conclusion of Contracts

第九条 当事人订立合同，应当具有相应的民事权利能力和民事行为能力。

当事人依法可以委托代理人订立合同。

Article 9 For entering a contract, a party must have the appropriate capacity for civil rights and conduct.

A party may make a contract through an agent in accordance with the laws.

第十条 当事人订立合同，有书面形式、口头形式和其他形式。

法律、行政法规规定采用书面形式的，应当采用书面形式。当事人约定采用书面形式的，应当采用书面形式。

Article 10 A contract may be made by the parties in writing, by words of mouth or otherwise.

If required by the laws and administrative regulations or by agreement between the parties that a contract be made in writing, the contract shall be so made.

第十一条 书面形式是指合同书、信件和数据电文（包括电报、电传、传真、电子数据交换和电子邮件）等可以有形地表现所载内容

的形式。

Article 11 The written form means a contractual document, letter or electronically transmitted data text (including telegram, telex, facsimile, electronic data interchange and e-mail) whereby its contents are manifested in legible form.

第十二条 合同的内容由当事人约定，一般包括以下条款：

- （一）当事人的名称或者姓名和住所；
- （二）标的；
- （三）数量；
- （四）质量；
- （五）价款或者报酬；
- （六）履行期限；
- （七）违约责任；
- （八）解决争议的方法。

当事人可以参照各类合同的示范文本订立合同。

Article 12 The terms of a contract shall be agreed by the parties, which in general cover the following:

- (1) the name and address of each party;
- (2) subject matter;
- (3) quantity;
- (4) quality ;
- (5) price and remuneration;

(6) time, place and manner of performance; ;

(7) liabilities for breach;

(8) manner of dispute resolution.

In making a contract the parties may draw reference from various precedents.

第十三条 当事人订立合同，采取要约、承诺方式。

Article 13 A contract shall be concluded between the parties by way of offer and acceptance.

第十四条 要约是希望和他人订立合同的意思表示，该意思表示应当符合下列规定：

(一) 内容具体确定；

(二) 表明经受要约人承诺，要约人即受该意思表示约束。

Article 14 An offer by a party is an indication of his intention to enter into a contract with other person(s). Such indication shall satisfy the following requirements:

(1) the terms of the offer shall be certain;

(2) upon acceptance by the offeree, the offeror shall be bound by such indication.

第十五条 要约邀请是希望他人向自己发出要约的意思表示。寄送的价目表、拍卖公告、招标公告、招股说明书、商业广告等为要约邀请。

商业广告的内容符合要约规定的，视为要约。

Article 15 An invitation to treat is an indication of one's intention to invite other to make an offer to himself. Price quotations dispatched, auction notices, tender notices, prospectuses and commercial advertisements are taken as invitations to treat.

A commercial advertisement whose contents meet the requirements of an offer, shall be regarded as an offer.

第十六条 要约到达受要约人时生效。

采用数据电文形式订立合同，收件人指定特定系统接收数据电文的，该数据电文进入该特定系统的时间，视为到达时间；未指定特定系统的，该数据电文进入收件人的任何系统的首次时间，视为到达时间。

Article 16 An offer shall become effective when it is delivered to the offeree.

If a contract is to be concluded by electronically transmitted data text, and the addressee specifies a system for receiving such text, the time at which such text enters into the system shall be deemed to be the time of receipt; if no particular system is specified, the time at which such text first enters into any system of the addressee shall be deemed to be the time of receipt.

第十七条 要约可以撤回。撤回要约的通知应当在要约到达受要约人之前或者与要约同时到达受要约人。

Article 17 An offer may be withdrawn. Any notice to withdraw

an offer must reach the offeree before its receipt by the offeree.

第十八条 要约可以撤销。撤销要约的通知应当在受要约人发出承诺通知之前到达受要约人。

Article 18 An offer may be revoked. Any notice to revoke an offer must reach the offeree before the offeree dispatches his notice of acceptance.

第十九条 有下列情形之一的，要约不得撤销：

（一）要约人确定了承诺期限或者以其他形式明示要约不可撤销；

（二）受要约人有理由认为要约是不可撤销的，并已经为履行合同作了准备工作。

Article 19 No offer shall be revoked in any of the following circumstances:

（1）the offeror has expressly specified a period of time for acceptance or otherwise provided that the offer is irrevocable;

（2）the offeree has grounds to believe that the offer is irrevocable and has forthwith taken preparatory steps for performing the contract.

第二十条 有下列情形之一的，要约失效：

（一）拒绝要约的通知到达要约人；

（二）要约人依法撤销要约；

（三）承诺期限届满，受要约人未作出承诺；

（四）受要约人对要约的内容作出实质性变更。

Article 20 An offer shall lapse on any of the following circumstances:

- (1) the notice of rejection of the offer has reached the offeror;
- (2) the offeror lawfully revokes the offer;
- (3) the offeree has not made an acceptance to the offer on or before its expiration; and
- (4) the offeree materially changes the terms of the offer by way of a counter-offer.

第二十一条 承诺是受要约人同意要约的意思表示。

Article 21 An acceptance is an expression by the offeree of his agreement to the offer.

第二十二条 承诺应当以通知的方式作出，但根据交易习惯或者要约表明可以通过行为作出承诺的除外。

Article 22 An acceptance shall be made by way of notice, except that an acceptance may be made by way of conduct where the trading practice or the terms of the offer so provides.

第二十三条 承诺应当在要约确定的期限内到达要约人。要约没有确定承诺期限的，承诺应当依照下列规定到达：

(一) 要约以对话方式作出的，应当即时作出承诺，但当事人另有约定的除外；

(二) 要约以非对话方式作出的，承诺应当在合理期限内到达。

Article 23 The acceptance shall reach the offeror within the time

specified in the offer. If no time is specified in the offer, the acceptance shall be served in accordance with the following provisions:

(1) if the offer is made by words of mouth, the acceptance shall be made instantaneously unless the parties have agreed otherwise;

(2) if the offer is made otherwise than by words of mouth, the acceptance shall be served within a reasonable time.

第二十四条 要约以信件或者电报作出的，承诺期限自信件载明的日期或者电报交发之日开始计算。信件未载明日期的，自投寄该信件的邮戳日期开始计算。要约以电话、传真等快速通讯方式作出的，承诺期限自要约到达受要约人时开始计算。

Article 24 If the offer is made by post or telegraph, the time for acceptance commences at the date stated in the letter or the date the telegram is tendered for dispatch. If no date is stated on the letter, it commences on the date of the postal chop for the posting of the letter. If the offer is made by means of instantaneous communication such as telephone or facsimile, the time for acceptance shall commence when the offer reaches the offeree.

第二十五条 承诺生效时合同成立。

Article 25 A contract is concluded when the acceptance takes effect.

第二十六条 承诺通知到达要约人时生效。承诺不需要通知的，根据交易习惯或者要约的要求作出承诺的行为时生效。

采用数据电文形式订立合同的，承诺到达的时间适用本法第十六条第二款的规定。

Article 26 An acceptance shall take effect when notice thereof reaches the offeror. An acceptance that does not require a notice to be given, shall be effective when an act of acceptance is made in accordance with trading practice or as required by the offer.

In case of a contract made by electronic communication, the time for receipt of the acceptance shall be governed by the provisions of paragraph 2 of Article 16 of this Act.

第二十七条 承诺可以撤回。撤回承诺的通知应当在承诺通知到达要约人之前或者与承诺通知同时到达要约人。

Article 27 An acceptance may be withdrawn. Any notice of withdrawal of acceptance shall reach the offeror before the notice of acceptance is served to the offeror.

第二十八条 受要约人超过承诺期限发出承诺的，除要约人及时通知受要约人该承诺有效的以外，为新要约。

Article 28 An acceptance made by the offeree after the specified time for acceptance shall constitute a new offer unless the offeror informs the offeree in good time that the acceptance is effective.

第二十九条 受要约人在承诺期限内发出承诺，按照通常情形能够及时到达要约人，但因其他原因承诺到达要约人时超过承诺期限的，除要约人及时通知受要约人因承诺超过期限不接受该承诺的以

外，该承诺有效。

Article 29 An acceptance which is dispatched by the offeree within time, and which would have reached the offeror in time in the normal course of event, but for some reason is received by the offeror after the time for acceptance, shall nevertheless be effective, unless the offeror informs the offeree in good time that the acceptance is not accepted because of lapse of time.

第三十条 承诺的内容应当与要约的内容一致。受要约人对要约的内容作出实质性变更的，为新要约。有关合同标的、数量、质量、价款或者报酬、履行期限、履行地点和方式、违约责任和解决争议方法等的变更，是对要约内容的实质性变更。

Article 30 The terms of the acceptance shall correspond with those of the offer. If the terms of the offer are materially modified by the offeree, such modified terms shall constitute a new offer. Any modification to the terms of the offer in connection with the description, quantity, quality, price or remuneration, time and manner of performance, of the subject matter of the contract and the liability for breach and method for dispute resolution thereof, shall be regarded as material modification.

第三十一条 承诺对要约的内容作出非实质性变更的，除要约人及时表示反对或者要约表明承诺不得对要约的内容作出任何变更的以外，该承诺有效，合同的内容以承诺的内容为准。

Article 31 An acceptance making non-material modification to the offer shall be effective and the contract shall be subject to such modified terms of the acceptance unless the offeror objects in good time to such modification or the offer expressly provides that no modification shall be made thereof.

第三十二条 当事人采用合同书形式订立合同的，自双方当事人签字或者盖章时合同成立。

Article 32 A contract by the parties in writing shall be concluded upon signing thereof or affixing the seal thereon.

第三十三条 当事人采用信件、数据电文等形式订立合同的，可以在合同成立之前要求签订确认书。签订确认书时合同成立。

Article 33 In case of a contract made through letter or electronically transmitted data text, the parties may, before the conclusion, require a duly signed confirmation in writing. Such contract shall then be concluded upon the execution of the written confirmation.

第三十四条 承诺生效的地点为合同成立的地点。

采用数据电文形式订立合同的，收件人的主营业地为合同成立的地点；没有主营业地的，其经常居住地为合同成立的地点。当事人另有约定的，按照其约定。

Article 34 The place of formation of the contract shall be the place where the acceptance takes effect.

In case a contract is made by electronically transmitted data text, the

place of formation of the contract shall be the principal place of business of the recipient. The recipient having no principal place of business, the place of formation of the contract shall be his habitual residence. If the parties have agreed otherwise, their agreement shall prevail.

第三十五条 当事人采用合同书形式订立合同的，双方当事人签字或者盖章的地点为合同成立的地点。

Article 35 In case of written contracts, the place of formation of the contract shall be where the parties sign the contract or affix the seal thereon.

第三十六条 法律、行政法规规定或者当事人约定采用书面形式订立合同，当事人未采用书面形式但一方已经履行主要义务，对方接受的，该合同成立。

Article 36 In case it is required by the laws and administrative regulations or agreed by the parties that a contract be made in writing, if the parties have not reduced the contract into writing while one party has performed the material obligations thereof and the other party has accepted the same, the contract shall be established.

第三十七条 采用合同书形式订立合同，在签字或者盖章之前，当事人一方已经履行主要义务，对方接受的，该合同成立。

Article 37 If a contract shall be made in writing, and before it is executed, one party has performed his material obligations thereunder with the acceptance of the same by the other party, the contract shall be

established.

第三十八条 国家根据需要下达指令性任务或者国家订货任务的，有关法人、其他组织之间应当依照有关法律、行政法规规定的权利和义务订立合同。

Article 38 In case of mandatory assignment or purchase by the State in need, the legal entities or other organizations concerned shall enter into contracts in accordance with their respective rights and obligations as set out by the relevant laws or administrative regulations.

第三十九条 采用格式条款订立合同的，提供格式条款的一方应当遵循公平原则确定当事人之间的权利和义务，并采取合理的方式提请对方注意免除或者限制其责任的条款，按照对方的要求，对该条款予以说明。

格式条款是当事人为了重复使用而预先拟定，并在订立合同时未与对方协商的条款。

Article 39 If and when a contract is made on standard terms by one party, the party making such standard terms shall define the parties' respective rights and obligations in accordance with the principle of fairness, and that party shall take reasonable measures to draw the attention of the other party to any clauses relating to exclusion or limitation of liability, and explain the same to the other party as required.

Standard terms are terms drafted by one party in advance for repeated use, which have not been negotiated with the other party upon

making the contract.

第四十条 格式条款具有本法第五十二条和第五十三条规定情形的，或者提供格式条款一方免除其责任、加重对方责任、排除对方主要权利的，该条款无效。

Article 40 If any standard terms fall into any of the circumstances stipulated in Articles 52 and 53 below, or the party providing the standard terms purports to exclude his own liabilities or prejudicial to the other party's liabilities or to exclude the other party's material rights, such standard terms shall be null and void.

第四十一条 对格式条款的理解发生争议的，应当按照通常理解予以解释。对格式条款有两种以上解释的，应当作出不利于提供格式条款一方的解释。格式条款和非格式条款不一致的，应当采用非格式条款。

Article 41 If the interpretation of the standard terms is in dispute, the standard terms shall be construed according to their generally accepted meaning. If a standard term is capable of having two or more interpretations, the interpretation shall be drawn against the party providing the standard term. If discrepancy occurs between a standard term and a non-standard term, the non-standard term shall prevail.

第四十二条 当事人在订立合同过程中有下列情形之一，给对方造成损失的，应当承担损害赔偿责任：

（一）假借订立合同，恶意进行磋商；

(二) 故意隐瞒与订立合同有关的重要事实或者提供虚假情况;

(三) 有其他违背诚实信用原则的行为。

Article 42 A party in the course of making a contract under any of the following circumstances and causing any loss and damage to the other party, shall be liable for damages:

(1) under the pretext of making a contract, conducting negotiation in bad faith;

(2) concealing significant facts material to the making of the contract or providing false information;

(3) any other conduct contrary to the principle of good faith.

第四十三条 当事人在订立合同过程中知悉的商业秘密，无论合同是否成立，不得泄露或者不正当地使用。泄露或者不正当地使用该商业秘密给对方造成损失的，应当承担损害赔偿责任。

Article 43 Trade secret acquired by a party in the course of making a contract shall not be divulged or improperly used whether or not a contract is concluded. Any party who divulges or improperly uses the trade secret thereby causing losses to the other party, shall be liable for damages.

第三章 合同的效力

Chapter 3 Taking Effect of Contracts

第四十四条 依法成立的合同，自成立时生效。

法律、行政法规规定应当办理批准、登记等手续生效的，依照其规定。

Article 44 A contract made according to this Act shall take effect upon conclusion.

If the laws or administrative regulations prescribe approval or registration to render the contract taking effect, such formalities shall be complied with.

第四十五条 当事人对合同的效力可以约定附条件。附生效条件的合同，自条件成就时生效。附解除条件的合同，自条件成就时失效。

当事人为自己的利益不正当地阻止条件成就的，视为条件已成就；不正当地促成条件成就的，视为条件不成就。

Article 45 The parties may agree on collateral terms with regard to a contract taking effect. A contract with a condition-precedent takes effect when the condition is fulfilled. A contract with a condition-subsequent shall be invalid when the condition-subsequent occurs.

If a party in his own interest improperly prevents the fulfillment of any condition, such condition shall be deemed to have been satisfied. A condition shall be deemed unfulfilled if it is improperly procured.

第四十六条 当事人对合同的效力可以约定附期限。附生效期限的合同，自期限届至时生效。附终止期限的合同，自期限届满时失效。

Article 46 The period of validity of a contract may be agreed by

the parties. A contract with a commencement date shall come into force on that date. A contract with a date for termination shall be expired on that date.

第四十七条 限制民事行为能力人订立的合同，经法定代理人追认后，该合同有效，但纯获利益的合同或者与其年龄、智力、精神健康状况相适应而订立的合同，不必经法定代理人追认。

相对人可以催告法定代理人在一个月内予以追认。法定代理人未作表示的，视为拒绝追认。合同被追认之前，善意相对人有撤销的权利。撤销应当以通知的方式作出。

Article 47 A contract entered into by a person with limited capacity shall take effect upon ratification by his statutory representative. A contract solely for the benefit of the person as a party with limited capacity, or appropriate to his age, mental capacity and health rendering him suitable to make such a contract, needs not be ratified by his statutory representative .

The counterparty to the contract may urge the statutory representative to ratify the contract within one month. The statutory representative making no response thereto within one month shall be deemed to have refused ratification. A *bona fide* counterparty has the right to rescind the contract by way of notice at any time before ratification.

第四十八条 行为人没有代理权、超越代理权或者代理权终止后

以被代理人名义订立的合同，未经被代理人追认，对被代理人不发生效力，由行为人承担责任。

相对人可以催告被代理人在一个月内予以追认。被代理人未作表示的，视为拒绝追认。合同被追认之前，善意相对人有撤销的权利。撤销应当以通知的方式作出。

Article 48 If a contract is made by a person in the name of his principal without power of attorney, or outside the scope of his agency, or after termination of his agency, such contract without ratification by his principal shall not bind the principal. The person acting in such manner shall be held liable.

The counterparty to the contract may urge the purported principal to ratify within one month. The purported principal shall be deemed to have refused ratification in the absence of any indication. A *bona fide* counterparty has the right to rescind the contract by way of notice at any time before ratification.

第四十九条 行为人没有代理权、超越代理权或者代理权终止后以被代理人名义订立合同，相对人有理由相信行为人有代理权的，该代理行为有效。

Article 49 If a person enters into a contract in the name of his principal without power of attorney or outside the scope of his agency or after the termination of the agency, if and when the counterparty has good reason to believe that such person has the powers of so acting, such act of

agency by that person shall be valid.

第五十条 法人或者其他组织的法定代表人、负责人超越权限订立的合同，除相对人知道或者应当知道其超越权限的以外，该代表行为有效。

Article 50 If the statutory representative or person in charge of a legal entity or other organization enters into a contract exceeding the scope of his authority, such act of representation shall be valid unless the counterparty knows or ought to have known that he has exceeded the scope of his authority.

第五十一条 无处分权的人处分他人财产，经权利人追认或者无处分权的人订立合同后取得处分权的，该合同有效。

Article 51 A contract shall be valid, if a person without authority by way of the contract disposes of the property of another person who subsequently ratifies such act, or if that person without authority subsequently obtains such authority after the conclusion of the contract.

第五十二条 有下列情形之一的，合同无效：

- （一）一方以欺诈、胁迫的手段订立合同，损害国家利益；
- （二）恶意串通，损害国家、集体或者第三人利益；
- （三）以合法形式掩盖非法目的；
- （四）损害社会公共利益；
- （五）违反法律、行政法规的强制性规定。

Article 52 Under any of the following circumstances, a contract

shall be void:

(1) a party makes the contract by fraud or coercion prejudicial to the interests of the State;

(2) the parties conspire maliciously to prejudice the interests of the State, a collective entity or a third party;

(3) any unlawful purpose is concealed by lawful means;

(4) public interests are prejudiced;

(5) it contravenes the mandatory provisions of the laws or administrative regulations.

第五十三条 合同中的下列免责条款无效:

(一) 造成对方人身伤害的;

(二) 因故意或者重大过失造成对方财产损失的。

Article 53 Any exemption clause for liabilities in a contract shall be null and void, if:

(1) the counterparty suffers personal injury;

(2) the counterparty sustains damage and losses due to any intentional or substantial default.

第五十四条 下列合同, 当事人一方有权请求人民法院或者仲裁机构变更或者撤销:

(一) 因重大误解订立的;

(二) 在订立合同时显失公平的。

一方以欺诈、胁迫的手段或者乘人之危, 使对方在违背真实意

思的情况下订立的合同，受损害方有权请求人民法院或者仲裁机构变更或者撤销。

当事人请求变更的，人民法院或者仲裁机构不得撤销。

Article 54 A party may apply to a people's court or an arbitration institution to vary or rescind the following contracts:

- (1) a contract concluded through gross misunderstanding;
- (2) a contract made with apparent unfairness.

If one party, by way of fraud, coercion or taking advantage of the other party's plight, induces the other party to enter into a contract against his true intention, the injured party may apply to a people's court or an arbitration institution for variation or rescission of the contract.

If a party applies for variation, the people's court or arbitration institution shall not rescind the contract.

第五十五条 有下列情形之一的，撤销权消灭：

（一）具有撤销权的当事人自知道或者应当知道撤销事由之日起一年内没有行使撤销权；

（二）具有撤销权的当事人知道撤销事由后明确表示或者以自己的行为放弃撤销权。

Article 55 The right of rescission shall be extinguished if:

(1) the party with the right of rescission fails to exercise such right within one year from the date when he knows or ought to have known the grounds for rescission.

(2) the party with the right of rescission, after knowing the grounds for rescission expressly or by his own conduct, abandons his rights.

第五十六条 无效的合同或者被撤销的合同自始没有法律约束力。合同部分无效，不影响其他部分效力的，其他部分仍然有效。

Article 56 A void or rescinded contract shall have no legal binding effect as from its inception. If a term of the contract is null and void and such term does not affect the validity of the other terms, such other terms shall remain valid and effective.

第五十七条 合同无效、被撤销或者终止的，不影响合同中独立存在的有关解决争议方法的条款的效力。

Article 57 The validity and effect of the clause for dispute resolution existing independently and separately in a contract shall not be affected by the nullity, revocation or termination of the contract.

第五十八条 合同无效或者被撤销后，因该合同取得的财产，应当予以返还；不能返还或者没有必要返还的，应当折价补偿。有过错的一方应当赔偿对方因此所受到的损失，双方都有过错的，应当各自承担相应的责任。

Article 58 If a contract is taken as null and void or has been rescinded, any property obtained pursuant thereto shall be returned. If the return of the property is impossible or unnecessary, compensation at its equivalent value shall be made. The defaulting party shall indemnify the innocent party for losses arising therefrom. If both parties are in default,

each party shall be responsible for his own share of the liabilities.

第五十九条 当事人恶意串通，损害国家、集体或者第三人利益的，因此取得的财产收归国家所有或者返还集体、第三人。

Article 59 If the parties obtain property through and by collusion thereby injuring the interests of the State or a collective entity or a third party, the property so obtained shall be returned to the State or the collective entity or the third party.

第四章 合同的履行

Chapter 4 Performance of Contracts

第六十条 当事人应当按照约定全面履行自己的义务。

当事人应当遵循诚实信用原则，根据合同的性质、目的和交易习惯履行通知、协助、保密等义务。

Article 60 The parties shall perform all their respective obligations as agreed.

In compliance with the nature and purposes of the contract and trade practice, a party shall perform in good faith his obligations relating to notice, assistance and confidentiality or otherwise.

第六十一条 合同生效后，当事人就质量、价款或者报酬、履行地点等内容没有约定或者约定不明确的，可以协议补充；不能达成补充协议的，按照合同有关条款或者交易习惯确定。

Article 61 If an effective contract contains no terms for quality,

price or remuneration and place of performance or such terms are uncertain, the parties may make supplemental provisions. If there is no supplemental agreement, such provisions shall be determined according to other relevant terms of the contract or trade practice.

第六十二条 当事人就有关合同约定不明确，依照本法第六十一条的规定仍不能确定的，适用下列规定：

（一）质量要求不明确的，按照国家标准、行业标准履行；没有国家标准、行业标准的，按照通常标准或者符合合同目的的特定标准履行。

（二）价款或者报酬不明确的，按照订立合同时履行地的市场价格履行；依法应当执行政府定价或者政府指导价的，按照规定履行。

（三）履行地点不明确，给付货币的，在接受货币一方所在地履行；交付不动产的，在不动产所在地履行；其他标的，在履行义务一方所在地履行。

（四）履行期限不明确的，债务人可以随时履行，债权人也可以随时要求履行，但应当给对方必要的准备时间。

（五）履行方式不明确的，按照有利于实现合同目的的方式履行。

（六）履行费用的负担不明确的，由履行义务一方负担。

Article 62 If any terms in a contract agreed by the parties are ambiguous and such ambiguity cannot be resolved under the provisions of Article 61 of this Act, the following provisions shall apply:

(1) If the quality provisions are uncertain, the State standard or industry standard shall apply; if there is no such standard, the generally accepted standard or specific standard for the purpose of the contract, shall apply.

(2) If the terms relating to the price or remuneration are unclear, the market price of the place of performance at the time of the conclusion of the contract shall apply. If the laws require adoption of the price fixed or directed by the government, such price shall apply.

(3) In case the term relating to place of performance is uncertain, if the payment shall be made in money it shall be made at the place of the party receiving the payment upon such payment being made. In case of delivery of real property, the performance shall be made at the location of the real property. In case of other subject matters, the performance shall be made at the place of the party performing the obligations thereunder .

(4) If the time for performance is uncertain, the debtor may perform at any time, and the creditor may also at any time demand performance, provided that he has given sufficient notice for payment to the debtor.

(5) If the manner of performance is uncertain, performance shall be made in the manner expedient for the purpose of the contract.

(6) If the liability for payment of the expenses incurred for the performance is uncertain, such expenses shall be borne by the party performing the obligations.

第六十三条 执行政府定价或者政府指导价的，在合同约定的交付期限内政府价格调整时，按照交付时的价格计价。逾期交付标的物的，遇价格上涨时，按照原价格执行；价格下降时，按照新价格执行。逾期提取标的物或者逾期付款的，遇价格上涨时，按照新价格执行；价格下降时，按照原价格执行。

Article 63 With regard to the adoption of the price fixed or directed by the government, if the price is adjusted by the government during the agreed time for delivery in the contract, the price shall be assessed at the time of delivery. If the delivery of the subject matter is overdue whereby the price has increased, the original price shall prevail; if the price has decreased, the new price shall prevail. If the taking delivery of the subject matter or the payment is overdue whereby the price has increased, the new price shall prevail; if the price has decreased, the original price shall prevail.

第六十四条 当事人约定由债务人向第三人履行债务的，债务人未向第三人履行债务或者履行债务不符合约定，应当向债权人承担违约责任。

Article 64 If by an agreement between the parties, the debtor shall perform his obligations to a third party but fails to do so, or his performance does not satisfy the terms of the contract, he shall be liable to the creditor for the breach.

第六十五条 当事人约定由第三人向债权人履行债务，第三人不

履行债务或者履行债务不符合约定，债务人应当向债权人承担违约责任。

Article 65 If by an agreement between the parties, the obligations shall be performed by a third party to the creditor but the third party fails to perform his obligations or his performance departs from the agreement, the debtor shall be liable to the creditor for the breach.

第六十六条 当事人互负债务，没有先后履行顺序的，应当同时履行。一方在对方履行之前有权拒绝其履行要求。一方在对方履行债务不符合约定时，有权拒绝其相应的履行要求。

Article 66 If the parties bear their respective obligations to each other and there is no order of priority as to performance, the parties shall perform their respective obligations simultaneously. A party has a right to refuse the demand for performance by the other party who has not performed his obligations. A party has a right to refuse the corresponding demand for performance by the other party, if the obligations so performed by the other party depart from the agreement.

第六十七条 当事人互负债务，有先后履行顺序，先履行一方未履行的，后履行一方有权拒绝其履行要求。先履行一方履行债务不符合约定的，后履行一方有权拒绝其相应的履行要求。

Article 67 If the parties bear their respective obligations to each other and there is an order of priority as to performance; if the party first to perform fails to do so, the other party has a right to refuse the demand

for performance by the defaulting party. If the party first to perform fails to comply with the agreed obligations in the course of performance, the other party has a right to refuse the corresponding demand for performance by the defaulting party.

第六十八条 应当先履行债务的当事人,有确切证据证明对方有下列情形之一的,可以中止履行:

- (一) 经营状况严重恶化;
- (二) 转移财产、抽逃资金,以逃避债务;
- (三) 丧失商业信誉;
- (四) 有丧失或者可能丧失履行债务能力的其他情形。

当事人没有确切证据中止履行的,应当承担违约责任。

Article 68 The party first to perform may suspend performance if in possession of cogent evidence that the other party falls into any of the following circumstances:

- (1) his business conditions being seriously deteriorating;
- (2) he is transferring any property or withdrawing and absconding with any funds to evade payment of debts;
- (3) he has lost commercial credibility;
- (4) he is in any other circumstances that lead to the loss or possible loss of ability to perform his obligations.

A party suspending performance without cogent evidence shall be liable for breach of the contract.

第六十九条 当事人依照本法第六十八条的规定中止履行的，应当及时通知对方。对方提供适当担保时，应当恢复履行。中止履行后，对方在合理期限内未恢复履行能力并且未提供适当担保的，中止履行的一方可以解除合同。

Article 69 A party suspending performance under Article 68 of this Act, shall give prompt notice to the other party. Upon being provided appropriate guarantee from the other party, the party shall resume his performance. After performance is suspended, if the other party fails to regain his ability to perform and does not provide an appropriate guarantee, the party suspending the performance may rescind the contract.

第七十条 债权人分立、合并或者变更住所没有通知债务人，致使履行债务发生困难的，债务人可以中止履行或者将标的物提存。

Article 70 If the creditor does not notify the debtor of his splitting-up, merger or a change of his address, thereby rendering the debtor difficult to perform his obligations, the debtor may suspend the performance or keep the subject matter in custody.

第七十一条 债权人可以拒绝债务人提前履行债务，但提前履行不损害债权人利益的除外。债务人提前履行债务给债权人增加的费用，由债务人负担。

Article 71 A creditor may refuse to accept advance performance of an obligation by the debtor unless the early performance does not

prejudice the interests of the creditor. Any increase in expenses incurred by the creditor arising from the advance performance by the debtor shall be borne by the debtor.

第七十二条 债权人可以拒绝债务人部分履行债务，但部分履行不损害债权人利益的除外。债务人部分履行债务给债权人增加的费用，由债务人负担。

Article 72 A creditor may refuse partial performance by his debtor unless the partial performance does not prejudice the creditor's interests. Any additional expenses incurred by the creditor arising from the partial performance shall be borne by the debtor.

第七十三条 因债务人怠于行使其到期债权，对债权人造成损害的，债权人可以向人民法院请求以自己的名义代位行使债务人的债权，但该债权专属于债务人自身的除外。

代位权的行使范围以债权人的债权为限。债权人行使代位权的必要费用，由债务人负担。

Article 73 If a creditor suffers loss and damage by reason of failure on the part of the debtor to obtain payment for debts due and payable to him by a third party, the creditor may apply to a people's court for subrogation to the debtor's right, except such right is personal to the debtor. The extent to which subrogation may be exercised shall be limited to the right of the debtor.

Any necessary expenses incurred by the creditor in exercising the

subrogation shall be borne by the debtor.

第七十四条 因债务人放弃其到期债权或者无偿转让财产，对债权人造成损害的，债权人可以请求人民法院撤销债务人的行为。债务人以明显不合理的低价转让财产，对债权人造成损害，并且受让人知道该情形的，债权人也可以请求人民法院撤销债务人的行为。

撤销权的行使范围以债权人的债权为限。债权人行使撤销权的必要费用，由债务人负担。

Article 74 Any creditor suffering by his debtor waiving any of the debts due and payable or transferring any asset out of him without any consideration, may apply to a people's court to set aside such acts committed by the debtor. Any creditor suffering by his debtor knowingly transferring any asset at gross undervalue to a transferee, may also apply to a people's court to set aside such acts of the debtor.

The right to set aside shall be limited to the extent of the right of the creditor. The necessary expenses of the creditor in exercising his right to set aside shall be borne by the debtor.

第七十五条 撤销权自债权人知道或者应当知道撤销事由之日起一年内行使。自债务人的行为发生之日起五年内没有行使撤销权的，该撤销权消灭。

Article 75 The right to set aside shall be exercised within one year from the date of the creditor knowing or ought to have known of the cause for setting aside. Such right shall be extinguished if it is not

exercised within five years from the date of the acts of the debtor.

第七十六条 合同生效后，当事人不得因姓名、名称的变更或者法定代表人、负责人、承办人的变动而不履行合同义务。

Article 76 Upon the contract becoming effective, a party thereto may not refuse performance of any of his contractual obligations on the grounds of change of name or statutory representative or the person in charge or the administrator.

第五章 合同的变更和转让

Chapter 5 Variation and Transfer of Contracts

第七十七条 当事人协商一致，可以变更合同。

法律、行政法规规定变更合同应当办理批准、登记等手续的，依照其规定。

Article 77 A contract may be varied if unanimously agreed by the parties.

If any law or administrative regulation prescribes procedures for approval or registration of the variation to any contract, such procedures shall be complied with.

第七十八条 当事人对合同变更的内容约定不明确的，推定为未变更。

Article 78 No variation to a contract shall be presumed if the variation agreed by the parties is uncertain.

第七十九条 债权人可以将合同的权利全部或者部分转让给第三人，但有下列情形之一的除外：

- （一）根据合同性质不得转让；
- （二）按照当事人约定不得转让；
- （三）依照法律规定不得转让。

Article 79 A creditor may assign the whole or any part of his right under a contract to a third party, except that:

- (1) by the nature of the contract, the right is not assignable;
- (2) by agreement between the parties such right shall not be assigned;
- (3) the assignment of the right is not allowed by law.

第八十条 债权人转让权利的，应当通知债务人。未经通知，该转让对债务人不发生效力。

债权人转让权利的通知不得撤销，但经受让人同意的除外。

Article 80 A creditor assigning his right shall give notice to the debtor. An assignment of the right is not binding on a debtor not having been given notice.

Except with the agreement of the assignee, a notice of assignment of right given by a creditor may not be revoked.

第八十一条 债权人转让权利的，受让人取得与债权有关的从权利，但该从权利专属于债权人自身的除外。

Article 81 The assignee to whom a creditor assigns his right, shall acquire any right collateral thereto, except that the collateral right is

personal to the creditor.

第八十二条 债务人接到债权转让通知后，债务人对让与人的抗辩，可以向受让人主张。

Article 82 Upon receiving any notice of assignment of a debt a debtor may avail himself of any defence which he may have against the creditor as assignor and assert such defence against the assignee.

第八十三条 债务人接到债权转让通知时，债务人对让与人享有债权，并且债务人的债权先于转让的债权到期或者同时到期的，债务人可以向受让人主张抵销。

Article 83 If by the time the debtor receives a notice of assignment of debt, the debtor has a right of debt against the assignor, and such right of debt is due and payable not later than the assigned debt, the debtor shall be entitled to set off such debt against the assignee.

第八十四条 债务人将合同的义务全部或者部分转移给第三人的，应当经债权人同意。

Article 84 The debtor shall obtain the creditor's prior consent when assigning his contractual obligations in whole or in part to a third party.

第八十五条 债务人转移义务的，新债务人可以主张原债务人对债权人的抗辩。

Article 85 Upon the debtor assigning his obligations, the new debtor may avail himself of the defence of the original debtor against the

creditor.

第八十六条 债务人转移义务的，新债务人应当承担与主债务有关的从债务，但该从债务专属于原债务人自身的除外。

Article 86 Upon the debtor assigning his obligations, the new debtor shall assume any obligations collateral to the principal obligation, except that such collateral obligations are personal to the original debtor.

第八十七条 法律、行政法规规定转让权利或者转移义务应当办理批准、登记等手续的，依照其规定。

Article 87 The assignment of rights or obligations shall be subject to the approval or registration if it is so required by the laws or administrative regulations.

第八十八条 当事人一方经对方同意，可以将自己在合同中的权利和义务一并转让给第三人。

Article 88 With the consent of the other party, a party may assign both his contractual rights and obligations simultaneously to a third party.

第八十九条 权利和义务一并转让的，适用本法第七十九条、第八十一条至第八十三条、第八十五条至第八十七条的规定。

Article 89 The simultaneous assignment of the rights and obligations shall be subject to the respective provisions of Article 79, Articles 81 to 83, and Articles 85 to 87 of this Act.

第九十条 当事人订立合同后合并的，由合并后的法人或者其他组织行使合同权利，履行合同义务。当事人订立合同后分立的，除债

权人和债务人另有约定的以外，由分立的法人或者其他组织对合同的权利和义务享有连带债权，承担连带债务。

Article 90 If after the conclusion of a contract, a party thereto merged with another entity, the contractual rights and obligations of the party under the contract shall be exercised and borne by such amalgamated entity, be it a legal person or otherwise. If after the conclusion of a contract, a party thereto split up, the entities arising therefrom shall bear the contractual rights and obligations jointly and severally, subject as agreed by the creditor and debtor.

第六章 合同的权利义务终止

Chapter 6 Termination of the Rights and Obligations of Contracts

第九十一条 有下列情形之一的，合同的权利义务终止：

- （一）债务已经按照约定履行；
- （二）合同解除；
- （三）债务相互抵销；
- （四）债务人依法将标的物提存；
- （五）债权人免除债务；
- （六）债权债务同归于一人；
- （七）法律规定或者当事人约定终止的其他情形。

Article 91 The rights and obligations under a contract shall be terminated if:

- (1) the obligations have been performed as agreed;
- (2) the contract has been rescinded;
- (3) the obligations have been set-off;
- (4) the debtor has in accordance with the laws kept subject matter in custody;
- (5) the creditor has waived debts owing to him;
- (6) the rights and obligations have been undertaken by the same person;
- (7) other circumstances for such termination as stipulated by law or agreed by the parties.

第九十二条 合同的权利义务终止后，当事人应当遵循诚实信用原则，根据交易习惯履行通知、协助、保密等义务。

Article 92 After the termination of the contractual rights and obligations, the parties shall perform their respective surviving obligations in particular giving notices, rendering assistance and observing confidentiality in good faith and in accordance with trade customs.

第九十三条 当事人协商一致，可以解除合同。

当事人可以约定一方解除合同的条件。解除合同的条件成就时，解除权人可以解除合同。

Article 93 The parties may by mutual agreement rescind the contract.

The parties may agree on the conditions for a party to rescind the contract. Upon the conditions for rescission of a contract having been satisfied, the party with such right may rescind the contract.

第九十四条 有下列情形之一的，当事人可以解除合同：

（一）因不可抗力致使不能实现合同目的；

（二）在履行期限届满之前，当事人一方明确表示或者以自己的行为表明不履行主要债务；

（三）当事人一方迟延履行主要债务，经催告后在合理期限内仍未履行；

（四）当事人一方迟延履行债务或者有其他违约行为致使不能实现合同目的；

（五）法律规定的其他情形。

Article 94 Either party may rescind the contract under any of the following circumstances:

(1) Due to *force majeure*, the purposes as contemplated by the contract cannot be achieved;

(2) Before expiration of the time for performance, the other party indicates expressly or by way of conduct that he will not perform his principal obligations;

(3) The other party delays in performing his principal obligations and after being urged fails to perform the same within a reasonable time;

(4) The other party delays in performing his obligations or commits

any other breach of the contract so that the purposes as contemplated by the contract cannot be achieved;

(5) Any other circumstance as provided by law.

第九十五条 法律规定或者当事人约定解除权行使期限，期限届满当事人不行使的，该权利消灭。

法律没有规定或者当事人没有约定解除权行使期限，经对方催告后在合理期限内不行使的，该权利消灭。

Article 95 The right of rescission shall be extinguished if it is not exercised within the time limit as provided by law or agreed by the parties.

In case the law does not stipulate or the parties have not agreed on the time for rescission, the right of rescission by one party shall be extinguished if, after being urged by the other party, such right is not exercised within a reasonable time.

第九十六条 当事人一方依照本法第九十三条第二款、第九十四条的规定主张解除合同的，应当通知对方。合同自通知到达对方时解除。对方有异议的，可以请求人民法院或者仲裁机构确认解除合同的效力。

法律、行政法规规定解除合同应当办理批准、登记等手续的，依照其规定。

Article 96 For rescinding the contract according to the provisions in paragraph 2 of Article 93 and Article 94 of this Act, a party shall give

notice to the other party. The contract shall be rescinded when the notice is delivered to the other party. If the other party objects, he may apply to a people's court or an arbitral institution to determine the effect of such rescission.

The rescission of contract shall be subject to the approval or registration if it is so required by the laws or administrative regulations.

第九十七条 合同解除后，尚未履行的，终止履行；已经履行的，根据履行情况和合同性质，当事人可以要求恢复原状、采取其他补救措施、并有权要求赔偿损失。

Article 97 After rescission of the contract, performance of any of the obligations on a party to be performed shall no longer be required. However if any obligations have already been performed by one party, without prejudice to his right to seek compensation for losses he may request that restoration or other remedial measure be taken depending on the circumstance of the performance and the nature of the contract.

第九十八条 合同的权利义务终止，不影响合同中结算和清理条款的效力。

Article 98 The termination of the contractual rights and obligations shall not affect the validity of the provisions for settlement of liabilities, and counting, valuation and disposal thereof.

第九十九条 当事人互负到期债务，该债务的标的物种类、品质相同的，任何一方可以将自己的债务与对方的债务抵销，但依照法律

规定或者按照合同性质不得抵销的除外。

当事人主张抵销的，应当通知对方。通知自到达对方时生效。抵销不得附条件或者附期限。

Article 99 If the parties bear to each other their respective debts due and payable, and such debts are of the same kind and quality, any party may set-off his own debt against that of the other party except that such set-off is not permitted by law or by the nature of the contract.

A party seeking to set-off such debts shall give notice to the other party. A notice shall be effective upon its delivery to the other party. The set-off shall be made without any condition or timeframe.

第一百条 当事人互负债务，标的物种类、品质不相同的，经双方协商一致，也可以抵销。

Article 100 If the parties bear to each other their respective debts due and payable, and such debts are of different kind and quality, the parties may set off their debts by mutual agreement.

第一百零一条 有下列情形之一的，难以履行债务的，债务人可以将标的物提存：

- （一）债权人无正当理由拒绝受领；
- （二）债权人下落不明；
- （三）债权人死亡未确定继承人或者丧失民事行为能力未确定监护人；
- （四）法律规定的其他情形。

标的物不适于提存或者提存费用过高的，债务人依法可以拍卖或者变卖标的物，提存所得的价款。

Article 101 The debtor, finding himself being prevented from discharge of his obligations in any of the following circumstances, may keep the subject matter in custody:

(1) The creditor refuses to accept the subject matter without valid reasons;

(2) The whereabouts of the creditor are unknown;

(3) The creditor has died and there is no successor in title having been appointed, or the creditor has lost his capacity for civil conduct and a guardian for him has not been appointed;

(4) Any other circumstances as provided by law.

If the subject matter is not suitable for keeping in custody or the custody expenses are excessive, the debtor may, subject to law, auction or sell the subject matter and keep the proceeds in custody.

第一百零二条 标的物提存后，除债权人下落不明的以外，债务人应当及时通知债权人或者债权人的继承人、监护人。

Article 102 Upon the subject matter being kept in custody, the debtor shall, unless the creditor's whereabouts are unknown, promptly notify the creditor or his successor in title or his guardian.

第一百零三条 标的物提存后，毁损、灭失的风险由债权人承担。提存期间，标的物的孳息归债权人所有。提存费用由债权人负担。

Article 103 Upon the subject matter being kept in custody, the risk of damage and losses to the subject matter shall be borne by the creditor. Any benefits from the subject matter so kept, shall belong to the creditor. The expenses for custody shall be borne by the creditor.

第一百零四条 债权人可以随时领取提存物,但债权人对债务人负有到期债务的,在债权人未履行债务或者提供担保之前,提存部门根据债务人的要求应当拒绝其领取提存物。

债权人领取提存物的权利,自提存之日起五年内不行使而消灭,提存物扣除提存费用后归国家所有。

Article 104 The creditor may at any time take delivery of the subject matter kept in custody; provided that if creditor owes to the debtor any obligations, the escrow agent shall as the debtor may require, refuse to entertain the claim by the creditor before performance of his obligations or providing a guarantee.

The right of the creditor to taking delivery of any subject matter kept in custody shall be extinguished if not exercised within 5 years as from the date of keeping, and the subject matter shall then be forfeited to the State with deduction of the expenses incurred for custody.

第一百零五条 债权人免除债务人部分或者全部债务的,合同的权利义务部分或者全部终止。

Article 105 If the performance of the obligations on the part of the debtor is waived by the creditor wholly or in part, the contractual

rights and obligations of the debtor to the extent of the waiver shall be terminated.

第一百零六条 债权和债务同归于一人的，合同的权利义务终止，但涉及第三人利益的除外。

Article 106 If the contractual rights and obligations are undertaken by one same person, such rights and obligations shall be extinguished, except those that involve third party interest.

第七章 违约责任

Chapter 7 Liability for Breach of Contract

第一百零七条 当事人一方不履行合同义务或者履行合同义务不符合约定的，应当承担继续履行、采取补救措施或者赔偿损失等违约责任。

Article 107 If a party fails to perform his contractual obligations or his performance is not in compliance with the agreed terms, he is in breach of contract and shall be liable to continue performance, take remedial measures, pay for damages, or otherwise.

第一百零八条 当事人一方明确表示或者以自己的行为表明不履行合同义务的，对方可以在履行期限届满之前要求其承担违约责任。

Article 108 If one party expresses manifestly or indicates by his conduct that he will not perform his contractual obligations, the other party may before the deadline for performance demand the defaulting

party to bear the liability for breach.

第一百零九条 当事人一方未支付价款或者报酬的，对方可以要求其支付价款或者报酬。

Article 109 If one party fails to pay the price or remuneration, the other party may demand the defaulting party to make such payments.

第一百一十条 当事人一方不履行非金钱债务或者履行非金钱债务不符合约定的，对方可以要求履行，但有下列情形之一的除外：

- （一）法律上或者事实上不能履行；
- （二）债务的标的不适于强制履行或者履行费用过高；
- （三）债权人在合理期限内未要求履行。

Article 110 If one party fails to perform a non-monetary obligation or performs a non-monetary obligation not according to the agreed terms, the other party may demand performance except in any of the following cases:

- （1） Performance cannot be made by law or not practical;
- （2） The subject matter of the obligation is not suitable for specific performance or the expense for performance is excessive;
- （3） The creditor fails to seek performance within a reasonable time.

第一百一十一条 质量不符合约定的，应当按照当事人的约定承担违约责任。对违约责任没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，受损害方根据标的的性质以及损失的大

小，可以合理选择要求对方承担修理、更换、重作、退货、减少价款或者报酬等违约责任。

Article 111 The liability for breach of the agreed terms in respect of quality shall be borne by the defaulting party as agreed. If there is no agreement on liability for such breach or any agreement in this regard is unclear and cannot be ascertained under Article 61 of this Act, the aggrieved party may, having regard to the nature of the subject matter and the extent of damages, require the defaulting party for repair, replacement, re-production, or reject the goods or reduce the price or remuneration.

第一百一十二条 当事人一方不履行合同义务或者履行合同义务不符合约定的，在履行义务或者采取补救措施后，对方还有其他损失的，应当赔偿损失。

Article 112 If a party fails to perform his contractual obligations or his performance is not in line with the agreed terms, he shall pay further losses sustained by the other party even though he has made good his default or taken remedial measures.

第一百一十三条 当事人一方不履行合同义务或者履行合同义务不符合约定，给对方造成损失的，损失赔偿额应当相当于因违约所造成的损失，包括合同履行后可以获得的利益，但不得超过违反合同一方订立合同时预见到或者应当预见到的因违反合同可能造成的损失。

经营者对消费者提供商品或者服务有欺诈行为的，依照《中华人

民共和国消费者权益保护法》的规定承担损害赔偿责任。

Article 113 If one party fails to perform his contractual obligations or his performance is not in line with the agreed terms thereby causing damage to the other party, the quantum of damages shall be equivalent to the losses caused by the breach including benefits that would have been made had the contract been performed; provided that the damages shall not exceed the losses foreseeable or ought to have been foreseen by the defaulting party upon the conclusion of the contract.

A business operator defrauding any consumer in the supply of any goods or services, shall be liable to pay damages to the consumer in accordance with the Act of the People's Republic of China on the Protection of Consumer Rights and Interests.

第一百一十四条 当事人可以约定一方违约时应当根据违约情况向对方支付一定数额的违约金，也可以约定因违约产生的损失赔偿额的计算方法。

约定的违约金低于造成的损失的，当事人可以请求人民法院或者仲裁机构予以增加；约定的违约金过分高于造成的损失的，当事人可以请求人民法院或者仲裁机构予以适当减少。

当事人就迟延履行约定违约金的，违约方支付违约金后，还应当履行债务。

Article 114 The parties may agree that if and when a party commits a breach, he shall pay liquidated damages as agreed according to

the extent of the breach, and the parties may also agree on the assessment of damages arising from the breach.

A party may apply to a people's court or an arbitration institution for an increase if the agreed liquidated damages are less than the actual losses; similarly a party may apply to a people's court or an arbitration institution for an appropriate reduction if the agreed liquidated damages manifestly exceed the actual losses.

If the parties have agreed on liquidated damages to purge the breach of late performance by one party, the defaulting party shall continue to perform his obligations after payment of such damages to the innocent party.

第一百一十五条 当事人可以依照《中华人民共和国担保法》约定一方向对方给付定金作为债权的担保。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行约定的债务的，无权要求返还定金；收受定金的一方不履行约定的债务的，应当双倍返还定金。

Article 115 Pursuant to the Guarantee Act of the People's Republic of China, the parties may agree on the payment of a deposit by one party to the other as security for liabilities. After the party has performed the obligations on his part to be performed, the deposit shall be returned to him or offset against the price due and payable by him. If upon his payment of the deposit the party fails to perform his obligations

as agreed, he shall have no right to claim for the refund of the deposit. If having received the deposit from a party, the other party fails to perform his obligations under the contract, he shall refund double of the deposit to the party who has paid the deposit.

第一百一十六条 当事人既约定违约金，又约定定金的，一方违约时，对方可以选择适用违约金或者定金条款。

Article 116 If the parties agree on the amount of liquidated damages and deposit, in the event of one party committing a breach the other party may elect to apply the provisions relating to liquidated damages or deposit.

第一百一十七条 因不可抗力不能履行合同的，根据不可抗力的影响，部分或者全部免除责任，但法律另有规定的除外。当事人迟延履行后发生不可抗力的，不能免除责任。

本法所称不可抗力，是指不能预见、不能避免并不能克服的客观情况。

Article 117 In case the contract cannot be performed for reasons of *force majeure*, the parties shall be exempted from their respective liabilities wholly or in part depending on the extent of the *force majeure*, unless the law provides otherwise. However the party who delays in performance before the occurrence of *force majeure*, shall not be exempted from his liabilities.

Force majeure as referred to in this Act means extraneous

circumstances that are unforeseeable, unavoidable and insurmountable.

第一百一十八条 当事人一方因不可抗力不能履行合同的，应当及时通知对方，以减轻可能给对方造成的损失，并应当在合理期限内提供证明。

Article 118 A party unable to perform a contract owing to *force majeure* shall promptly notify the other party of such event so as to minimize any losses that may be sustained by the other party, and the party shall prove to the other party the *force majeure* within a reasonable time.

第一百一十九条 当事人一方违约后，对方应当采取适当措施防止损失的扩大；没有采取适当措施致使损失扩大的，不得就扩大的损失要求赔偿。

当事人因防止损失扩大而支出的合理费用，由违约方承担。

Article 119 In case one party commits a breach of the agreement, the other party shall take appropriate measures to minimize his losses; if the other party fails to take proper measures so that the losses are not minimized, he shall not be entitled to claim damages for the losses so aggravated.

Expenses incurred reasonably by the innocent party to minimize his losses shall be borne by the defaulting party.

第一百二十条 当事人双方都违反合同的，应当各自承担相应的责任。

Article 120 If both parties are in breach of the contract, they shall each bear their own corresponding liabilities.

第一百二十一条 当事人一方因第三人的原因造成违约的,应当向对方承担违约责任。当事人一方和第三人之间的纠纷,依照法律规定或者按照约定解决。

Article 121 A party shall be liable to the other party for breach of the contract as a result of a wrongful act of a third party. In such case the dispute between the defaulting party and the third party shall be resolved separately according to law or by agreement.

第一百二十二条 因当事人一方的违约行为,侵害对方人身、财产权益的,受损害方有权选择依照本法要求其承担违约责任或者依照其他法律要求其承担侵权责任。

Article 122 If the breach of agreement by one party infringes the personal or property right of the other party, the injured party may claim by election either damages for breach of contract under this Act or against such infringement under any other laws.

第八章 其他规定

Chapter 8 Miscellaneous Provisions

第一百二十三条 其他法律对合同另有规定的,依照其规定。

Article 123 If the contract is subject to any provisions under other laws, such provisions shall apply.

第一百二十四条 本法分则或者其他法律没有明文规定的合同,

适用本法总则的规定，并可以参照本法分则或者其他法律最相类似的规定。

Article 124 A contract not explicitly covered by the specific provisions of this Act or by other laws, shall be governed by the General Provisions of this Act, with reference to the most similar provisions of either this Act or other laws.

第一百二十五条 当事人对合同条款的理解有争议的，应当按照合同所使用的词句、合同的有关条款、合同的目的、交易习惯以及诚实信用原则，确定该条款的真实意思。

合同文本采用两种以上文字订立并约定具有同等效力的，对各文本使用的词句推定具有相同含义。各文本使用的词句不一致的，应当根据合同的目的予以解释。

Article 125 If the meaning of any terms of this contract is disputed by the parties, the true meaning of such terms shall be interpreted in good faith by reference to the words and expressions used in such terms, relevant provisions in the contract, the objects of the contract and the trade practice concerned.

If copies of a contract are made in two or more languages with equal effect, the words and expressions used in the same context of the copies shall be presumed to have the same meaning. In case the words and expressions so used are not consistent in meaning, they shall be interpreted in light of the objects of the contract.

第一百二十六条 涉外合同的当事人可以选择处理合同争议所适用的法律,但法律另有规定的除外。涉外合同的当事人没有选择的,适用与合同有最密切联系的国家的法律。

在中华人民共和国境内履行的中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同,适用中华人民共和国法律。

Article 126 The parties to a contract with foreign element may agree to elect the governing law for resolving their contractual disputes, except stipulated otherwise by the law. If the parties to a contract with foreign element have not made a choice of governing law, the law of the country with which the contract has the closest connection shall apply.

The laws of the People's Republic of China shall apply for Sino-foreign equity joint venture contracts, Sino-foreign co-operative joint venture contracts, and Sino-foreign co-operative exploration and development of natural resources contracts, that are meant to be performed within the territory of the People's Republic of China.

第一百二十七条 工商行政管理部门和其他有关行政主管部门在各自的职权范围内,依照法律、行政法规的规定,对利用合同危害国家利益、社会公共利益的违法行为,负责监督处理;构成犯罪的,依法追究刑事责任。

Article 127 The Administration of Industry and Commerce and other relevant administrative authorities shall, within the scope of their

respective functions and powers in accordance with provisions of the laws and administrative regulations, monitor and deal with any unlawful conduct by way of contract prejudicial and detrimental to the interests of the state or public. If such conduct amounts to a crime, criminal responsibility shall be pursued according to law.

第一百二十八条 当事人可以通过和解或者调解解决合同争议。

当事人不愿和解、调解或者和解、调解不成的，可以根据仲裁协议向仲裁机构申请仲裁。涉外合同的当事人可以根据仲裁协议向中国仲裁机构或者其他仲裁机构申请仲裁。当事人没有订立仲裁协议或者仲裁协议无效的，可以向人民法院起诉。当事人应当履行发生法律效力的判决、仲裁裁决、调解书；拒不履行的，对方可以请求人民法院执行。

Article 128 Any contractual disputes would be resolved by the parties through conciliation or mediation.

If conciliation or mediation is rejected or without settlement, the parties may refer the dispute to an arbitral institution for arbitration in accordance with any arbitration agreement. The parties to a contract with foreign elements may according to their arbitration agreement apply to a Chinese arbitration institution or other arbitration institutions for arbitration. If there is no arbitration agreement or if the arbitration agreement is null and void, either party may institute proceedings before

a people's court. The parties are bound by and shall observe and perform all judgments, arbitration awards or mediation settlements. If a party refuses the execution thereof, the other party may apply to a people's court for enforcement.

第一百二十九条 因国际货物买卖合同和技术进出口合同争议提起诉讼或者申请仲裁的期限为四年，自当事人知道或者应当知道其权利受到侵害之日起计算。因其他合同争议提起诉讼或者申请仲裁的期限，依照有关法律的规定。

Article 129 No litigation or arbitration for contractual disputes relating to international sales of goods or import and export of technology shall be instituted beyond four years from the date when the party knows or ought to have known his cause of action. The limitation period for litigation or arbitration regarding other contractual disputes shall be in accordance with the provisions of the relevant laws.

分则 **Special Contracts**

第九章 买卖合同

Chapter 9 Contract for Sale and Purchase

第一百三十条 买卖合同是出卖人转移标的物的所有权于买受人，买受人支付价款的合同。

Article 130 A contract for sale and purchase means a contract

whereby the seller transfers to the buyer the title of the subject matter and the buyer pays for the price.

第一百三十一条 买卖合同的内容除依照本法第十二条的规定以外，还可以包括包装方式、检验标准和方法、结算方式、合同使用的文字及其效力等条款。

Article 131 Subject to the provisions of articles stipulated in Article 12 of this Act, a contract for sale and purchase may include such terms and conditions as packaging, standard and method of inspection, mode of payment, language of the text and legal effect thereof.

第一百三十二条 出卖的标的物，应当属于出卖人所有或者出卖人有权处分。

法律、行政法规禁止或者限制转让的标的物，依照其规定。

Article 132 The subject matter being sold shall belong to the seller or the seller has the right to dispose of it.

If the transfer of any subject matter is prohibited or restricted by law or administrative regulations, such provisions shall prevail.

第一百三十三条 标的物的所有权自标的物交付时起转移，但法律另有规定或者当事人另有约定的除外。

Article 133 Upon delivery, the title to a subject matter shall be transferred to the buyer unless otherwise stipulated by law or agreed by the parties.

第一百三十四条 当事人可以在买卖合同中约定买受人未履行

支付价款或者其他义务的，标的物的所有权属于出卖人。

Article 134 The parties may agree in a contract for sale and purchase that the title to the subject matter shall remain with the seller until the buyer has paid the price or performed other obligations thereunder.

第一百三十五条 出卖人应当履行向买受人交付标的物或者交付提取标的物的单证，并转移标的物所有权的义务。

Article 135 In performing the contract, the seller shall deliver to the buyer the subject matter or document for taking delivery of the same, and transfer to the buyer the title to the subject matter.

第一百三十六条 出卖人应当按照约定或者交易习惯向买受人交付提取标的物单证以外的有关单证和资料。

Article 136 Pursuant to the agreement or trade customs, the seller shall deliver to the buyer the relevant documents and information in addition to the delivery documents.

第一百三十七条 出卖具有知识产权的计算机软件等标的物的，除法律另有规定或者当事人另有约定的以外，该标的物的知识产权不属于买受人。

Article 137 Upon sale of the subject matter such as computer software, no intellectual property rights attached thereto shall be passed to the buyer unless otherwise provided by law or agreement between the parties.

第一百三十八条 出卖人应当按照约定的期限交付标的物。约定交付期间的，出卖人可以在该交付期间的任何时间交付。

Article 138 The subject matter shall be delivered by the seller at the time for delivery as agreed. If delivery is agreed to be made within a period of time, the seller may effect delivery at any time within such period.

第一百三十九条 当事人没有约定标的物的交付期限或者约定不明确的，适用本法第六十一条、第六十二条第四项的规定。

Article 139 If there is no agreement between the parties on the time for delivery of the subject matter or the agreement relating thereto is uncertain, the provisions under Article 61 and Article 62(4) of this Act shall apply.

第一百四十条 标的物在订立合同之前已为买受人占有的，合同生效的时间为交付时间。

Article 140 If the subject matter is already in the possession of the buyer before the contract is made, the time when the contract takes effect shall be the time for delivery.

第一百四十一条 出卖人应当按照约定的地点交付标的物。

当事人没有约定交付地点或者约定不明确，依照本法第六十一条的规定仍不能确定的，适用下列规定：

（一）标的物需要运输的，出卖人应当将标的物交付给第一承运人以运交给买受人；

(二) 标的物不需要运输，出卖人和买受人订立合同时知道标的物在某一地点的，出卖人应当在该地点交付标的物；不知道标的物在某一地点的，应当在出卖人订立合同时的营业地交付标的物。

Article 141 The subject matter shall be delivered by the seller at the place as agreed.

If there is no agreement as to the place of delivery, or the agreement relating thereto is uncertain, nor the place can be determined by applying the provisions of Article 61 of this Act, the following provisions shall apply:

(1) If transportation of the subject matter is required, the seller shall deliver the subject matter to the first carrier for delivery to the buyer;

(2) If transportation of the subject matter is not required, and the parties at the time of making the contract are aware of the location of the subject matter, the seller shall deliver the subject matter at that location. If at the time of making the contract, the location of the subject matter is uncertain to the parties, the business place of the seller at the time of making the contract shall be the place for delivery.

第一百四十二条 标的物毁损、灭失的风险，在标的物交付之前由出卖人承担，交付之后由买受人承担，但法律另有规定或者当事人另有约定的除外。

Article 142 The risk of damage to, loss or destruction of any subject matter shall be borne by the seller before delivery and by the

buyer after delivery, unless otherwise stipulated by law or agreed by the parties.

第一百四十三条 因买受人的原因致使标的物不能按照约定的期限交付的，买受人应当自违反约定之日起承担标的物毁损、灭失的风险。

Article 143 If the buyer fails to take delivery at the time as agreed for reason known to him, he shall bear the risks of damage to, loss and destruction of the subject matter from the date of his breach of the contract.

第一百四十四条 出卖人出卖交由承运人运输的在途标的物，除当事人另有约定的以外，毁损、灭失的风险自合同成立时起由买受人承担。

Article 144 If the subject matter of the contract for sale and purchase is cargo in transit having been given to a carrier for transportation, subject to any agreement between the parties, the risks of damage to, loss and destruction of the subject matter shall be borne by the buyer from the time when the contract is made.

第一百四十五条 当事人没有约定交付地点或者约定不明确，依照本法第一百四十一条第二款第一项的规定标的物需要运输的，出卖人将标的物交付给第一承运人后，标的物毁损、灭失的风险由买受人承担。

Article 145 If there is no agreement as to the place of delivery, or

the agreement thereto is uncertain, whereas transportation is require according to the provisions of Article 141-2-1 of this Act, risks of damage to, loss and destruction of the subject matter shall be borne by the buyer after the seller handing over the subject matter to the first carrier.

第一百四十六条 出卖人按照约定或者依照本法第一百四十一条第二款第二项的规定将标的物置于交付地点，买受人违反约定没有收取的，标的物毁损、灭失的风险自违反约定之日起由买受人承担。

Article 146 If the seller has, as agreed or pursuant to the provisions of Article 141-2 -2 of this Act, delivered the subject matter to the place of delivery whereas the buyer fails to take delivery in breach of the agreement, the risks of damage to, loss and destruction of the subject matter shall be borne by the buyer from the date of the breach.

第一百四十七条 出卖人按照约定未交付有关标的物的单证和资料的，不影响标的物毁损、灭失风险的转移。

Article 147 In any case, the failure of the seller to deliver documents and information relating to the subject matter as agreed shall not affect the transfer of the risks of the damage to, loss and destruction of the subject matter.

第一百四十八条 因标的物质量不符合质量要求，致使不能实现合同目的的，买受人可以拒绝接受标的物或者解除合同。买受人拒绝接受标的物或者解除合同的，标的物毁损、灭失的风险由出卖人承担。

Article 148 If the quality of the subject matter does not satisfied

with the requirements leading to non-compliance with the specifications of the contract, the buyer may reject the subject matter or rescind the contract. Upon the rejection of the subject matter or the rescission of the contract by the buyer, the risks of damage to, loss and destruction of the subject matter shall then be borne by the seller.

第一百四十九条 标的物毁损、灭失的风险由买受人承担的，不影响因出卖人履行债务不符合约定，买受人要求其承担违约责任的权利。

Article 149 The rights of the buyer to hold the seller liable for breach of the contract because of not performing his obligations on the part of the seller as agreed, would not be affected even if the risks of damage to, loss and destruction of the subject matter is borne by the buyer.

第一百五十条 出卖人就交付的标的物，负有保证第三人不得向买受人主张任何权利的义务，但法律另有规定的除外。

Article 150 In respect of the subject matter so delivered, the seller shall warrant to the buyer that no third party has any right to claim against the subject matter unless otherwise stipulated by law.

第一百五十一条 买受人订立合同时知道或者应当知道第三人对买卖的标的物享有权利的，出卖人不承担本法第一百五十条规定的义务。

Article 151 When the contract is made, if the buyer knows or

ought to have known the existence of a third party's right on the subject matter to be sold, the seller shall not bear the liability as stipulated in Article 150 of this Act.

第一百五十二条 买受人有确切证据证明第三人可能就标的物主张权利的，可以中止支付相应的价款，但出卖人提供适当担保的除外。

Article 152 With cogent evidence that a third party may make any claim against the subject matter, the buyer may withhold payment of the contracted price except when the seller provides appropriate surety.

第一百五十三条 出卖人应当按照约定的质量要求交付标的物。出卖人提供有关标的物质量说明的，交付的标的物应当符合该说明的质量要求。

Article 153 The seller shall deliver the subject matter in satisfaction of the terms for quality as agreed, and he shall also confirm that the subject matter so delivered shall be in compliance with the quality specifications.

第一百五十四条 当事人对标的物的质量要求没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，适用本法第六十二条第一项的规定。

Article 154 If there is no agreement or the agreement is uncertain as to the quality specifications of the subject matter, and such specifications cannot be determined according to the provisions of Article

61 of this Act, the provisions of Article 62(1) of this Act shall apply.

第一百五十五条 出卖人交付的标的物不符合质量要求的, 买受人可以依照本法第一百一十一条的规定要求承担违约责任。

Article 155 If the subject matter delivered by the seller fails to conform to the terms for quality as agreed, the buyer may claim against the seller for breach of contract pursuant to the provisions of Article 111 of this Act.

第一百五十六条 出卖人应当按照约定的包装方式交付标的物。对包装方式没有约定或者约定不明确, 依照本法第六十一条的规定仍不能确定的, 应当按照通用的方式包装, 没有通用方式的, 应当采取足以保护标的物的包装方式。

Article 156 The seller shall deliver the subject matter packed in the manner as agreed. If there is no agreement to the manner of package or the agreement relating thereto is uncertain, nor can it be determined pursuant to the provisions of Article 61 of this Act, the subject matter shall be packed according to customary practice. If no such customary practice exists, the subject matter shall be packed in such a manner to provide with sufficient protection.

第一百五十七条 买受人收到标的物时应当在约定的检验期间内检验。没有约定检验期间的, 应当及时检验。

Article 157 Upon its receipt the buyer shall inspect the subject matter within the period agreed. If no period for inspection has been

agreed, inspection shall be made promptly upon receipt of the subject matter.

第一百五十八条 当事人约定检验期间的，买受人应当在检验期间内将标的物的数量或者质量不符合约定的情形通知出卖人。买受人怠于通知的，视为标的物的数量或者质量符合约定。

当事人没有约定检验期间的，买受人应当在发现或者应当发现标的物的数量或者质量不符合约定的合理期间内通知出卖人。买受人在合理期间内未通知或者自标的物收到之日起两年内未通知出卖人的，视为标的物的数量或者质量符合约定，但对标的物有质量保证期的，适用质量保证期，不适用该两年的规定。

出卖人知道或者应当知道提供的标的物不符合约定的，买受人不受前两款规定的通知时间的限制。

Article 158 If time for inspection has been agreed, the buyer shall within the specified time provide the seller with particulars of any deviation in quantity or defect in quality of the subject matter. If the buyer fails to provide such particulars, the quantity or quality of the subject matter shall be deemed to correspond with the agreement.

If there is no agreement as to the time for inspection, the buyer shall, within a reasonable time after he has discovered or ought to have discovered any deviation in quality or defect in quantity of the subject matter, give notice to the seller. If the buyer fails to give notice to the seller within a reasonable time or fails to give notice within 2 years after

receipt of the subject matter, the quantity and quality of the subject matter shall be deemed to correspond with the contract, provided that if there is a warranty period for the subject matter, the warranty shall apply and the two-year provision shall be inapplicable.

If the seller knows or ought to have known that the subject matter does not correspond with the contract, the buyer shall not be required to give notice as referred to in the two paragraphs above.

第一百五十九条 买受人应当按照约定的数额支付价款。对价款没有约定或者约定不明确的,适用本法第六十一条、第六十二条第二项的规定。

Article 159 The buyer shall pay the agreed price in full. If the price has not been agreed or the agreement is uncertain, Article 61 and Article 62 (2) of this Act shall apply.

第一百六十条 买受人应当按照约定的地点支付价款。对支付地点没有约定或者约定不明确,依照本法第六十一条的规定仍不能确定的,买受人应当在出卖人的营业地支付,但约定支付价款以交付标的物或者交付提取标的物单证为条件的,在交付标的物或者交付提取标的物单证的所在地支付。

Article 160 The price shall be paid by the buyer at the agreed place. If the place of payment has not been agreed or the agreement is uncertain, nor can it be ascertained under Article 61 of this Act, the buyer shall make payment at the place of business of the seller, provided that if

payment is conditional upon delivery of the subject matter or of the delivery document thereof, payment shall then be made at the place of delivery of the subject matter or its delivery document.

第一百六十一条 买受人应当按照约定的时间支付价款。对支付时间没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，买受人应当在收到标的物或者提取标的物单证的同时支付。

Article 161 The price shall be paid by the buyer at the time agreed. If the time of payment has not been agreed, or such agreement is uncertain and cannot be ascertained under Article 61 of this Act, the buyer shall make payment against taking delivery of the subject matter or receiving the delivery document thereof.

第一百六十二条 出卖人多交标的物的，买受人可以接收或者拒绝接收多交的部分。买受人接收多交部分的，按照合同的价格支付价款；买受人拒绝接收多交部分的，应当及时通知出卖人。

Article 162 If the quantity of the subject matter so delivered by the seller is in excessive of what is contracted for, the buyer may accept or refuse to accept the excess. A buyer accepting the excess shall pay the price at the contract rate; a buyer refusing to accept the excess shall promptly give notice to the seller.

第一百六十三条 标的物在交付之前产生的孳息，归出卖人所有，交付之后产生的孳息，归买受人所有。

Article 163 Interest accrued from the subject matter before

delivery shall belong to the seller whereas interest accrued after delivery shall belong to the buyer.

第一百六十四条 因标的物主物不符合约定而解除合同的，解除合同的效力及于从物。因标的物的从物不符合约定被解除的，解除的效力不及于主物。

Article 164 If the contract is rescinded due to the fact that the essential elements of the subject matter do not comply with the agreed terms, the effect of the rescission shall extend to all collateral elements. If the terms of the contract relating to the collateral elements of the subject matter are revoked because of the collateral elements not complying with the agreed terms, the effect of such revocation shall not extend to the essential elements of the contract.

第一百六十五条 标的物为数物，其中一物不符合约定的，买受人可以就该物解除，但该物与他物分离使标的物的价值显受损害的，当事人可以就数物解除合同。

Article 165 If the subject matter consists of more than one article and one fails to comply with the contract, the buyer may elect to discharge the obligations under the contract as regards that article, provided that if segregation of that article from the other articles will result in distinct diminution in the value of the subject matter, the parties may discharge the obligations under the contract for delivery of other articles.

第一百六十六条 出卖人分批交付标的物的，出卖人对其中一批标的物不交付或者交付不符合约定，致使该批标的物不能实现合同目的的，买受人可以就该批标的物解除。

出卖人不交付其中一批标的物或者交付不符合约定，致使今后其他各批标的物的交付不能实现合同目的的，买受人可以就该批以及今后其他各批标的物解除。

买受人如果就其中一批标的物解除，该批标的物与其他各批标的物相互依存的，可以就已经交付和未交付的各批标的物解除。

Article 166 If the subject matter is to be delivered by installments, the seller fails to deliver an installment or the delivery of the same fails to comply with the contract, causing the purpose of the contract in relation to that installment unachievable, the buyer may discharge the obligations under the contract relating to that installment.

If the seller fails to make delivery of one installment or the delivery fails to comply with the contract, causing the purpose of the contract in relation to the delivery of all future installments unachievable, the buyer may rescind the whole contract.

If the buyer discharges the obligations under the contract in relation to one installment which is inter-dependent with the other installments of the subject matter, the buyer may elect to discharge the obligations under the contract in relation to other installments whether or not already delivered.

第一百六十七条 分期付款的买受人未支付到期价款的金额达到全部价款的五分之一的，出卖人可以要求买受人支付全部价款或者解除合同。

出卖人解除合同的，可以向买受人要求支付该标的物的使用费。

Article 167 If payment is to be made by installments, the buyer fails to make one installment payment when due and payable amounting to one fifth of the contract price, the seller may demand the buyer to pay forthwith all the installments outstanding at the time of the default in one lump sum or rescind the contract.

If the subject matter has been used by the buyer, the seller rescinding the contract may require the buyer to pay for such use.

第一百六十八条 凭样品买卖的当事人应当封存样品，并可以对样品质量予以说明。出卖人交付的标的物应当与样品及其说明的质量相同。

Article 168 The parties to a sale by sample shall seal up the sample and may describe the quality of the sample. The subject matter delivered by the seller shall correspond with the sample as well as the descriptions of quality.

第一百六十九条 凭样品买卖的买受人不知道样品有隐蔽瑕疵的，即使交付的标的物与样品相同，出卖人交付的标的物的质量仍然应当符合同种物的通常标准。

Article 169 In a case of sale by sample wherein the buyer is

unaware of any latent defect in the sample, notwithstanding that the subject matter so delivered by the seller corresponds with the sample, the seller shall still be liable to deliver the subject matter in accordance with common quality standard of the same kind.

第一百七十条 试用买卖的当事人可以约定标的物的试用期间。对试用期间没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，由出卖人确定。

Article 170 In case of sale by trial usage the trial period may be agreed by the parties. If there is no agreement as to the trial period, or the agreement relating thereto is uncertain and cannot be ascertained under Article 61 of this Act, such period shall then be determined by the seller.

第一百七十一条 试用买卖的买受人在试用期内可以购买标的物，也可以拒绝购买。试用期间届满，买受人对是否购买标的物未作表示的，视为购买。

Article 171 For the sale by trial usage, the buyer may purchase the subject matter or decline to purchase the same during the trial period. Upon expiry of the trial period, if the buyer has made no indication as to the purchase, the subject matter shall be deemed to have been purchased by the buyer.

第一百七十二条 招标投标买卖的当事人的权利和义务以及招标投标程序等，依照有关法律、行政法规的规定。

Article 172 In case of sale by tender, the rights and obligations

of the parties thereto and the procedure thereof shall be governed by the relevant laws and administrative regulations.

第一百七十三条 拍卖的当事人的权利和义务以及拍卖程序等，依照有关法律、行政法规的规定。

Article 173 In case of sale by auction, the rights and obligations of the parties thereto and the procedure thereof shall be governed by the relevant laws and administrative regulations.

第一百七十四条 法律对其他有偿合同有规定的，依照其规定；没有规定的，参照买卖合同的有关规定。

Article 174 Other specified contracts with consideration shall be subject to provisions as set out by law relating thereto, or otherwise in accordance with the provisions relating to contracts for sale and purchase specified by this Act.

第一百七十五条 当事人约定易货交易，转移标的物的所有权的，参照买卖合同的有关规定。

Article 175 In case of barter whereby the titles of the subject matters shall be exchanged, the provisions under this Act relating to contracts for sale and purchase shall apply.

第十章 供用电、水、气、热力合同

Chapter 10 Contracts for Supply and Use of Electricity,

Water, Gas or Heating

第一百七十六条 供用电合同是供电人向用电人供电，用电人支付电费的合同。

Article 176 A contract for the supply and use of electricity is one whereby the supplier provides electricity to the user who pays for the charges.

第一百七十七条 供用电合同的内容包括供电的方式、质量、时间，用电容量、地址、性质，计量方式，电价、电费的结算方式，供用电设施的维护责任等条款。

Article 177 A contract of the supply and use of electricity shall set out terms for mode, quality and time of the supply; capacity, location and type of the use, metering, price and payment of charges; as well as liability for maintenance of facilities thereof.

第一百七十八条 供用电合同的履行地点，按照当事人约定；当事人没有约定或者约定不明确的，供电设施的产权分界处为履行地点。

Article 178 The point of delivery under a contract for the supply and use of electricity shall be agreed by the parties; if there is no such agreement or the agreement is uncertain, the point of delivery shall be the exit point of the electricity facilities installed where the property of the supplier comes to an end.

第一百七十九条 供电人应当按照国家规定的供电质量标准和约定安全供电。供电人未按照国家规定的供电质量标准和约定安全供

电，造成用电人损失的，应当承担损害赔偿责任。

Article 179 The electricity supplier shall provide electricity in a safe manner in accordance with the quality requirements prescribed by the State and the terms agreed. In default, the supplier shall be held liable for any loss and damage so sustained by the user.

第一百八十条 供电人因供电设施计划检修、临时检修、依法限电或者用电人违法用电等原因，需要中断供电时，应当按照国家有关规定事先通知用电人。未事先通知用电人中断供电，造成用电人损失的，应当承担损害赔偿责任。

Article 180 The electricity supplier shall give prior notice to the user as prescribed by the State for any necessary suspension of the supply due to routine maintenance or emergency repairs, or curtailment of supply in accordance with the laws, or caused by unlawful use of the user. In default of such notice, the supplier shall be liable for loss and damage occasioned to the user by such suspension.

第一百八十一条 因自然灾害等原因断电，供电人应当按照国家有关规定及时抢修。未及时抢修，造成用电人损失的，应当承担损害赔偿责任。

Article 181 In case of power failure caused by natural disaster or Act of God, the electricity supplier shall carry out emergency repairs within the time as prescribed by the State. Omission to effect such repairs, the supplier shall be liable for any loss and damage suffered by the user.

第一百八十二条 用电人应当按照国家有关规定和当事人的约定及时交付电费。用电人逾期不交付电费的，应当按照约定支付违约金。经催告用电人在合理期限内仍不交付电费和违约金的，供电人可以按照国家规定的程序中止供电。

Article 182 Punctual payment of electricity charges shall be made by the user in accordance with any requirements of the State and the terms of the agreement. In default of payment, the user shall pay the liquidated damages as agreed. If despite of reminders the electricity charges remain unpaid, the supplier may suspend the supply in accordance with the procedures prescribed by the State.

第一百八十三条 用电人应当按照国家有关规定和当事人的约定安全用电。用电人未按照国家有关规定和当事人的约定安全用电，造成供电人损失的，应当承担损害赔偿责任。

Article 183 An electricity user shall use electricity in a safe manner in accordance with the requirements of the State or as agreed. In default the user shall be held liable for damage caused to the electricity supplier.

第一百八十四条 供用水、供用气、供用热力合同，参照供用电合同的有关规定。

Article 184 Reference to the provisions of the contract for the supply and use of electricity shall be made to the contract for the supply and use of water, gas and heating.

第十一章 赠与合同

Chapter 11 Contracts of Gift

第一百八十五条 赠与合同是赠与人将自己的财产无偿给予受赠人，受赠人表示接受赠与的合同。

Article 185 A contract of gift is one whereby for no consideration a donor transfers his property to a donee who accepts the property as gift.

第一百八十六条 赠与人在赠与财产的权利转移之前可以撤销赠与。

具有救灾、扶贫等社会公益、道德义务性质的赠与合同或者经过公证的赠与合同，不适用前款规定。

Article 186 Before the title to the gift property is transferred, a donor may revoke the gift.

The provisions of this Article above shall not apply to a contract of gift for public benefits as donation or for moral obligations with regard to the relief of natural disaster or poverty, or to a contract of gift which has been notarized.

第一百八十七条 赠与的财产依法需要办理登记等手续的，应当办理有关手续。

Article 187 If gift of the property is required by law to be registered, the relevant procedures shall be complied with.

第一百八十八条 具有救灾、扶贫等社会公益、道德义务性质的

赠与合同或者经过公证的赠与合同，赠与人不交付赠与的财产的，受赠人可以要求交付。

Article 188 In case of a contract of gift for public benefits or moral obligations such as for the relief of natural disaster or poverty, or a contract of gift which has been notarized, the donee may demand for delivery of the gift if the donor fails to deliver the subject matter thereof.

第一百八十九条 因赠与人故意或者重大过失致使赠与的财产毁损、灭失的，赠与人应当承担损害赔偿责任。

Article 189 If the subject matter of the gift is damaged or perished by reason of willful or material wrongful act on the part of donor, he shall be held liable for damages.

第一百九十条 赠与可以附义务。

赠与附义务的，受赠人应当按照约定履行义务。

Article 190 A gift may be made with obligations.

If a gift is made subject to any obligations, the donee shall perform the obligations as agreed.

第一百九十一条 赠与的财产有瑕疵的，赠与人不承担责任。附义务的赠与，赠与的财产有瑕疵的，赠与人在附义务的限度内承担与出卖人相同的责任。

赠与人故意不告知瑕疵或者保证无瑕疵，造成受赠人损失的，应当承担损害赔偿责任。

Article 191 The donor shall not be held liable for any defect in

the gift property. If the gift is made subject to any obligations on the part of the donee, then to the extent of such obligations, the donor shall be liable for any defect in the gift property as if he were the seller of the property.

If a donor knowingly fails to disclose the defect or otherwise warrants to the donee that there is no defect, causing damage to the donee, the donor shall be liable for damages.

第一百九十二条 受赠人有下列情形之一的，赠与人可以撤销赠与：

- （一）严重侵害赠与人或者赠与人的近亲属；
- （二）对赠与人有扶养义务而不履行；
- （三）不履行赠与合同约定的义务。

赠与人的撤销权，自知道或者应当知道撤销原因之日起一年内行使。

Article 192 The donor may revoke the gift if the donee:

- (1) causes grave harm to the donor or any of his next of kin;
- (2) fails to perform any obligation to provide maintenance to the donor; and
- (3) fails to perform any agreed obligations under the contract of gift.

The donor has the right to rescind the contract of gift within one year after he knows or ought to have known of the cause giving rise to the rescission.

第一百九十三条 因受赠人的违法行为致使赠与人死亡或者丧失民事行为能力的，赠与人的继承人或者法定代理人可以撤销赠与。

赠与人的继承人或者法定代理人的撤销权，自知道或者应当知道撤销原因之日起六个月内行使。

Article 193 If the donor dies or loses his civil capacity to act because of the unlawful act of the donee, the successor or statutory legal representative of the donor may rescind the contract of gift.

The successor or statutory legal representative of the donor shall exercise his right to rescind within six months after he knows or ought to have known the cause thereof

第一百九十四条 撤销权人撤销赠与的，可以向受赠人要求返还赠与的财产。

Article 194 The donor having rescinded the contract may require the donee to return the gift property.

第一百九十五条 赠与人的经济状况显著恶化，严重影响其生产经营或者家庭生活的，可以不再履行赠与义务。

Article 195 If the financial condition of the donor substantially deteriorates thereby seriously affecting his business or the livelihood of his family, the donor may cease to perform his obligations under the contract of gift.

第十二章 借款合同

Chapter 12 Loan Agreements

第一百九十六条 借款合同是借款人向贷款人借款，到期返还借款并支付利息的合同。

Article 196 A loan agreement is a contract whereby the borrower borrows money from the lender, and repays the loan and interests thereof in full on maturity.

第一百九十七条 借款合同采用书面形式，但自然人之间借款另有约定的除外。

借款合同的内容包括借款种类、币种、用途、数额、利率、期限和还款方式等条款。

Article 197 A loan agreement shall be in writing, except that an agreement between individuals provides otherwise.

A loan agreement shall contain provisions specifying the details of the loan, including its category, currency, application, amount, rate of interest, term and manner of repayment.

第一百九十八条 订立借款合同，贷款人可以要求借款人提供担保。担保依照《中华人民共和国担保法》的规定。

Article 198 In a loan agreement, the lender may require the borrower to provide security which shall be governed by the Security Act of the People's Republic of China.

第一百九十九条 订立借款合同，借款人应当按照贷款人的要求提供与借款有关的业务活动和财务状况的真实情况。

Article 199 In a loan agreement and upon demand of the lender, the borrower shall provide true details of his business activities in connection with the loan and of his financial conditions.

第二百条 借款的利息不得预先在本金中扣除。利息预先在本金中扣除的，应当按照实际借款数额返还借款并计算利息。

Article 200 No interest shall be deducted in advance from the principal of the loan.

If interest is deducted in advance from the principal, repayment of the loan and interest shall be calculated according to the actual amount borrowed.

第二百零一条 贷款人未按照约定的日期、数额提供借款，造成借款人损失的，应当赔偿损失。

借款人未按照约定的日期、数额收取借款的，应当按照约定的日期、数额支付利息。

Article 201 If a lender fails to provide the loan on the agreed date or for the agreed sum, he shall be liable for any loss suffered by the borrower.

The borrower shall pay interest as agreed, even though the agreed sum is not drawn in full or not collected on the agreed date by the borrower.

第二百零二条 贷款人按照约定可以检查、监督借款的使用情况。借款人应当按照约定向贷款人定期提供有关财务会计报表等资

料。

Article 202 The lender may, as agreed, check and oversee the appropriation of the loan by the borrower. The borrower shall, as agreed, provide the lender with the required financial and accounting statements.

第二百零三条 借款人未按照约定的借款用途使用借款的，贷款人可以停止发放借款、提前收回借款或者解除合同。

Article 203 If the borrower fails to appropriate the loan for the specified purpose as agreed, the lender may suspend the release of the loan, and call back the loan before its maturity or rescind the agreement, as appropriate.

第二百零四条 办理贷款业务的金融机构贷款的利率，应当按照中国人民银行规定的贷款利率的上下限确定。

Article 204 Interest rates of loans shall be fixed by a qualified financial institution as lender within the range as set out by the People's Bank of China.

第二百零五条 借款人应当按照约定的期限支付利息。对支付利息的期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定，借款期间不满一年的，应当在返还借款时一并支付；借款期间一年以上的，应当在每届满一年时支付，剩余期间不满一年的，应当在返还借款时一并支付。

Article 205 The borrower shall, as agreed, pay interest when

becoming due and payable. If the time for payment of the interest has not been agreed in the loan agreement or the agreement is uncertain for payment thereof, nor can it be determined according to the provisions of Article 61 of this Act, thus for a loan of a fixed term of less than one year, interest shall be paid upon the repayment of the principal. If the term of the loan is for more than one year, interest shall be paid at the end of each and every one year term, and for the remaining months of the loan, interest shall be paid upon full settlement of the loan.

第二百零六条 借款人应当按照约定的期限返还借款。对借款期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，借款人可以随时返还；贷款人可以催告借款人在合理期限内返还。

Article 206 The borrower shall repay the loan within the time as agreed. If there is no agreement as to the term of repayment or the agreement relating thereto is uncertain, nor can the repayment term be determined according to the provisions of Article 61 of this Act, thus the borrower may repay the loan at any time, whereas the lender may by way of notice demand the borrower to repay the loan within a reasonable time.

第二百零七条 借款人未按照约定的期限返还借款的，应当按照约定或者国家有关规定支付逾期利息。

Article 207 If the borrower fails to repay the loan within the time as agreed, overdue interest, if any, shall be paid by the borrower as

agreed or in accordance with the relevant provisions of the State.

第二百零八条 借款人提前偿还借款的，除当事人另有约定的以外，应当按照实际借款的期间计算利息。

Article 208 If the borrower repays the loan in advance, the interest payable shall be calculated according to the actual period of the borrowing unless agreed otherwise by the parties.

第二百零九条 借款人可以在还款期限届满之前向贷款人申请展期。贷款人同意的，可以展期。

Article 209 The borrower may request the lender to extend the term for repayment before expiration and such term may be extended accordingly if the lender agrees.

第二百一十条 自然人之间的借款合同，自贷款人提供借款时生效。

Article 210 A loan agreement between individuals shall take effect upon provision of funds by the lender.

第二百一十一条 自然人之间的借款合同对支付利息没有约定或者约定不明确的，视为不支付利息。

自然人之间的借款合同约定支付利息的，借款的利率不得违反国家有关限制借款利率的规定。

Article 211 If there is no agreement between individuals as to provision for payment of interest for a loan or the agreement relating thereto is uncertain, no interest shall be deemed payable.

If the loan agreement between individuals stipulates payment of interest, the interest rate shall not be contravened any provisions for restriction thereof specified by the State.

第十三章 租赁合同

Chapter 13 Hiring Contracts

第二百一十二条 租赁合同是出租人将租赁物交付承租人使用、收益，承租人支付租金的合同。

Article 212 A hiring contract means a contract whereby the lender shall let the property to a hirer for his use and benefits, and the hirer shall pay for the rent.

第二百一十三条 租赁合同的内容包括租赁物的名称、数量、用途、租赁期限、租金及其支付期限和方式、租赁物维修等条款。

Article 213 A hiring contract shall contain such provisions relating to the subject matter of hiring in respect of name, quantity, use, term, rental, manner of payment, and maintenance thereof.

第二百一十四条 租赁期限不得超过二十年。超过二十年的，超过部分无效。

租赁期间届满，当事人可以续订租赁合同，但约定的租赁期限自续订之日起不得超过二十年。

Article 214 No hiring period shall exceed 20 years. If it exceeds 20 years, the period that so exceeds shall be void.

The parties may renew the hiring term upon the expiration, provided

that the term agreed for renewal shall not exceed 20 years from the date of renewal.

第二百一十五条 租赁期限六个月以上的，应当采用书面形式。当事人未采用书面形式的，视为不定期租赁。

Article 215 The hiring period for six months or more shall be in writing. If not reduced into writing by the parties, the hiring period shall be deemed without a fixed term.

第二百一十六条 出租人应当按照约定将租赁物交付承租人，并在租赁期间保持租赁物符合约定的用途。

Article 216 The lender shall deliver the subject matter to the hirer as agreed and maintain the subject matter fit for the agreed purpose during the hiring period.

第二百一十七条 承租人应当按照约定的方法使用租赁物。对租赁物的使用方法没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当按照租赁物的性质使用。

Article 217 The hirer shall use the subject matter in the agreed manner. If there is no agreement as to the manner for use of the subject matter or the agreement relating thereto is uncertain, nor can it be ascertained under Article 61 of this Act, such manner shall be determined according to the nature of the subject matter.

第二百一十八条 承租人按照约定的方法或者租赁物的性质使用租赁物，致使租赁物受到损耗的，不承担损害赔偿责任。

Article 218 By using the subject matter in the agreed manner or according to its nature, the hirer shall not be held liable for any damages for losses due to wear and tear as a result of such use.

第二百一十九条 承租人未按照约定的方法或者租赁物的性质使用租赁物，致使租赁物受到损失的，出租人可以解除合同并要求赔偿损失。

Article 219 If the hirer uses the subject matter in a manner amounting to breach of the agreed terms or against the nature of the subject matter causing damage thereto, the lender may rescind the contract and claim for damages.

第二百二十条 出租人应当履行租赁物的维修义务，但当事人另有约定的除外。

Article 220 The lender shall maintain the subject matter in good order unless otherwise agreed by the parties.

第二百二十一条 承租人在租赁物需要维修时可以要求出租人在合理期限内维修。出租人未履行维修义务的，承租人可以自行维修，维修费用由出租人负担。因维修租赁物影响承租人使用的，应当相应减少租金或者延长租期。

Article 221 When necessary, the hirer may demand the lender to carry out within a reasonable time any maintenance and repair to the subject matter as required. If the lender fails to maintain or repair, the hirer may effect the same at the expense of the lender. If such

maintenance or repair affects the use of the subject matter, the rent shall be abated or the hiring term be extended accordingly.

第二百二十二条 承租人应当妥善保管租赁物，因保管不善造成租赁物毁损、灭失的，应当承担损害赔偿责任。

Article 222 The hirer shall keep the subject matter in good condition, and in default shall be held liable for any damage to or loss of the subject matter so caused.

第二百二十三条 承租人经出租人同意，可以对租赁物进行改善或者增设他物。

承租人未经出租人同意，对租赁物进行改善或者增设他物的，出租人可以要求承租人恢复原状或者赔偿损失。

Article 223 With the consent of the lender the hirer may make improvement or addition to the subject matter.

If the hirer makes any improvement or addition to the subject matter without the consent of the lender, the lender may either require the hirer to make reinstatement or demand for damages.

第二百二十四条 承租人经出租人同意，可以将租赁物转租给第三人。承租人转租的，承租人与出租人之间的租赁合同继续有效，第三人对租赁物造成损失的，承租人应当赔偿损失。

承租人未经出租人同意转租的，出租人可以解除合同。

Article 224 With the lender's consent the hirer may sublet the subject matter to a third party. If the hirer sublets, the hiring contract

between the hirer and the lender shall remain valid but the hirer shall be held liable for any damage or loss caused to the subject matter by the third party.

The lender may rescind the contract if the hirer purports to sublet the subject matter without the consent of the lender.

第二百二十五条 在租赁期间因占有、使用租赁物获得的收益，归承租人所有，但当事人另有约定的除外。

Article 225 Any gain arising from the possession or use of the subject matter shall belong to the hirer unless otherwise agreed by the parties.

第二百二十六条 承租人应当按照约定的期限支付租金。对支付期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定，租赁期间不满一年的，应当在租赁期间届满时支付；租赁期间一年以上的，应当在每届满一年时支付，剩余期间不满一年的，应当在租赁期间届满时支付。

Article 226 The hirer shall pay rents within the time as agreed. If the time for payment has not been agreed or is uncertain, nor can it be determined according to the provisions of Article 61 of this Act, the rents shall be paid upon the expiration of the hiring if the term of the hire is for less than one year. If the term of the hire is for more than one year, the rents shall be paid at the end of every one year term, and for the remaining months payment of rents shall be made upon expiration of the

hiring.

第二百二十七条 承租人无正当理由未支付或者迟延支付租金的,出租人可以要求承租人在合理期限内支付。承租人逾期不支付的,出租人可以解除合同。

Article 227 If the hirer fails to pay or delays the payment of the rents without good cause, the lender may require the hirer to make payment within a reasonable time after default. If payment remains unpaid after such reasonable time, the lender may rescind the contract.

第二百二十八条 因第三人主张权利,致使承租人不能对租赁物使用、收益的,承租人可以要求减少租金或者不支付租金。

第三人主张权利的,承租人应当及时通知出租人。

Article 228 If a third party claims any rights over the subject matter, depriving the hirer from enjoying or obtaining benefit from the subject matter, the hirer may require abatement or non-payment of the rents.

Upon a third party making such a claim, the hirer shall promptly notify the lender.

第二百二十九条 租赁物在租赁期间发生所有权变动的,不影响租赁合同的效力。

Article 229 Change of the ownership of the subject matter during the term of the hire shall not affect the validity of the hiring contract.

第二百三十条 出租人出卖租赁房屋的,应当在出卖之前的合理

期限内通知承租人，承租人享有以同等条件优先购买的权利。

Article 230 If a landlord sells his real property on leasing, he shall give reasonable prior notice to the tenant who shall have the right of pre-emption on the same terms.

第二百三十一条 因不可归责于承租人的事由，致使租赁物部分或者全部毁损、灭失的，承租人可以要求减少租金或者不支付租金；因租赁物部分或者全部毁损、灭失，致使不能实现合同目的的，承租人可以解除合同。

Article 231 If there is any partial or total damage to or loss of the subject matter due to any cause not attributable to the hirer, the hirer may require abatement to or withhold payment of the rents. If the partial or total damage to or loss of the subject matter renders the purpose of the contract unachievable, the hirer may rescind the contract.

第二百三十二条 当事人对租赁期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，视为不定期租赁。当事人可以随时解除合同，但出租人解除合同应当在合理期限之前通知承租人。

Article 232 If the term of the hire has not been agreed or is uncertain, nor can it be ascertained under Article 61 of this Act, the term of the hire shall be deemed to be unfixed. In such case, either party may rescind the contract at any time, provided that the lender who rescinds shall give reasonable prior notice to the hirer.

第二百三十三条 租赁物危及承租人的安全或者健康的，即使承租人订立合同时明知该租赁物质量不合格，承租人仍然可以随时解除合同。

Article 233 If the property for hiring is prejudicial to the safety or health of the hirer, he may rescind the contract at any time notwithstanding that at the time of entering into the contract he was well aware of the quality of the property for hiring being substandard.

第二百三十四条 承租人在房屋租赁期间死亡的，与其生前共同居住的人可以按照原租赁合同租赁该房屋。

Article 234 If a tenant of any premises dies during the term of his tenancy, the person living with him at the time of his death may take up the tenancy on the same terms (by way of novation) .

第二百三十五条 租赁期间届满，承租人应当返还租赁物。返还的租赁物应当符合按照约定或者租赁物的性质使用后的状态。

Article 235 Upon expiration of the hiring the hirer shall deliver to the lender vacant possession of the property in a condition after having been used in a way that is consistent with the agreement or with the nature of the property.

第二百三十六条 租赁期间届满，承租人继续使用租赁物，出租人没有提出异议的，原租赁合同继续有效，但租赁期限为不定期。

Article 236 If after the expiration of the term of the hiring, the hirer continues on using the property, and to which the lender does not

object, the hiring shall be continued at will.

第十四章 融资租赁合同

Chapter 14 Finance Lease

第二百三十七条 融资租赁合同是出租人根据承租人对出卖人、租赁物的选择，向出卖人购买租赁物，提供给承租人使用，承租人支付租金的合同。

Article 237 A finance lease is a contract whereby the lender buys a specified hiring property from a seller prescribed by the hirer for letting the same to the hirer for his use against payment of rents by such hirer.

第二百三十八条 融资租赁合同的内容包括租赁物名称、数量、规格、技术性能、检验方法、租赁期限、租金构成及其支付期限和方式、币种、租赁期间届满租赁物的归属等条款。

融资租赁合同应当采用书面形式。

Article 238 A finance lease shall contain such particulars of the leasing property as its descriptions, quantities, specifications, technical characteristics, inspection methods, term of the lease, composition of rents, time and manner of payment of rents, currency of rents to be paid, and ownership of the property upon expiration of the term of the lease.

A finance lease shall be in writing.

第二百三十九条 出租人根据承租人对出卖人、租赁物的选择订立的买卖合同，出卖人应当按照约定向承租人交付标的物，承租人享

有与受领标的物有关的买受人的权利。

Article 239 In the case of a lender who by a purchase agreement buys from a seller specified by the hirer a leasing property prescribed by the hirer, the seller of the purchase agreement shall deliver the leasing property to the hirer in accordance with the purchase agreement whereby the hirer shall have the right to receive the property as if he were the buyer.

第二百四十条 出租人、出卖人、承租人可以约定，出卖人不履行买卖合同义务的，由承租人行使索赔的权利。承租人行使索赔权利的，出租人应当协助。

Article 240 The lender, the seller and the hirer may agree that the right to claim against the seller for default in the performance of the purchase agreement shall be exercised by the hirer. If and when the hirer exercises such right, the lender shall provide proper assistance to the hirer.

第二百四十一条 出租人根据承租人对出卖人、租赁物的选择订立的买卖合同，未经承租人同意，出租人不得变更与承租人有关的合同内容。

Article 241 Once the lender enters into a purchase agreement with a seller specified by the hirer for a leasing property prescribed by the hirer, he may not vary any provision contained therein relating to the hirer without the consent of the hirer.

第二百四十二条 出租人享有租赁物的所有权。承租人破产的，租赁物不属于破产财产。

Article 242 The ownership of the leasing property shall remain vested in the lender. If the hirer becomes bankrupt, the leasing property shall not form an asset of the bankrupt.

第二百四十三条 融资租赁合同的租金，除当事人另有约定的以外，应当根据购买租赁物的大部分或者全部成本以及出租人的合理利润确定。

Article 243 Unless otherwise agreed by the parties, rents under a finance lease shall be determined in accordance with the main or entire cost of acquisition of the leasing property together with the reasonable profits of the lender.

第二百四十四条 租赁物不符合约定或者不符合使用目的的，出租人不承担责任，但承租人依赖出租人的技能确定租赁物或者出租人干预选择租赁物的除外。

Article 244 The lender shall not be held liable if the leasing property does not conform to the agreement or is not fit for its specific purpose, unless the hirer relies on the skill of the lender or otherwise the lender interferes in the selection of the leasing property.

第二百四十五条 出租人应当保证承租人对租赁物的占有和使用。

Article 245 The lender shall ensure that the hirer has possession

and use of the leasing property.

第二百四十六条 承租人占有租赁物期间，租赁物造成第三人的人身伤害或者财产损害的，出租人不承担责任。

Article 246 The lender shall not be held liable for any personal injury or damage to property of a third party caused by the leasing property while it is in the possession of the hirer.

第二百四十七条 承租人应当妥善保管、使用租赁物。

承租人应当履行占有租赁物期间的维修义务。

Article 247 The hirer shall exercise proper care and use over the leasing property.

The hirer shall properly maintain and repair the leasing property while it is in his possession.

第二百四十八条 承租人应当按照约定支付租金。承租人经催告后在合理期限内仍不支付租金的，出租人可以要求支付全部租金；也可以解除合同，收回租赁物。

Article 248 The hirer shall pay rents as agreed. If payment of rents shall be in default despite of demand of the lender by way of a reasonable notice, the lender may demand immediate payment of all rents in full by one lump sum or may elect to rescind the lease and to recover possession of the leasing property.

第二百四十九条 当事人约定租赁期间届满租赁物归承租人所有，承租人已经支付大部分租金，但无力支付剩余租金，出租人因此

解除合同收回租赁物的，收回的租赁物的价值超过承租人欠付的租金以及其他费用的，承租人可以要求部分返还。

Article 249 If by agreement, the hirer shall become the owner of the leasing property upon expiration of the lease, and if the hirer has paid the greater part of the rent but being unable to pay the remaining rent whereupon the lender rescinds the lease and recovers possession of the leasing property, then if the value of the leasing property exceeds the outstanding rent and other charges due and payable, the hirer may demand the lender to make partial reimbursement.

第二百五十条 出租人和承租人可以约定租赁期间届满租赁物的归属。对租赁物的归属没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，租赁物的所有权归出租人。

Article 250 The ownership of the leasing property at the expiration of the lease shall be determined by the hirer and the lender as agreed. If there is no agreement on the ownership or the agreement relating thereto is uncertain, nor can it be ascertained under Article 61 of this Act, the ownership of the leasing property shall remain with the lender.

第十五章 承揽合同

Chapter 15 Contracts With Contractors

第二百五十一条 承揽合同是承揽人按照定作人的要求完成工

作，交付工作成果，定作人给付报酬的合同。

承揽包括加工、定作、修理、复制、测试、检验等工作。

Article 251 A contract with a contractor is an agreement whereby the contractor completes the work or provides the services in accordance with the client's requirements and delivers the finished work against payment of remuneration by the client.

The work referred to above shall include processing, making to order, repair, duplicating, testing, inspection and others.

第二百五十二条 承揽合同的内容包括承揽的标的、数量、质量、报酬、承揽方式、材料的提供、履行期限、验收标准和方法等条款。

Article 252 A contract with a contractor shall contain provisions relating to subject matter, its quantity and quality, remuneration, manner of service by the contractor, supply of materials, time for performance, and methods and standards for inspection upon acceptance.

第二百五十三条 承揽人应当以自己的设备、技术和劳力，完成主要工作，但当事人另有约定的除外。

承揽人将其承揽的主要工作交由第三人完成的，应当就该第三人完成的工作成果向定作人负责；未经定作人同意的，定作人也可以解除合同。

Article 253 Unless otherwise agreed by the parties, the contractor shall complete the main work with his own equipment, skill and labour.

A contractor sub-contracting the work to a third party shall be

responsible to the client for the work done by the third party. Without the consent of the client in respect of such sub-contract, the client may also rescind the contract.

第二百五十四条 承揽人可以将其承揽的辅助工作交由第三人完成。承揽人将其承揽的辅助工作交由第三人完成的，应当就该第三人完成的工作成果向定作人负责。

Article 254 A contractor may subcontract any ancillary work to a third party whereby the contractor shall be responsible to his client for the result of the ancillary work.

第二百五十五条 承揽人提供材料的，承揽人应当按照约定选用材料，并接受定作人检验。

Article 255 If the materials are provided by the contractor, he shall use the materials as agreed and accede to any inspection by his client.

第二百五十六条 定作人提供材料的，定作人应当按照约定提供材料。承揽人对定作人提供的材料，应当及时检验，发现不符合约定时，应当及时通知定作人更换、补齐或者采取其他补救措施。

承揽人不得擅自更换定作人提供的材料，不得更换不需要修理的零部件。

Article 256 If the materials are provided by his client who shall supply the materials as agreed, the contractor shall conduct inspection of the materials so provided by the client at any time. Upon discovery of any

material not conforming to the agreement, the contractor shall forthwith notify his client for replacement, making good any shortage or taking any other remedies.

The contractor shall not unilaterally replace any materials provided by his client, or replace any component if repair is not required.

第二百五十七条 承揽人发现定作人提供的图纸或者技术要求不合理的，应当及时通知定作人。因定作人怠于答复等原因造成承揽人损失的，应当赔偿损失。

Article 257 If the contractor finds any drawing provided by or any technical requirements of his client being unreasonable, the contractor shall forthwith notify his client who shall be liable for such damages arising from delay in making a reply to the contractor.

第二百五十八条 定作人中途变更承揽工作的要求，造成承揽人损失的，应当赔偿损失。

Article 258 If in the course of the work the client varies any contractual requirement of the work thereby causing any loss to the contractor, the client shall be liable for damages.

第二百五十九条 承揽工作需要定作人协助的，定作人有协助的义务。定作人不履行协助义务致使承揽工作不能完成的，承揽人可以催告定作人在合理期限内履行义务，并可以顺延履行期限；定作人逾期不履行的，承揽人可以解除合同。

Article 259 The client shall provide such assistance as the

contractor may require. If the work cannot be completed by reason of failure on the part of the client to provide such assistance, the contractor may demand the client to perform such obligations within a reasonable time, and to extend the time for completion accordingly. If the client fails to perform the obligations within the time, the contractor may rescind the contract.

第二百六十条 承揽人在工作期间,应当接受定作人必要的监督检验。定作人不得因监督检验妨碍承揽人的正常工作。

Article 260 The contractor shall in the course of work accede to the necessary supervision and inspection by his client who shall not cause any disruption to the contractor's ordinary course of work upon such supervision or inspection.

第二百六十一条 承揽人完成工作的,应当向定作人交付工作成果,并提交必要的技术资料和相关质量证明。定作人应当验收该工作成果。

Article 261 Upon completion of the work the contractor shall deliver the completed work to his client together with the necessary technical data and relevant quality certification. The client shall inspect the completed work for acceptance.

第二百六十二条 承揽人交付的工作成果不符合质量要求的,定作人可以要求承揽人承担修理、重作、减少报酬、赔偿损失等违约责任。

Article 263 If the completed work delivered by the contractor does not meet with the quality specifications, the client may require the contractor to bear responsibility for remedies to the defects including repairing, reworking, reduction in remuneration, or payment of damages.

第二百六十三条 定作人应当按照约定的期限支付报酬。对支付报酬的期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，定作人应当在承揽人交付工作成果时支付；工作成果部分交付的，定作人应当相应支付。

Article 263 The client shall pay the remuneration within the agreed time. If there is no agreement to the time for payment of the remuneration, or the agreement is uncertain and cannot be ascertained under Article 61 of this Act, the client shall pay the contractor upon delivery of the completed work. If the completed work is delivered in part, the client shall make partial payment accordingly.

第二百六十四条 定作人未向承揽人支付报酬或者材料费等价款的，承揽人对完成的工作成果享有留置权，但当事人另有约定的除外。

Article 264 Unless otherwise agreed, the contractor shall have a lien on the completed work if the client fails to pay the contractor remuneration or costs for the completed work or materials.

第二百六十五条 承揽人应当妥善保管定作人提供的材料以及完成的工作成果，因保管不善造成毁损、灭失的，应当承担损害赔偿

责任。

Article 256 The contractor shall take proper custody of the materials provided by his client as well as of the completed work, and be held liable for damages for any loss or destruction occasioned by the default on the part of the contractor.

第二百六十六条 承揽人应当按照定作人的要求保守秘密，未经定作人许可，不得留存复制品或者技术资料。

Article 266 The contractor shall comply with the obligations of confidentiality as required by his client, and shall not without the permission of the client retain any replica or technical data.

第二百六十七条 共同承揽人对定作人承担连带责任，但当事人另有约定的除外。

Article 267 Unless otherwise agreed by the parties, co-contractors shall be jointly and severally liable to the client.

第二百六十八条 定作人可以随时解除承揽合同，造成承揽人损失的，应当赔偿损失。

Article 268 The client may at any time rescind the contract for work, but shall be liable to his contractor for any damages so caused, if any.

第十六章 建设工程合同

Chapter 16 Contracts for Construction

第二百六十九条 建设工程合同是承包人进行工程建设，发包人

支付价款的合同。

建设工程合同包括工程勘察、设计、施工合同。

Article 269 A construction contract is one whereby the contractor undertakes construction works for which his client makes payment.

A construction contract includes contracts for survey, design and works in connection with construction.

第二百七十条 建设工程合同应当采用书面形式。

Article 270 A construction contract shall be in writing.

第二百七十一条 建设工程的招标投标活动,应当依照有关法律的规定公开、公平、公正进行。

Article 271 The tender procedures for construction works shall be carried out in compliance with the applicable laws and in an open, fair and impartial manner.

第二百七十二条 发包人可以与总承包人订立建设工程合同,也可以分别与勘察人、设计人、施工人订立勘察、设计、施工承包合同。发包人不得将应当由一个承包人完成的建设工程肢解成若干部分发包给几个承包人。

总承包人或者勘察、设计、施工承包人经发包人同意,可以将自己承包的部分工作交由第三人完成。第三人就其完成的工作成果与总承包人或者勘察、设计、施工承包人向发包人承担连带责任。承包人不得将其承包的全部建设工程转包给第三人或者将其承包的全部建设工程肢解以后以分包的名义分别转包给第三

人。

禁止承包人将工程分包给不具备相应资质条件的单位。禁止分包单位将其承包的工程再分包。建设工程主体结构的施工必须由承包人自行完成。

Article 272 A client may make a construction contract with a main contractor, or enter into separate contracts with surveyor, designer and builder. A client shall not assign the works in part to several contractors whereby such works should be carried out by the main contractor.

With the consent of the client, the main contractor or the contractors for survey, design or building may subcontract part of their respective works to third parties. In respect of works done by any such third party, the third party shall be held liable to the client jointly and severally with the main contractor or the contractors for survey, design or building, as the case may be. A contractor shall not subcontract his entire construction works in one lot to a third party, nor in the name of subcontracting divide the same into parts and assign such parts to separate third parties.

A contractor is prohibited from subcontracting his works to a party lack of the required qualifications. A subcontractor is prohibited from further subcontracting his works. The main structure of the construction works shall be carried out by the main contractor himself.

第二百七十三条 国家重大建设工程合同，应当按照国家规定的

程序和国家批准的投资计划、可行性研究报告等文件订立。

Article 273 Contracts for major construction projects of the State shall be made in accordance with the prescribed procedures together with the investment plans, feasibility study reports and other documents approved by the State.

第二百七十四条 勘察、设计合同的内容包括提交有关基础资料 and 文件（包括概预算）的期限、质量要求、费用以及其他协作条件等条款。

Article 274 Contracts for survey or design shall contain such terms in respect of time for submission of basic information and documents (including financial estimates and budgets), quality requirements, expenses, and conditions for coordination incidental thereto.

第二百七十五条 施工合同的内容包括工程范围、建设工期、中间交工工程的开工和竣工时间、工程质量、工程造价、技术资料交付时间、材料和设备供应责任、拨款和结算、竣工验收、质量保修范围和质量保证期、双方相互协作等条款。

Article 275 A construction contract shall contain such terms as the scope of the works, the construction time and the schedule for items to be completed therein, quality standard, price of the works, time for delivery of technical information, division of responsibility as to the provision of materials and/or equipment, appropriation of funds and

settlement of payment, completion inspection, scope and time of warranty, and terms for mutual coordination incidental thereto.

第二百七十六条 建设工程实行监理的,发包人应当与监理人采用书面形式订立委托监理合同。发包人与监理人的权利和义务以及法律责任,应当依照本法委托合同以及其他有关法律、行政法规的规定。

Article 276 If the construction works are subject to supervision, the client shall enter into a written contract for supervision with the clerk of works. The respective rights, obligations and legal liabilities of the client and the clerk of works shall be subject to the provisions of this Act in relation to agency contracts and other relevant laws and administrative regulations.

第二百七十七条 发包人在不妨碍承包人正常作业的情况下,可以随时对作业进度、质量进行检查。

Article 277 Without causing disruption to the normal operation of the contractor, the client may at any time inspect the progress and quality of the works.

第二百七十八条 隐蔽工程在隐蔽以前,承包人应当通知发包人检查。发包人没有及时检查的,承包人可以顺延工程日期,并有权要求赔偿停工、窝工等损失。

Article 278 The contractor shall give notice to his client for inspection before sealing of any concealed works. If the client fails to inspect in time, the contractor may delay the completion accordingly and

shall be entitled to claim damages for suspension and idling of the work.

第二百七十九条 建设工程竣工后，发包人应当根据施工图纸及说明书、国家颁发的施工验收规范和质量检验标准及时进行验收。验收合格的，发包人应当按照约定支付价款，并接收该建设工程。建设工程竣工经验收合格后，方可交付使用；未经验收或者验收不合格的，不得交付使用。

Article 279 The client shall promptly inspect the construction works upon completion for acceptance against the drawings and specifications in accordance with the specifications for building inspection and acceptance and quality standards thereof promulgated by the State. Upon inspection if the works are found satisfactory, the client shall pay the agreed price and accept the works. Construction works may be delivered to the client for use only upon satisfactory inspection thereof. If the works have not been inspected or are found unsatisfactory upon inspection, the works shall not be handed over to the client for use.

第二百八十条 勘察、设计的质量不符合要求或者未按照期限提交勘察、设计文件拖延工期，造成发包人损失的，勘察人、设计人应当继续完善勘察、设计，减收或者免收勘察、设计费并赔偿损失。

Article 280 If the survey/design does not conform to the requirements or the survey/design documents are not delivered in time, causing delay in the completion of the works thereby occasioning damage to the client, the surveyor or the designer shall continue to perfect the

survey or design, reduce or forego the survey or design fees, and in addition to compensate for any losses suffered by the client.

第二百八十一条 因施工人的原因致使建设工程质量不符合约定的,发包人有权要求施工人在合理期限内无偿修理或者返工、改建。经过修理或者返工、改建后,造成逾期交付的,施工人应当承担违约责任。

Article 281 If due to the fault on the part of the builder of the contractor the works fail to satisfy the quality standards as agreed, the client may demand the builder of the contractor to carry out repairs and to make good or rebuild the works free of charge within a reasonable time. If handing over of the works is delayed owing to such repairing, making good or rebuilding, the builder of the contractor shall be liable for the delay.

第二百八十二条 因承包人的原因致使建设工程在合理使用期限内造成人身和财产损害的,承包人应当承担损害赔偿责任。

Article 282 If within a reasonable period of use after the completion of the construction works, any personal injury or damage to property occurs due to the contractor's fault, the contractor shall be liable for damages.

第二百八十三条 发包人未按照约定的时间和要求提供原材料、设备、场地、资金、技术资料的,承包人可以顺延工程日期,并有权要求赔偿停工、窝工等损失。

Article 283 If the client fails to provide any raw material, equipment, site, funds or technical information according to the time and the requirements as agreed, the contractor may delay the time for completion accordingly and shall be entitled to claim for losses arising from the suspension or idling of the work or otherwise.

第二百八十四条 因发包人的原因致使工程中途停建、缓建的，发包人应当采取措施弥补或者减少损失，赔偿承包人因此造成的停工、窝工、倒运、机械设备调迁、材料和构件积压等损失和实际费用。

Article 284 If the works are suspended or deferred due to cause on the part of the client, the client shall take measures to make good or mitigate the losses, and compensate the contractor for any losses caused by the suspension or idling of the works, re-transportation, redeploying of machinery and equipment, overstocking of materials and components together with expenses actually incurred.

第二百八十五条 因发包人变更计划，提供的资料不准确，或者未按照期限提供必需的勘察、设计工作条件而造成勘察、设计的返工、停工或者修改设计，发包人应当按照勘察人、设计人实际消耗的工作量增付费用。

Article 285 If the client varies the plan or supplies inaccurate information or fails to provide in time the conditions necessary for carrying out the survey or design, rendering necessary re-work and/or suspension of survey and design, or variation of the design, the client

shall pay the surveyor or the designer extra fees for any of the additional work done.

第二百八十六条 发包人未按照约定支付价款的，承包人可以催告发包人在合理期限内支付价款。发包人逾期不支付的，除按照建设工程的性质不宜折价、拍卖的以外，承包人可以与发包人协议将该工程折价，也可以申请人民法院将该工程依法拍卖。建设工程的价款就该工程折价或者拍卖的价款优先受偿。

Article 286 If the client fails to pay the price as agreed, the contractor may urge and demand to make payment within a reasonable time. If default shall be made in payment by the client within the specified time, unless the nature of the works makes it inappropriate to be evaluated in terms of money or auctioned, the contractor may agree with the client to evaluate the works in terms of money, or apply to a people's court to auction the works according to law. Payment of the construction price out of the proceeds realized from the evaluation or auction shall have priority.

第二百八十七条 本章没有规定的，适用承揽合同的有关规定。

Article 287 For matters not specified in this chapter, the provisions in the Contract with Contractor of this Act shall apply.

第十七章 运输合同

Chapter 17 Contracts for Transportation

第一节 一般规定

Section 1 General Rules

第二百八十八条 运输合同是承运人将旅客或者货物从起运地点运输到约定地点，旅客、托运人或者收货人支付票款或者运输费用的合同。

Article 288 A contract of carriage is one whereby the carrier transports passenger or cargo from the starting point to the destination as agreed and whereby the passenger, the consignor or the consignee pays for the fare or freight to the carrier.

第二百八十九条 从事公共运输的承运人不得拒绝旅客、托运人通常、合理的运输要求。

Article 289 A carrier engaged in public transportation shall not refuse a normal and reasonable request from a passenger or consignor for carriage.

第二百九十条 承运人应当在约定期间或者合理期间内将旅客、货物安全运输到约定地点。

Article 290 A carrier shall carry the passenger or goods safely to the agreed destination within the agreed time or within a reasonable time.

第二百九十一条 承运人应当按照约定的或者通常的运输路线将旅客、货物运输到约定地点。

Article 291 A carrier shall carry the passenger or goods to the agreed destination by the agreed or regular route.

第二百九十二条 旅客、托运人或者收货人应当支付票款或者

运输费用。承运人未按照约定路线或者通常路线运输增加票款或者运输费用的，旅客、托运人或者收货人可以拒绝支付增加部分的票款或者运输费用。

Article 292 The passenger, the consignor or the consignee shall pay the fare or freight. If a carrier fails to take the agreed or regular route, thereby causing an increase in the fare or freight, the passenger, the consignor or the consignee may refuse to pay the extra part of the fare or freight.

第二节 客运合同

Section 2 Contracts for Conveying Passengers

第二百九十三条 客运合同自承运人向旅客交付客票时成立，但当事人另有约定或者另有交易习惯的除外。

Article 293 Subject to any agreement or trade practice, a contract for conveying passengers is concluded at the time when the carrier gives the ticket to the passengers.

第二百九十四条 旅客应当持有效客票乘运。旅客无票乘运、超程乘运、越级乘运或者持失效客票乘运的，应当补交票款，承运人可以按照规定加收票款。旅客不交付票款的，承运人可以拒绝运输。

Article 294 A passenger on board shall hold a valid ticket. A passenger on board without a ticket or traveling on the mileage not covered by the ticket or taking a class higher than specified on the ticket

or holding a ticket which has become invalid, shall make up for the deficiency in the fare and the carrier may levy a surcharge in accordance with the applicable rules. A carrier may refuse to carry a passenger who fails to pay the proper fare for the ticket.

第二百九十五条 旅客因自己的原因不能按照客票记载的时间乘坐的，应当在约定的时间内办理退票或者变更手续。逾期办理的，承运人可以不退票款，并不再承担运输义务。

Article 295 A passenger for his own reason being unable to take the conveyance at the time stated on the ticket, shall apply for refund of fare or change of ticket within the agreed time. A carrier may refuse to refund and shall have no further obligation to carry if an application is made out of time.

第二百九十六条 旅客在运输中应当按照约定的限量携带行李。超过限量携带行李的，应当办理托运手续。

Article 296 A passenger shall carry hand luggage not more than the permitted weight/size/piece. A passenger carrying luggage more than permitted shall check in his extra luggage for transportation by the carrier.

第二百九十七条 旅客不得随身携带或者在行李中夹带易燃、易爆、有毒、有腐蚀性、有放射性以及有可能危及运输工具上人身和财产安全的危险物品或者其他违禁物品。

旅客违反前款规定的，承运人可以将违禁物品卸下、销毁或者送交有关部门。旅客坚持携带或者夹带违禁物品的，承运人应当拒绝运

输。

Article 297 No passenger shall carry on his body or in his luggage any dangerous or prohibited materials which are inflammable, explosive, toxic, corrosive, radioactive or which may endanger the safety of any person or property on board.

The carrier may unload any prohibited article taken on board by a passenger in contravention of the preceding paragraph, destroy the same or hand it over to the relevant authority. If a passenger insists on carrying on his body or in his luggage a prohibited article, the carrier shall refuse the carriage.

第二百九十八条 承运人应当向旅客及时告知有关不能正常运输的重要事由和安全运输应当注意的事项。

Article 298 A carrier shall inform passengers in time of any substantial cause which may affect the normal course of carriage and require attention to any matter for safe carriage.

第二百九十九条 承运人应当按照客票载明的时间和班次运输旅客。承运人迟延运输的，应当根据旅客的要求安排改乘其他班次或者退票。

Article 299 A carrier shall carry passengers in accordance with the time schedule stated on the ticket. For any undue delay a carrier shall arrange alternative carriage or make refund upon the demand of the passengers.

第三百条 承运人擅自变更运输工具而降低服务标准的,应当根据旅客的要求退票或者减收票款;提高服务标准的,不应当加收票款。

Article 300 If a carrier unilaterally changes the carriage conveyance so as to lower the level of service, he shall make a refund or reduction in fare upon demand by the passengers. No increase to the ticket fare shall be made for upgrading the level of service.

第三百零一条 承运人在运输过程中,应当尽力救助患有急病、分娩、遇险的旅客。

Article 301 In the course of transportation a carrier shall use his best endeavors to render assistance to any passenger suffering sudden illness or giving birth or being in danger.

第三百零二条 承运人应当对运输过程中旅客的伤亡承担损害赔偿责任,但伤亡是旅客自身健康原因造成的或者承运人证明伤亡是旅客故意、重大过失造成的除外。

前款规定适用于按照规定免票、持优待票或者经承运人许可搭乘的无票旅客。

Article 302 A carrier shall be liable to pay damages arising out of death or personal injury of any passenger during the course of transportation, unless the death or the injury is caused by the health of the passenger or the carrier proves that the death or the injury is inflicted intentionally by or due to the grave default of the passenger.

The provisions of the preceding paragraph shall apply to any

passenger who in accordance with rules is exempted from holding or holds a concessionary ticket, or travels without holding a ticket with the consent of the carrier.

第三百零三条 在运输过程中旅客自带物品毁损、灭失，承运人有过错的，应当承担损害赔偿责任。旅客托运的行李毁损、灭失的，适用货物运输的有关规定。

Article 303 If a hand-carried article of a passenger is damaged or lost during carriage due to the default of the carrier, the carrier shall be liable for damages. If a passenger's checked-in luggage is damaged or lost, the relevant rules for carriage of goods shall apply.

第三节 货运合同

Section 3 Contracts for Carriage of Goods

第三百零四条 托运人办理货物运输，应当向承运人准确表明收货人的名称或者姓名或者凭指示的收货人，货物的名称、性质、重量、数量，收货地点等有关货物运输的必要情况。

因托运人申报不实或者遗漏重要情况，造成承运人损失的，托运人应当承担损害赔偿责任。

Article 304 For shipment a consignor shall state to the carrier accurately the necessary information for transportation of the goods including the name of the consignee or the person to whose order the goods are to be delivered, the descriptions, quality, weight and quantity of

the goods and the place for collection.

If the carrier suffers losses and damages because of false declaration or omission of material information by the consignor, the consignor shall be held liable for damages.

第三百零五条 货物运输需要办理审批、检验等手续的，托运人应当将办理完有关手续的文件提交承运人。

Article 305 If approval or inspection is required for the carriage of the goods, the consignor shall deliver to the carrier the relevant documents evidencing compliance with the prescribed procedures.

第三百零六条 托运人应当按照约定的方式包装货物。对包装方式没有约定或者约定不明确的，适用本法第一百五十六条的规定。

托运人违反前款规定的，承运人可以拒绝运输。

Article 306 The consignor shall pack the goods in the agreed manner. If there is no agreement on the manner of packing or such agreement is uncertain, the provisions of Article 156 of this Act shall apply.

The carrier may refuse to carry the goods if the consignor is in breach of the preceding paragraph.

第三百零七条 托运人托运易燃、易爆、有毒、有腐蚀性、有放射性等危险物品的，应当按照国家有关危险物品运输的规定对危险物品妥善包装，作出危险物标志和标签，并将有关危险物品的名称、性质和防范措施的书面材料提交承运人。

托运人违反前款规定的，承运人可以拒绝运输，也可以采取相应措施以避免损失的发生，因此产生的费用由托运人承担。

Article 307 For shipping dangerous goods being inflammable, explosive, toxic, corrosive or radioactive, a consignor shall pack them in a proper manner in accordance with State regulations for the carriage of dangerous goods with marking and label as such, and shall deliver to the carrier with written materials with the descriptions, nature and preventive measures.

If the consignor is in breach of the preceding paragraph, the carrier may refuse to carry the goods or take appropriate measures to avoid any loss. The consignor shall bear any costs arising therefrom.

第三百零八条 在承运人将货物交付收货人之前，托运人可以要求承运人中止运输、返还货物、变更到达地或者将货物交给其他收货人，但应当赔偿承运人因此受到的损失。

Article 308 Prior to the delivery of goods to the consignee by the carrier, the consignor may require the carrier to suspend the carriage, return the goods, alter the destination or deliver the goods to a different consignee, provided that the consignor shall compensate the carrier for damages arising from such a change.

第三百零九条 货物运输到达后，承运人知道收货人的，应当及时通知收货人，收货人应当及时提货。收货人逾期提货的，应当向承运人支付保管费等费用。

Article 309 Upon arrival of the transported goods at the destination, the carrier shall forthwith notify the known consignee, who shall collect the goods promptly. Failure to collect the goods in time, the consignee shall pay the carrier for storage and other charges.

第三百一十条 收货人提货时应当按照约定的期限检验货物。对检验货物的期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当在合理期限内检验货物。收货人在约定的期限或者合理期限内对货物的数量、毁损等未提出异议的，视为承运人已经按照运输单证的记载交付的初步证据。

Article 310 Upon taking delivery, the consignee shall inspect the goods as agreed. If there is no agreement as to the time for inspecting the goods or the agreement is uncertain, or cannot be determined according to Article 61 of this Act, the consignee shall inspect the goods within a reasonable time. If the consignee fails to lodge any complaints relating to the quantity or damage to the goods within the agreed time or a reasonable time, such omission shall be deemed as *prima facie* evidence that the carrier has made delivery in accordance with the documents for carriage.

第三百一十一条 承运人对运输过程中货物的毁损、灭失承担赔偿责任，但承运人证明货物的毁损、灭失是因不可抗力、货物本身的自然性质或者合理损耗以及托运人、收货人的过错造成的，不承担赔偿责任。

Article 311 A carrier shall be liable for damage or loss to the goods sustained during the course of carriage, excepted that he shall not be held liable if he can prove that the damage or loss is caused by *force majeure*, or inherent nature or reasonable wear and tear of the goods, or through acts done by the consignor or consignee.

第三百一十二条 货物的毁损、灭失的赔偿额，当事人有约定的，按照其约定；没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，按照交付或者应当交付时货物到达地的市场价格计算。法律、行政法规对赔偿额的计算方法和赔偿限额另有规定的，依照其规定。

Article 312 The quantum of damages for loss and damage to the goods shall be as agreed between the parties. If the quantum of damages neither has been agreed nor is the agreement certain, nor can it be ascertained under Article 61 of this Act, the quantum shall be assessed according to the market value of the goods at the time when they are delivered or ought to have been delivered to the destination. If any law or administrative regulations providing for the method of assessment or for the limit of the quantum of damages, shall apply.

第三百一十三条 两个以上承运人以同一运输方式联运的，与托运人订立合同的承运人应当对全程运输承担责任。损失发生在某一运输区段的，与托运人订立合同的承运人和该区段的承运人承担连带责任。

Article 313 Where two or more carriers provide connected carriage by the similar kind of transportation, the carrier who makes the contract of carriage with the consignor shall be liable for the entire course of transportation. If loss occurs in a section of the journey in transportation, the carrier making the contract of carriage with the consignee shall be jointly and severally liable with the other carrier for that section of the journey.

第三百一十四条 货物在运输过程中因不可抗力灭失，未收取运费的，承运人不得要求支付运费；已收取运费的，托运人可以要求返还。

Article 314 If the goods are destroyed or lost due to *force majeure* during carriage and if the freight has not yet been collected by the carrier, no demand for payment of the outstanding freight shall be made by the carrier. If the freight has been collected, the consignor may demand for a refund.

第三百一十五条 托运人或者收货人不支付运费、保管费以及其他运输费用的，承运人对相应的运输货物享有留置权，但当事人另有约定的除外。

Article 315 If either the consignor or the consignee fails to pay the freight, storage fees or other carriage fees, the carrier shall be entitled to a lien on the goods so carried unless otherwise agreed by the parties.

第三百一十六条 收货人不明或者收货人无正当理由拒绝受领

货物的，依照本法第一百零一条的规定，承运人可以提存货物。

Article 316 If the identity of the consignee is unclear or the consignee refuses to collect the goods without good cause, the carrier may take delivery and put in storage of the goods according to the provisions of Article 101 of this Act.

第三百一十七条 多式联运经营人负责履行或者组织履行多式联运合同，对全程运输享有承运人的权利，承担承运人的义务。

Article 317 A multi-carriage operator shall perform or procure performance of the multi-carriage contract whereby he has the rights and the obligations of a carrier for the entire journey in transportation.

第三百一十八条 多式联运经营人可以与参加多式联运的各区段承运人就多式联运合同的各区段运输约定相互之间的责任，但该约定不影响多式联运经营人对全程运输承担的义务。

Article 318 A multi-carriage operator may enter into contracts with the carriers for various sectional carriage of the journey in transportation and agree among themselves their respective obligations, provided that the liability of the multi-carriage operator for the entire journey shall not be affected.

第三百一十九条 多式联运经营人收到托运人交付的货物时，应当签发多式联运单据。按照托运人的要求，多式联运单据可以是可转让单据，也可以是不可转让单据。

Article 319 Upon receiving the cargo from the consignor, the

multi-carriage operator shall issue multi-carriage documents. As requested by the consignor, such multi-carriage documents may be negotiable or non-negotiable.

第三百二十条 因托运人托运货物时的过错造成多式联运经营人损失的，即使托运人已经转让多式联运单据，托运人仍然应当承担损害赔偿责任。

Article 320 Notwithstanding negotiations for the carriage documents, the consignor shall remain liable for any damage caused to the multi-carriage operator by the default of the consignor at the time of shipment.

第三百二十一条 货物的毁损、灭失发生于多式联运的某一运输区段的，多式联运经营人的赔偿责任和责任限额，适用调整该区段运输方式的有关法律规定。货物毁损、灭失发生的运输区段不能确定的，依照本章规定承担损害赔偿责任。

Article 321 The liability for compensation and the limitation thereof of the multi-carriage operator for any damage or loss to the cargo occurred in any sectional carriage of the journey in the course of transportation, shall be governed by the law applicable to that particular sectional carriage of the multi-carriage. If the damage to or loss of the cargo occurs in the sectional carriage which is uncertain, liability for damages shall be governed by this Chapter.

第十八章 技术合同

Chapter 18 Contracts for Technology

第一节 一般规定

Section 1 General Rules

第三百二十二条 技术合同是当事人就技术开发、转让、咨询或者服务订立的确立相互之间权利和义务的合同。

Article 322 A technology contract is a contract whereby the parties specify their respective rights and obligations with regard to the development, transfer, consultancy and services for any technology.

第三百二十三条 订立技术合同，应当有利于科学技术的进步，加速科学技术成果的转化、应用和推广。

Article 323 A technology contract shall be formed with a view to facilitating the advancement of scientific technology, accelerating the commercialization, application and promotion of scientific technological achievements.

第三百二十四条 技术合同的内容由当事人约定，一般包括以下条款：

- （一）项目名称；
- （二）标的的内容、范围和要求；
- （三）履行的计划、进度、期限、地点、地域和方式；
- （四）技术情报和资料的保密；
- （五）风险责任的承担；
- （六）技术成果的归属和收益的分成办法；

- (七) 验收标准和方法;
- (八) 价款、报酬或者使用费及其支付方式;
- (九) 违约金或者损失赔偿的计算方法;
- (十) 解决争议的方法;
- (十一) 名词和术语的解释。

与履行合同有关的技术背景资料、可行性论证和技术评价报告、项目任务书和计划书、技术标准、技术规范、原始设计和工艺文件，以及其他技术文档，按照当事人的约定可以作为合同的组成部分。

技术合同涉及专利的，应当注明发明创造的名称、专利申请人和专利权人、申请日期、申请号、专利号以及专利权的有效期限。

Article 324 The provisions of a technology contract shall be agreed by the parties, and shall normally contain the following terms:

- (1) title of the project;
- (2) details, scope and requirements of the subject matter;
- (3) plan, schedule, time limit, place, districts and manner of performance;
- (4) maintaining confidentiality of technical information and materials;
- (5) assuming liability for risks;
- (6) ownership of technological achievements and profit-sharing;
- (7) criteria and method of inspection and acceptance;
- (8) price, remuneration or fees for usage and manner of payment;
- (9) liquidated damages for breach or method for assessment of the

quantum of damages for losses;

(10) methods for dispute resolution;

(11) interpretation of terms and expressions.

Background technology materials, feasibility studies and technological appraisals, project descriptions and plans, technological standards and specifications, original designs and documents on technological processes, as well as other technology files relevant to the performance of the contract may be deemed as an integral part of the contract as agreed by the parties thereto.

If a technology contract involves patents, such contract shall specify the title of the invention or creation, the patent applicant and the patentee, the date and number of the application, the patent number as well as the duration of patent rights.

第三百二十五条 技术合同价款、报酬或者使用费的支付方式由当事人约定,可以采取一次总算、一次总付或者一次总算、分期支付,也可以采取提成支付或者提成支付附加预付入门费的方式。

约定提成支付的,可以按照产品价格、实施专利和使用技术秘密后新增的产值、利润或者产品销售额的一定比例提成,也可以按照约定的其他方式计算。提成支付的比例可以采取固定比例、逐年递增比例或者逐年递减比例。

约定提成支付的,当事人应当在合同中约定查阅有关会计帐目的办法。

Article 325 The price, remuneration or fees for usage under a technology contract as agreed by the parties may be paid by one lump sum or by installments, or by means of royalties, or royalties together with an initiation fee.

If royalties are agreed to be paid, they may be assessed *pro rata* on the basis of the price of the product, the added value after application of the patent or technical know-how, profits or sales turnover of the product, or otherwise. The royalties to be assessed in the aforesaid manner may be fixed, increased or decreased annually.

If royalties are agreed to be paid, the parties shall provide in the contract for inspection of the relevant accounts.

第三百二十六条 职务技术成果的使用权、转让权属于法人或者其他组织的，法人或者其他组织可以就该项职务技术成果订立技术合同。法人或者其他组织应当从使用和转让该项职务技术成果所取得的收益中提取一定比例，对完成该项职务技术成果的个人给予奖励或者报酬。法人或者其他组织订立技术合同转让职务技术成果时，职务技术成果的完成人享有以同等条件优先受让的权利。

职务技术成果是执行法人或者其他组织的工作任务，或者主要是利用法人或者其他组织的物质技术条件所完成的技术成果。

Article 326 If a legal entity or other organization has the rights to use or assign technological achievements in the exercise of its duties, such legal entity or organization may enter into any technology contract

in respect of the technological achievements and shall, from benefits derived from the use or assignment of the duty-related technological achievements, pay a certain portion thereof to the individual who has made such technological achievements as reward or remuneration. In the event of assignment of the duty-related technological achievements is to be made by the legal entity or other organization, the person who has accomplished such achievements, shall have the right of preemption on the same terms.

A duty-related technological achievements means a technological achievement made in the course of carrying out an assignment by an employee for or mainly by using the materials or technological conditions of the legal entity or other organization.

第三百二十七条 非职务技术成果的使用权、转让权属于完成技术成果的个人，完成技术成果的个人可以就该项非职务技术成果订立技术合同。

Article 327 The person making the non-duty related technological achievements has the exclusive rights to use or assign such achievements and may enter into any contract in respect thereof.

第三百二十八条 完成技术成果的个人有在有关技术成果文件上写明自己是技术成果完成者的权利和取得荣誉证书、奖励的权利。

Article 328 Upon his accomplishment of the technological achievements, the person shall be entitled to be named in the

documentation for the technological achievements as a creator, and be given a certificate of ownership as award.

第三百二十九条 非法垄断技术、妨碍技术进步或者侵害他人技术成果的技术合同无效。

Article 329 A technology contract unlawfully monopolizing technology, impeding technological progress or infringing any right of another person shall be null and void.

第二节 技术开发合同

Section 2 Contracts for Technology Development

第三百三十条 技术开发合同是指当事人之间就新技术、新产品、新工艺或者新材料及其系统的研究开发所订立的合同。

技术开发合同包括委托开发合同和合作开发合同。

技术开发合同应当采用书面形式。

当事人之间就具有产业应用价值的科技成果实施转化订立的合同，参照技术开发合同的规定。

Article 330 A technology development contract means a contract made by the parties for the research and development of new technology, or new product, or new processes or new materials as well as the system thereof.

A technology development contract includes commissioned development and joint venture development.

A technology development contract shall be in writing.

A contract made by the parties for the commercialization of any technology with industrial applicability shall adopt the provisions for technology development contract.

第三百三十一条 委托开发合同的委托人应当按照约定支付研究开发经费和报酬, 提供技术资料、原始数据、完成协作事项, 接受研究开发成果。

Article 331 A commissioning party to a development contract shall pay the expenses and remuneration for the research and development as agreed. He shall further provide technological information and original data, render assistance, and accept the achievements of the research and development.

第三百三十二条 委托开发合同的研究开发人应当按照约定制定和实施研究开发计划; 合理使用研究开发经费; 按期完成研究开发工作, 交付研究开发成果, 提供有关的技术资料和必要的技术指导, 帮助委托人掌握研究开发成果。

Article 332 A commissioned party to a development contract shall formulate and implement a research and development program as agreed. He shall make reasonable appropriation of the funds for the research and development, complete the research and development according to the schedule, deliver the achievements thereof. He shall further provide the relative technical information and necessary technical

guidance, and assist the commissioning party to grasp the benefits thereof.

第三百三十三条 委托人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

Article 333 In breach of the contract on the part of the commissioning party causing any standstill, delay or failure of the research and development, he shall be held liable for the breach.

第三百三十四条 研究开发人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

Article 334 In breach of the contract on the part of the commissioned party causing any standstill, delay or failure of the research and development, he shall be held liable for the breach.

第三百三十五条 合作开发合同的当事人应当按照约定进行投资，包括以技术进行投资；分工参与研究开发工作；协作配合研究开发工作。

Article 335 The parties to a joint development contract shall, as agreed, make investment including by way of technology; and shall participate in and coordinate with each other for the research and development.

第三百三十六条 合作开发合同的当事人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

Article 336 A party to a joint development contract committing a

breach causing a standstill, delay or failure in the research and development, he shall be held liable for the breach.

第三百三十七条 因作为技术开发合同标的的技术已经由他人公开，致使技术开发合同的履行没有意义的，当事人可以解除合同。

Article 337 If the technology of the subject matter in a technological development contract has already been published by others rendering the performance of the contract without any value, the parties may rescind the contract.

第三百三十八条 在技术开发合同履行过程中，因出现无法克服的技术困难，致使研究开发失败或者部分失败的，该风险责任由当事人约定。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，风险责任由当事人合理分担。

当事人一方发现前款规定的可能致使研究开发失败或者部分失败的情形时，应当及时通知另一方并采取适当措施减少损失。没有及时通知并采取适当措施，致使损失扩大的，应当就扩大的损失承担责任。

Article 338 The risk of failure or partial failure resulting from any insurmountable technical difficulty in the course of technology research and development shall be borne by the parties as agreed. If there is no agreement or the agreement is uncertain or cannot be ascertained under Article 61 of this Act, the risk shall be borne by the parties reasonably according to their respective shares.

Upon a party discovering any circumstance referred to in the preceding paragraph possibly leading to the failure or partial failure of the research and development, he shall promptly give notice to the other party and take appropriate measures to minimize the losses. If the party fails in giving prompt notice and omits in taking appropriate measures thus increasing the losses, the defaulting party shall be held liable for the losses so increased.

第三百三十九条 委托开发完成的发明创造,除当事人另有约定的以外,申请专利的权利属于研究开发人。研究开发人取得专利权的,委托人可以免费实施该专利。

研究开发人转让专利申请权的,委托人享有以同等条件优先受让的权利。

Article 339 Subject to any agreement between the parties, the commissioned party shall have the right to apply for a patent in respect of any inventions-creations resulted from a commissioned development. The commissioning party may utilize for free any patent so obtained by the commissioned party.

In the case of assignment of patent application is to be made by the commissioned party, the commissioning party shall have the right of pre-emption on the same terms.

第三百四十条 合作开发完成的发明创造,除当事人另有约定的以外,申请专利的权利属于合作开发的当事人共有。当事人一方转

让其共有的专利申请权的，其他各方享有以同等条件优先受让的权利。

合作开发的当事人一方声明放弃其共有的专利申请权的，可以由另一方单独申请或者由其他各方共同申请。申请人取得专利权的，放弃专利申请权的一方可以免费实施该专利。

合作开发的当事人一方不同意申请专利的，另一方或者其他各方不得申请专利。

Article 340 Subject to any agreement between the parties, any patent application in respect of any inventions-creations resulted from a joint development, shall be held jointly by the parties thereto. If assignment is to be made by one party of his right in the patent application jointly held with the other party, the other party shall have the right of pre-emption on the same terms.

If one party to a joint development renounces his right in a patent application jointly held with the other party, the other party may proceed with the application by himself, If a patent is granted to the applicant, the party having renounced his right in the patent application may utilize the patent free of charge.

If any party to a joint development disagrees to apply for a patent, no patent application shall be made solely by the other party.

If any party to a joint development disagrees to apply for a patent, no patent application shall be made solely by the other party.

第三百四十一条 委托开发或者合作开发完成的技术秘密成果的使用权、转让权以及利益的分配办法，由当事人约定。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，当事人均有使用和转让的权利，但委托开发的研究开发人不得在向委托人交付研究开发成果之前，将研究开发成果转让给第三人。

Article 341 In a commissioned or technology joint development, the parties thereto shall come to an agreement in respect of the right to use any technical know-how so obtained and the distribution of the benefits derived therefrom. If there is no agreement or the agreement is uncertain and cannot be ascertained under Article 61 of this Act, any party may have the right to use and assign the achievements of the research and development, provided that the commissioned party under a commissioned development may not assign such achievements to a third party before delivery of the same to the commissioning party.

第三节 技术转让合同

Section 3 Contracts for Technology Transfer

第三百四十二条 技术转让合同包括专利权转让、专利申请权转让、技术秘密转让、专利实施许可合同。

技术转让合同应当采用书面形式。

Article 342 Technology transfer contracts include, *inter alia*, contracts for assignment of patent, patent application, technical know-how and for patent license.

A technology transfer contract shall be in writing.

第三百四十三条 技术转让合同可以约定让与人和受让人实施专利或者使用技术秘密的范围，但不得限制技术竞争和技术发展。

Article 343 In a contract for transfer of technology the transferor and the transferee may agree on the scope of utilization of any patent or the use of know-how, provided that it does not restrict technology competition or development.

第三百四十四条 专利实施许可合同只在该专利权的存续期间内有效。专利权有效期限届满或者专利权被宣布无效的，专利权人不得就该专利与他人订立专利实施许可合同。

Article 344 A patent licensing contract shall be enforceable only within the validity of the patent. The patentee may not contract with any person for the licensing of an expired patent or a patent that has been declared invalid.

第三百四十五条 专利实施许可合同的让与人应当按照约定许可受让人实施专利，交付实施专利有关的技术资料，提供必要的技术指导。

Article 345 The licensor of a patent licensing contract shall as agreed permit the licensee to utilize the patent, and shall deliver any technical data relating to the patent and provide the necessary technical guidance.

第三百四十六条 专利实施许可合同的受让人应当按照约定实

施专利，不得许可约定以外的第三人实施该专利；并按照约定支付使用费。

Article 346 The licensee of a patent licensing contract shall as agreed utilize the patent upon payment of royalties accordingly, and shall not permit anyone who is not a party to the contract to utilize the patent.

第三百四十七条 技术秘密转让合同的让与人应当按照约定提供技术资料，进行技术指导，保证技术的实用性、可靠性，承担保密义务。

Article 347 The licensor to a technology know-how contract shall as agreed provide technical data, give technical guidance, ensure the practical applicability and reliability of the technology, and maintain confidentiality.

第三百四十八条 技术秘密转让合同的受让人应当按照约定使用技术，支付使用费，承担保密义务。

Article 348 The licensee of a technical know-how contract shall in accordance with the agreed terms utilize the technology, pay the royalties, and maintain confidentiality.

第三百四十九条 技术转让合同的让与人应当保证自己是所提供的技术的合法拥有者，并保证所提供的技术完整、无误、有效，能够达到约定的目标。

Article 349 The transferor of a technology transfer contract shall warrant that he is the lawful proprietor of the technology so transferred,

of which the said technology is complete, free from error, effective, and capable of attaining the objects specified therein.

第三百五十条 技术转让合同的受让人应当按照约定的范围和期限，对让与人提供的技术中尚未公开的秘密部分，承担保密义务。

Article 350 In accordance with the agreed scope and term the transferee of a technology transfer contract shall maintain confidentiality in relation to the secret part of the technology supplied by the transferor which has not been divulged.

第三百五十一条 让与人未按照约定转让技术的，应当返还部分或者全部使用费，并应当承担违约责任；实施专利或者使用技术秘密超越约定的范围的，违反约定擅自许可第三人实施该项专利或者使用该项技术秘密的，应当停止违约行为，承担违约责任；违反约定的保密义务的，应当承担违约责任。

Article 351 A transferor failing to transfer the technology as agreed shall return the royalties in full or in part and shall be held liable for the breach. A transferor who utilizes the patent or the know-how beyond the agreed scope, or unilaterally permits a third party to utilize the patent or the know-how in breach of the agreement, shall forthwith cease to act in breach and be held liable for such breach. A transferor in breach of his obligation of confidentiality under the agreement shall be held liable.

第三百五十二条 受让人未按照约定支付使用费的，应当补交使

用费并按照约定支付违约金；不补交使用费或者支付违约金的，应当停止实施专利或者使用技术秘密，交还技术资料，承担违约责任；实施专利或者使用技术秘密超越约定的范围的，未经让与人同意擅自许可第三人实施该专利或者使用该技术秘密的，应当停止违约行为，承担违约责任；违反约定的保密任务的，应当承担违约责任。

Article 352 A transferee failing to pay the royalties as agreed shall make such payment and pay liquidated damages in accordance with the contract. If a transferee refuses to pay the overdue royalties or liquidated damages for breach of the agreement, he shall forthwith cease to use the patent or the know-how, return the technical materials and be liable for such breach. A transferee using the patent or the know-how beyond the agreed scope, or permitting a third party to use the patent or the know-how without the consent of the transferor, shall forthwith cease to act in breach and bear the liability for such breach. A transferee in breach of his obligation of confidentiality under the agreement shall be held liable for such breach.

第三百五十三条 受让人按照约定实施专利、使用技术秘密侵害他人合法权益的，由让与人承担责任，但当事人另有约定的除外。

Article 353 Subject to agreement between the parties, if the transferee in using a patent or technical know-how under a contract infringes the legitimate right of any other person, the transferor shall bear the liability therefor.

第三百五十四条 当事人可以按照互利的原则，在技术转让合同中约定实施专利、使用技术秘密后续改进的技术成果分享办法。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，一方后续改进的技术成果，其他各方无权分享。

Article 354 The parties may, on the principle of mutual benefit, provide in the technology transfer contract for the sharing of any subsequent improvement resulting from practicing of the patent or use of the know-how. If there is no agreement or the agreement is uncertain and cannot be ascertained under Article 61 of this Act, the other party shall not be entitled to enjoy the benefits of any subsequent improvement to the technology made by one party.

第三百五十五条 法律、行政法规对技术进出口合同或者专利、专利申请合同另有规定的，依照其规定。

Article 355 If the laws or any administrative regulations contain any other provisions in relation to a contract for the import or export of technology or patent or patent application, such provisions shall prevail.

第四节 技术咨询合同和技术服务合同

Section 4 Contracts for Technical Consultancy and Technical Service

第三百五十六条 技术咨询合同包括就特定技术项目提供可行性论证、技术预测、专题技术调查、分析评价报告等合同。

技术服务合同是指当事人一方以技术知识为另一方解决特定技术问题所订立的合同，不包括建设工程合同和承揽合同。

Article 356 Contracts for technical consultancy includes, *inter alias*, specific technology projects, feasibility study, technology forecast, specific technology investigations, analysis and evaluation report.

A technical service contract means a contract whereby one party undertakes to solve specific technical problems by using his technical expertise for the other party, excluding building contracts and contracts for work.

第三百五十七条 技术咨询合同的委托人应当按照约定阐明咨询的问题，提供技术背景材料及有关技术资料、数据；接受受托人的工作成果，支付报酬。

Article 357 Under a technology consultancy contract the commissioning party in accordance with agreed terms shall explain clearly the issues being consulted, and shall supply technology background information, relevant technical materials and data. He shall accept the services to be rendered by the commissioned party and pay the remuneration therefor.

第三百五十八条 技术咨询合同的受托人应当按照约定的期限完成咨询报告或者解答问题；提出的咨询报告应当达到约定的要求。

Article 358 Under a technology consultancy contract the commissioned party shall complete the consultancy report or answer

questions within the specified time. The consultancy report to be submitted shall be in line with the agreed requirements.

第三百五十九条 技术咨询合同的委托人未按照约定提供必要的资料和数据，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。技术咨询合同的受托人未按期提出咨询报告或者提出的咨询报告不符合约定的，应当承担减收或者免收报酬等违约责任。

技术咨询合同的委托人按照受托人符合约定要求的咨询报告和意见作出决策所造成的损失，由委托人承担，但当事人另有约定的除外。

Article 359 Under a technology consultancy contract if the commissioning party fails to provide the necessary information and data as agreed, thereby affecting the progress and quality of the work, or fails to accept or delaying in accepting the services rendered, he shall not be able to recover any remuneration already paid and shall be liable to pay any remuneration remaining unpaid. If the commissioned party to a technology consultancy contract fails to submit the consultancy report on time or submits a report not meeting with the agreed requirements, he shall bear the consequence of the breach by way of reducing the remuneration in whole or in part or otherwise.

Unless agreed otherwise, the commissioning party shall bear the losses caused by a decision made by him following the consultancy report

and advice rendered by the commissioned party in the compliance with the technology consultancy report so prepared in satisfaction of the requirement as agreed.

第三百六十条 技术服务合同的委托人应当按照约定提供工作条件，完成配合事项；接受工作成果并支付报酬。

Article 360 Under a technical service contract the commissioning party shall in accordance with the agreed terms provide the conditions for the work, render such assistance, accept the services to be rendered and pay the remuneration.

第三百六十一条 技术服务合同的受托人应当按照约定完成服务项目，解决技术问题，保证工作质量，并传授解决技术问题的知识。

Article 361 Under a technical service contract the commissioned party shall in accordance with the agreed terms render the services, solve the technical problems, guarantee the quality of work and transmit the knowledge on solving the technical problems.

第三百六十二条 技术服务合同的委托人不履行合同义务或者履行合同义务不符合约定，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。

技术服务合同的受托人未按照合同约定完成服务工作的，应当承担免收报酬等违约责任。

Article 362 Under a technical service contract if the commissioning party fails to perform his contractual obligations or his

performance is not in conformity with the agreed terms thereby affecting the progress and quality of the work, or he fails to accept or delays in accepting the services rendered, he shall not be able to recover any remuneration already paid and shall be liable to pay any outstanding.

Under a technical service contract if the commissioned party fails to complete the service as agreed, he shall be liable for breach of the contract thereby waiving the remuneration or otherwise.

第三百六十三条 在技术咨询合同、技术服务合同履行过程中，受托人利用委托人提供的技术资料和工作条件完成的新的技术成果，属于受托人。委托人利用受托人的工作成果完成的新的技术成果，属于委托人。当事人另有约定的，按照其约定。

Article 363 Despite of using the technical information and conditions for work provided by the commissioning party, any new technology achievements accomplished by the commissioned party in the performance of a technology consultancy contract or a technical service contract shall belong to the commissioned party. Any new technology achievements accomplished by the commissioning party by using the services rendered by the commissioned party shall belong to the commissioning party. If the parties have agreed otherwise, such agreement shall prevail.

第三百六十四条 法律、行政法规对技术中介合同、技术培训合同另有规定的，依照其规定。

Article 364 If the laws or administrative regulations contain any other provisions for technology agency or technology training contracts, such provisions shall prevail in respect of the said contracts.

第十九章 保管合同

Chapter 19 Custody Contract

第三百六十五条 保管合同是保管人保管寄存人交付的保管物，并返还该物的合同。

Article 365 A custody contract means a contract whereby the custodian keeps for safe custody an article handed over by a depositor, and returns the same to the depositor.

第三百六十六条 寄存人应当按照约定向保管人支付保管费。

当事人对保管费没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，保管是无偿的。

Article 366 The depositor shall pay the custodian a fee for custody as agreed.

If there is no agreement on the fee for custody between the parties or such agreement is uncertain and cannot be ascertained under Article 61 of this Act, the custody shall be free of charge.

第三百六十七条 保管合同自保管物交付时成立，但当事人另有约定的除外。

Article 367 Except agreed otherwise between the parties, a custody contract is concluded when the article is handed over for custody.

第三百六十八条 寄存人向保管人交付保管物的，保管人应当给付保管凭证，但另有交易习惯的除外。

Article 368 Subject to any trade practice, the custodian shall issue a receipt to the depositor when the depositor hands over the article for custody.

第三百六十九条 保管人应当妥善保管保管物。

当事人可以约定保管场所或者方法。除紧急情况或者为了维护寄存人利益的以外，不得擅自改变保管场所或者方法。

Article 369 The custodian shall keep the article in safe custody.

The parties may agree on the place for or the manner of custody, which may not be unilaterally changed except in case of emergency or for the purpose of protecting the interests of the depositor.

第三百七十条 寄存人交付的保管物有瑕疵或者按照保管物的性质需要采取特殊保管措施的，寄存人应当将有关情况告知保管人。寄存人未告知，致使保管物受损失的，保管人不承担损害赔偿责任；保管人因此受损失的，除保管人知道或者应当知道并且未采取补救措施的以外，寄存人应当承担损害赔偿责任。

Article 370 If an article delivered by the depositor for custody has defects or the nature of the article requires special measures to be taken, he shall so inform the custodian. If the depositor fails to inform the custodian thereby causing damage to and/or loss of the article in custody, the custodian shall not be held liable for damages. If the custodian suffers

losses caused by the omission on the part of the depositor, the depositor shall be held liable for damages unless the custodian knows or ought to have known such defects or nature but fails to take any remedial measures.

第三百七十一条 保管人不得将保管物转交第三人保管，但当事人另有约定的除外。

保管人违反前款规定，将保管物转交第三人保管，对保管物造成损失的，应当承担损害赔偿责任。

Article 371 The custodian shall not transfer the article in custody to a third party for safe keeping unless the parties agreed otherwise.

In breach of the preceding paragraph by transferring the article in custody to a third party, the custodian shall be liable for any damages so caused.

第三百七十二条 保管人不得使用或者许可第三人使用保管物，但当事人另有约定的除外。

Article 372 The custodian shall not use or permit a third party to use the article in custody unless the parties agreed otherwise.

第三百七十三条 第三人对保管物主张权利的，除依法对保管物采取保全或者执行的以外，保管人应当履行向寄存人返还保管物的义务。

第三人对保管人提起诉讼或者对保管物申请扣押的，保管人应当及时通知寄存人。

Article 373 If a third party claims a right over the article in custody, the custodian shall be obliged to return the article to the depositor except when measures are being taken over the said article for the purpose of preservation or enforcement according to law.

The custodian shall promptly notify the depositor of any legal proceedings taken by a third party against the custodian or any application made for the seizure of the article in custody.

第三百七十四条 保管期间，因保管人保管不善造成保管物毁损、灭失的，保管人应当承担损害赔偿责任，但保管是无偿的，保管人证明自己没有重大过失的，不承担损害赔偿责任。

Article 374 The custodian shall be liable for any damage to or loss of the article in custody as a result of his improper keeping, provided that if the custody is free of charge and the custodian can establish that there has been no gross default on his part, he shall not bear any liability for damages.

第三百七十五条 寄存人寄存货币、有价证券或者其他贵重物品的，应当向保管人声明，由保管人验收或者封存。寄存人未声明的，该物品毁损、灭失后，保管人可以按照一般物品予以赔偿。

Article 375 A depositor putting currency notes, securities or other valuables for safe keeping shall declare to the custodian whereupon the custodian shall inspect or seal up the same. If the depositor fails to make such declaration and in case such articles are subsequently damaged or

lost, the custodian may pay damages as if they were ordinary articles.

第三百七十六条 寄存人可以随时领取保管物。当事人对保管期间没有约定或者约定不明确的，保管人可以随时要求寄存人领取保管物；约定保管期间的，保管人无特别事由，不得要求寄存人提前领取保管物。

Article 376 The depositor may retrieve the article in custody at any time. If there is no agreement between the parties for the period of safe keeping or the agreement is uncertain, the custodian may at any time request the depositor to retrieve the said article. If there is an agreement to the custody period, the custodian may not require the depositor to retrieve the article prematurely unless for good cause.

第三百七十七条 保管期间届满或者寄存人提前领取保管物的，保管人应当将原物及其孳息归还寄存人。

Article 377 The custodian shall return to the depositor the article in custody together with any benefits derived therefrom, upon the expiry of the custody period or upon the depositor retrieving the article in custody prematurely.

第三百七十八条 保管人保管货币的，可以返还相同种类、数量的货币。保管其他可替代物的，可以按照约定返还相同种类、品质、数量的物品。

Article 378 A custodian keeping currency notes for custody may return the same kind of currency notes in the same amount. If the custody

is of other fungible articles, articles of same kind in same quality and quantity may be returned as agreed.

第三百七十九条 有偿的保管合同，寄存人应当按照约定的期限向保管人支付保管费。

当事人对支付期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当在领取保管物的同时支付。

Article 379 The depositor under a custody contract with consideration shall pay the custodian charges when becoming due and payable.

If there is no agreement as to the time for the payment or the agreement is uncertain and cannot be ascertained under Article 61 of this Act, payment shall be made at the time when the article is retrieved.

第三百八十条 寄存人未按照约定支付保管费以及其他费用的，保管人对保管物享有留置权，但当事人另有约定的除外。

Article 380 If the depositor fails to pay the custody charges and other expenses as agreed, the custodian shall be entitled to a lien on the article in custody unless the parties agree otherwise.

第二十章 仓储合同

Chapter 20 Contracts for Storage

第三百八十一条 仓储合同是保管人储存存货人交付的仓储物，存货人支付仓储费的合同。

Article 381 A contract for storage means a contract whereby the keeper stores the goods delivered by the depositor, and the depositor pays for the storage.

第三百八十二条 仓储合同自成立时生效。

Article 382 A contract for storage takes effect upon conclusion.

第三百八十三条 储存易燃、易爆、有毒、有腐蚀性、有放射性等危险物品或者易变质物品，存货人应当说明该物品的性质，提供有关资料。

存货人违反前款规定的，保管人可以拒收仓储物，也可以采取相应措施以避免损失的发生，因此产生的费用由存货人承担。

保管人储存易燃、易爆、有毒、有腐蚀性、有放射性等危险物品的，应当具备相应的保管条件。

Article 383 If inflammable, explosive, toxic, corrosive, radioactive and other dangerous or perishable articles are put to storage, the depositor shall indicate the nature of the goods and provide relevant information thereof.

If a depositor commits a breach of the preceding paragraph, the keeper is entitled to refuse storage of the goods, or to take appropriate measures to avoid occurrence of losses and to charge any expenses incurred thereby against the depositor.

For storage of inflammable, explosive, toxic, corrosive, radioactive and other dangerous goods, a keeper shall be equipped with appropriate

safe-keeping facilities.

第三百八十四条 保管人应当按照约定对入库仓储物进行验收。保管人验收时发现入库仓储物与约定不符合的，应当及时通知存货人。保管人验收后，发生仓储物的品种、数量、质量不符合约定的，保管人应当承担损害赔偿责任。

Article 384 The keeper shall inspect the goods to be stored for receipt. Upon discovering the goods stored not conforming to the specifications in the agreement by way of inspection, the keeper shall inform the depositor forthwith. The keeper shall be held liable for damages in respect of any damage to the goods in storage upon any descriptions, quantity or quality not conforming with the agreement of which the said goods have been accepted by the keeper after inspection.

第三百八十五条 存货人交付仓储物的，保管人应当给付仓单。

Article 385 Upon acceptance of the goods delivered by the depositor for storage, the keeper shall issue a storage receipt.

第三百八十六条 保管人应当在仓单上签字或者盖章。仓单包括下列事项：

- (一) 存货人的名称或者姓名和住所；
- (二) 仓储物的品种、数量、质量、包装、件数和标记；
- (三) 仓储物的损耗标准；
- (四) 储存场所；
- (五) 储存期间；

(六) 仓储费;

(七) 仓储物已经办理保险的, 其保险金额、期间以及保险人的名称;

(八) 填发人, 填发地和填发日期。

Article 386 The storage receipt shall be signed or stamped by the keeper. A storage receipt shall contain the following particulars:

(1) the name and address of the depositor;

(2) descriptions, quantity, quality, package, number of cartons and markings of the stored goods;

(3) the scale of damage to the stored goods;

(4) place of storage;

(5) period for storage;

(6) storage charges;

(7) the amount insured, terms of the policy and name of the insurer, if the stored goods are insured,;

(8) name of the person issuing the storage receipt, the place and the date of issue.

第三百八十七条 仓单是提取仓储物的凭证。存货人或者仓单持有人在仓单上背书并经保管人签字或者盖章的, 可以转让提取仓储物的权利。

Article 387 The storage receipt is an instrument for taking delivery of the goods so stored. The right to take delivery of the goods

may be transferred if the storage receipt has been endorsed by the depositor or holder thereof and also signed or stamped by the keeper.

第三百八十八条 保管人根据存货人或者仓单持有人的要求，应当同意其检查仓储物或者提取样品。

Article 388 Upon request by the depositor or the holder of the storage receipt, inspection of the stored goods or taking samples thereof shall be allowed by the keeper.

第三百八十九条 保管人对入库仓储物发现有变质或者其他损坏的，应当及时通知存货人或者仓单持有人。

Article 389 Upon discovering deterioration or other damage to the stored goods, the keeper shall promptly notify the depositor or the holder of the storage receipt.

第三百九十条 保管人对入库仓储物发现有变质或者其他损坏，危及其他仓储物的安全和正常保管的，应当催告存货人或者仓单持有人作出必要的处置。因情况紧急，保管人可以作出必要的处置，但事后应当将该情况及时通知存货人或者仓单持有人。

Article 390 Upon discovering any deterioration in or damage to any goods so stored which endangers the safety or normal storage of other goods, the keeper shall promptly demand the depositor or the holder of storage receipt to take necessary measures. In case of emergency, the keeper may take necessary measures by himself, but shall thereafter promptly notify the depositor or the holder of the storage receipt of the

measures so taken.

第三百九十一条 当事人对储存期间没有约定或者约定不明确的，存货人或者仓单持有人可以随时提取仓储物，保管人也可以随时要求存货人或者仓单持有人提取仓储物，但应当给予必要的准备时间。

Article 391 If there is no agreement between the parties on the period of storage or the agreement is uncertain, the depositor may retrieve the goods in storage at any time, and the keeper may also require the depositor or the holder of the storage receipt to collect the goods at any time, provided that sufficient time necessary for preparation shall be given.

第三百九十二条 储存期间届满，存货人或者仓单持有人应当凭仓单提取仓储物。存货人或者仓单持有人逾期提取的，应当加收仓储费；提前提取的，不减收仓储费。

Article 392 Upon expiry of the storage period, the depositor or the holder of storage receipt shall take delivery of the goods in storage against the receipt. Additional storage charges may be levied if the depositor or the holder of the storage receipt fails to take delivery in time. No reduction in storage charges shall be given for early retrieval.

第三百九十三条 储存期间届满，存货人或者仓单持有人不提取仓储物的，保管人可以催告其在合理期限内提取，逾期不提取的，保管人可以提存仓储物。

Article 393 If the depositor or the holder of the storage receipt fails to take delivery of the goods in storage upon expiry of the storage period, the keeper may demand the depositor or the holder of the storage receipt to take delivery within a reasonable time, and in default upon expiry thereof, the keeper may collect and store the goods by himself.

第三百九十四条 储存期间，因保管人保管不善造成仓储物毁损、灭失的，保管人应当承担损害赔偿责任。因仓储物的性质、包装不符合约定或者超过有效储存期造成仓储物变质、损坏的，保管人不承担损害赔偿责任。

Article 394 The keeper shall be liable for any damage to or loss of the goods in storage caused by improper storage during the period of storage. Because of the nature of the goods in storage or the packaging not conforming to the agreement or the goods being stored beyond the valid storage period, the keeper shall not be liable for damages if and when the goods are perished or damaged.

第三百九十五条 本章没有规定的，适用保管合同的有关规定。

Article 395 Any matter not provided for in this chapter shall be governed by the relevant provisions in Contracts for Storage.

第二十一章 委托合同

Chapter 21 Agency Contracts

第三百九十六条 委托合同是委托人和受托人约定，由受托人处

理委托人事务的合同。

Article 396 An agency contract is an agreement whereby the principal and the agent agree that the agent shall deal with the affairs on behalf of the principal.

第三百九十七条 委托人可以特别委托受托人处理一项或者数项事务，也可以概括委托受托人处理一切事务。

Article 397 A principal may appoint an agent to handle specifically one or several matters and may also appoint the agent to handle all matters generally.

第三百九十八条 委托人应当预付处理委托事务的费用。受托人为处理委托事务垫付的必要费用，委托人应当偿还该费用及其利息。

Article 398 The principal shall pay in advance the expenses for handling the agency matters. If the agent out of his own pocket has paid the necessary expenses for handling the agency matters, the principal shall reimburse the agent with such expenses plus interest.

第三百九十九条 受托人应当按照委托人的指示处理委托事务。需要变更委托人指示的，应当经委托人同意；因情况紧急，难以和委托人取得联系的，受托人应当妥善处理委托事务，但事后应当将该情况及时报告委托人。

Article 399 The agent shall handle the agency matters as instructed by the principal. The consent of the principal shall be obtained for any departure from the instructions of the principal. In case of

emergency if it is difficult to contact the principal, the agent shall handle the agency matters properly at his own discretion and report the situation to the principal promptly thereafter.

第四百条 受托人应当亲自处理委托事务。经委托人同意，受托人可以转委托。转委托经同意的，委托人可以就委托事务直接指示转委托的第三人，受托人仅就第三人的选任及其对第三人的指示承担责任。转委托未经同意的，受托人应当对转委托的第三人的行为承担责任，但在紧急情况下受托人为维护委托人的利益需要转委托的除外。

Article 400 The agent shall personally handle the agency matters. Sub-delegation of the agency is allowed with the consent of the principal. If the sub-delegation of the agency is agreed, the principal may give instructions direct to the delegated third party in respect of the agency matters. The agent shall then be liable only for his selection of and any instructions given to the delegated third party. If the sub-delegation is without consent, the agent shall be liable for the acts of the delegated third party, unless the sub-delegation is necessary under emergency as well as in the interest of the principal.

第四百零一条 受托人应当按照委托人的要求，报告委托事务的处理情况。委托合同终止时，受托人应当报告委托事务的结果。

Article 401 Upon request by the principal the agent shall account for the management of the agency affairs. When the agency is terminated, the agent shall report to the principal the position of the

agency matters.

第四百零二条 受托人以自己的名义，在委托人的授权范围内与第三人订立的合同，第三人在订立合同时知道受托人与委托人之间的代理关系的，该合同直接约束委托人和第三人，但有确切证据证明该合同只约束受托人和第三人的除外。

Article 402 If the agent in his own name and within the scope of his power of agency delegated by the principal enters into a contract with a third party who is aware of the agency between the agent and the principal, such contract shall bind the principal and the third party unless there is cogent evidence to prove that the contract binds only the agent and the third party, but not the principal.

第四百零三条 受托人以自己的名义与第三人订立合同时，第三人不知道受托人与委托人之间的代理关系的，受托人因第三人的原因对委托人不履行义务，受托人应当向委托人披露第三人，委托人因此可以行使受托人对第三人的权利，但第三人与受托人订立合同时如果知道该委托人就不会订立合同的除外。

受托人因委托人的原因对第三人不履行义务，受托人应当向第三人披露委托人，第三人因此可以选择受托人或者委托人作为相对人主张其权利，但第三人不得变更选定的相对人。

委托人行使受托人对第三人的权利的，第三人可以向委托人主张其对受托人的抗辩。第三人选定委托人作为其相对人的，委托人可以向第三人主张其对受托人的抗辩以及受托人对第三人的抗辩。

Article 403 The agent shall disclose the third party to the principal, if he in his own name enters into a contract with a third party who is unaware of the agency between the principal and the agent, and due to the act of the third party the agent fails to perform his obligations to the principal under the agency agreement, so that the principal may thereupon exercise the rights of the agent against the third party, except that if the third party were aware of the principal upon the conclusion of the contract, he would not have entered into the contract with the agent.

If the agent fails to perform his obligations to the third party due to the act of the principal, the agent shall disclose the principal to the third party who may thereupon elect to claim against either the principal or the agent as defendant, provided that he shall not be allowed to change the defendant.

If the principal exercises the agent's right against the third party, the third party may defend himself by any defense which he may use against the agent. If the third party elects the principal as defendant, the principal may defend himself by any defense which he may use against the agent as well as any defense which the agent may have against the third party.

第四百零四条 受托人处理委托事务取得的财产，应当转交给委托人。

Article 404 The agent shall account to the principal for any property obtained in the agency.

第四百零五条 受托人完成委托事务的，委托人应当向其支付报酬。因不可归责于受托人的事由，委托合同解除或者委托事务不能完成的，委托人应当向受托人支付相应的报酬。当事人另有约定的，按照其约定。

Article 405 The principal shall remunerate the agent upon completion of the agency matters. If not due to the fault of the agent, the agency contract is rescinded or the agency matters cannot be completed, the principal shall then pay the agent remuneration in *pro rata*. If the parties have agreed otherwise, such agreement shall prevail.

第四百零六条 有偿的委托合同，因受托人的过错给委托人造成损失的，委托人可以要求赔偿损失。无偿的委托合同，因受托人的故意或者重大过失给委托人造成损失的，委托人可以要求赔偿损失。

受托人超越权限给委托人造成损失的，应当赔偿损失。

Article 406 If under an agency contract with consideration, loss is incurred to the principal due to the fault of the agent, the principal may claim for damages against the agent. If under an agency contract without consideration, loss is incurred to the principal by the willful or gross default of the agent, the principal may claim for damages against the agent.

An agent acting outside the scope of his authority thereby causing damage to the principal shall be liable for the losses.

第四百零七条 受托人处理委托事务时，因不可归责于自己的事

由受到损失的，可以向委托人要求赔偿损失。

Article 407 An agent may require to be indemnified by the principal if he incurs any loss due to any cause not attributable to his act in dealing with the agency matters.

第四百零八条 委托人经受托人同意，可以在受托人之外委托第三人处理委托事务。因此给受托人造成损失的，受托人可以向委托人要求赔偿损失。

Article 408 The principal may with the consent of the agent appoint a third party other than the agent to handle the agency matters. The agent may then require the principal to indemnify him for any loss which he may incur thereby.

第四百零九条 两个以上的受托人共同处理委托事务的，对委托人承担连带责任。

Article 409 If two or more duly appointed agents jointly handle the agency matter, they shall assume joint and several liabilities towards the principal.

第四百一十条 委托人或者受托人可以随时解除委托合同。因解除合同给对方造成损失的，除不可归责于该当事人的事由以外，应当赔偿损失。

Article 410 The principal or agent may rescind the agency contract at any time. If the rescission is due to the act of one party and such rescission causes losses to the other party, the defaulting party shall

be liable for damages to the other party, except that the cause leading to the rescission is not attributable to the defaulting party.

第四百一十一条 委托人或者受托人死亡、丧失民事行为能力或者破产的，委托合同终止，但当事人另有约定或者根据委托事务的性质不宜终止的除外。

Article 411 An agency contract shall be terminated upon the death or loss of civil capacity to act or bankruptcy of either the principal or the agent save and except otherwise agreed between the parties, or by reason of the nature of the agency matter it is not appropriate to terminate the agency.

第四百一十二条 因委托人死亡、丧失民事行为能力或者破产，致使委托合同终止将损害委托人利益的，在委托人的继承人、法定代理人或者清算组织承受委托事务之前，受托人应当继续处理委托事务。

Article 412 In the event of death or loss of civil capacity to act or bankruptcy of the principal leading to termination of the agency contract detrimental to the interest of the principal, the agent shall continue to deal with the agency matters unless and until the principal's successor in title, legal representative or liquidation committee takes over the agency matters

第四百一十三条 因受托人死亡、丧失民事行为能力或者破产，致使委托合同终止的，受托人的继承人、法定代理人或者清算组织应

当及时通知委托人。因委托合同终止将损害委托人利益的，在委托人作出善后处理之前，受托人的继承人、法定代理人或者清算组织应当采取必要措施。

Article 413 In the event of death or loss of civil capacity to act or bankruptcy of the agent leading to termination of the agency contract, the agent's successor in title, legal representative or liquidation committee shall notify the principal forthwith. If termination of the agency contract is detrimental to the interest of the principal, the agent's successor in title, legal representative or liquidation committee shall take necessary measures before the principal makes arrangements for the consequential matters.

第二十二章 行纪合同

Chapter 22 Contracts for Sale of Goods On Consignment

第四百一十四条 行纪合同是行纪人以自己的名义为委托人从事贸易活动，委托人支付报酬的合同。

Article 414 A contract of consignment means a contract whereby the consignee, in his own name, engages in trade activities for the consignor, who pays remuneration to the consignee.

第四百一十五条 行纪人处理委托事务支出的费用，由行纪人负担，但当事人另有约定的除外。

Article 415 The consignee shall bear the expenses incurred in

dealing with the consignment unless otherwise agreed between the parties.

第四百一十六条 行纪人占有委托物的，应当妥善保管委托物。

Article 416 A consignee shall take good care and safe custody of the consigned articles in his possession.

第四百一十七条 委托物交付给行纪人时有瑕疵或者容易腐烂、变质的，经委托人同意，行纪人可以处分该物；和委托人不能及时取得联系的，行纪人可以合理处分。

Article 417 If the consigned articles are found to be defective or prone to perish or deteriorate upon their delivery to the consignee, the consignee may with the consent of the consignor dispose of such articles. If the consignor cannot be contacted promptly, the consignee may dispose of the articles in such manner as he thinks fit.

第四百一十八条 行纪人低于委托人指定的价格卖出或者高于委托人指定的价格买入的，应当经委托人同意。未经委托人同意，行纪人补偿其差额的，该买卖对委托人发生效力。

行纪人高于委托人指定的价格卖出或者低于委托人指定的价格买入的，可以按照约定增加报酬。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，该利益属于委托人。

委托人对价格有特别指示的，行纪人不得违背该指示卖出或者买入。

Article 418 A consignee who sells lower or buys higher than the

price fixed by the consignor shall obtain consent of the consignor. Without the consignor's consent, the transaction shall be effective against the consignor if the consignee compensates for the difference in price.

If the consignee sells higher or buys lower than the price fixed by the consignor, the remuneration may be increased as agreed. If there is no agreement or such agreement is unclear and cannot be ascertained under Article 61 of this Act, the benefit shall belong to the consignor.

If the consignor has given special instructions on the price, the consignee shall not go against such instructions for sale and purchase.

第四百一十九条 行纪人卖出或者买入具有市场定价的商品，除委托人有相反的意思表示的以外，行纪人自己可以作为买受人或者出卖人。

行纪人有前款规定情形的，仍然可以要求委托人支付报酬。

Article 419 If a consignee sells or buys any commodity for which the price is fixed by the market, the consignee may himself be the buyer or seller except that the consignor has expressed an intention to the contrary.

Under the circumstances of the preceding paragraph, the consignee may nevertheless require the consignor to pay him the remuneration.

第四百二十条 行纪人按照约定买入委托物，委托人应当及时受领。经行纪人催告，委托人无正当理由拒绝受领的，行纪人依照本法第一百零一条的规定可以提存委托物。

委托物不能卖出或者委托人撤回出卖，经经纪人催告，委托人不取回或者不处分该物的，经纪人依照本法第一百零一条的规定可以提存委托物。

Article 420 The consignor shall forthwith take delivery of the article bought by the consignee as agreed. If, after being demanded by the consignee, the consignor fails to take delivery of the article without good cause, the consignee may put the article in storage under Article 101 of this Act.

If the article cannot be sold or the consignor withdraws his instructions to sell, and despite of demands by the consignee the consignor fails to take back or dispose of the consigned article, the consignee may put the article in storage under Article 101 of this Act.

第四百二十一条 行纪人与第三人订立合同的，行纪人对该合同直接享有权利、承担义务。

第三人不履行义务致使委托人受到损害的，行纪人应当承担损害赔偿，但行纪人与委托人另有约定的除外。

Article 421 If the consignee enters into a contract with a third party, the consignee shall directly enjoy the rights and bear the obligations thereunder.

Subject to any agreement between the consignee and the consignor, the consignee shall be liable for damages due to the failure by the third party to perform his obligations.

第四百二十二条 行纪人完成或者部分完成委托事务的，委托人应当向其支付相应的报酬。委托人逾期不支付报酬的，行纪人对委托物享有留置权，但当事人另有约定的除外。

Article 422 Upon completion of the consignment in whole or in part, the consignor shall pay the corresponding remuneration to the consignee. Subject to any agreement between the parties, if the consignor fails to pay the remuneration promptly, the consignee shall have a lien over the consigned article.

第四百二十三条 本章没有规定的，适用委托合同的有关规定。

Article 423 Any matter regarding the contract of consignment not provided for in this chapter shall be governed by the provisions relating to the agency contracts.

第二十三章 居间合同

Chapter 23 Broker Contracts

第四百二十四条 居间合同是居间人向委托人报告订立合同的机会或者提供订立合同的媒介服务，委托人支付报酬的合同。

Article 424 A broker advises his principal of an opportunity or provides broker service for entering into a contract and the principal pays for such service

第四百二十五条 居间人应当就有关订立合同的事项向委托人如实报告。

居间人故意隐瞒与订立合同有关的重要事实或者提供虚假情况，损害委托人利益的，不得要求支付报酬并应当承担损害赔偿责任。

Article 425 The broker shall advise his principal truthfully of any matter relating to entering into the contract.

If the broker willfully withholds material information or provides false information relating to entering into the contract to the detriment of the principal, the broker shall not be entitled to payment of remuneration and shall further be held liable for damages.

第四百二十六条 居间人促成合同成立后，委托人应当按照约定支付报酬。对居间人的报酬没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，根据居间人的劳务合理确定。因居间人提供订立合同的媒介服务而促成合同成立的，由该合同的当事人平均负担居间人的报酬。

居间人促成合同成立的，居间活动的费用，由居间人负担。

Article 426 Upon the conclusion of a contract procured by the broker for his principal, the principal shall remunerate the broker as agreed. If there is no agreement on the remuneration payable to the broker or such agreement is uncertain and cannot be ascertained under Article 61 of this Act, reasonable remuneration shall be paid to the broker according to his service so rendered. If the conclusion of a contract has been procured by services of the broker acting for both parties, his remuneration shall be borne by the parties to the contract in equal shares.

The broker shall bear all expenses incurred by him in providing service for the conclusion of a contract.

第四百二十七条 居间人未促成合同成立的，不得要求支付报酬，但可以要求委托人支付从事居间活动支出的必要费用。

Article 427 The broker failing to procure the conclusion of a contract shall not be entitled to any remuneration, provided that he may require the principal to reimburse him for the expenses necessarily incurred for his services.

附则

Supplemental Provisions

第四百二十八条 本法自1999年10月1日起施行，《中华人民共和国合同法》、《中华人民共和国合同法》、《中华人民共和国合同法》同时废止。

Article 428 This Act shall come into force on October 1, 1999, thereupon the Economic Contract Act of the People's Republic of China, the Act of the People's Republic of China on Economic Contracts Involving Foreign Interests and the Act of the People's Republic of China on Technology Contracts shall be repealed.