

CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted and Promulgated by the Second Session of the Ninth National People's Congress March 15, 1999)

GENERAL PRINCIPLES

Chapter One General Provisions

Article 1 Purpose

This Law is formulated in order to protect the lawful rights and interests of contract parties, to safeguard social and economic order, and to promote socialist modernization.

Article 2 Definition of Contract; Exclusions

For purposes of this Law, a contract is an agreement between natural persons, legal persons or other organizations with equal standing, for the purpose of establishing, altering, or discharging a relationship of civil rights and obligations. An agreement concerning any personal relationship such as marriage, adoption, guardianship, etc. shall be governed by other applicable laws.

Article 3 Equal Standing of Parties

Contract parties enjoy equal legal standing and neither party may impose its will on the other party.

Article 4 Right to Enter into Contract Voluntarily

A party is entitled to enter into a contract voluntarily under the law, and no entity or individual may unlawfully interfere with such right.

Article 5 Fairness

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

Article 6 Good Faith

The parties shall abide by the principle of good faith in exercising their rights and performing their obligations.

Article 7 Legality

In concluding or performing a contract, the parties shall abide by the relevant laws and

administrative regulations, as well as observe social ethics, and may not disrupt social and economic order or harm the public interests.

Article 8 Binding Effect; Legal Protection

A lawfully formed contract is legally binding on the parties. The parties shall perform their respective obligations in accordance with the contract, and neither party may arbitrarily amend or terminate the contract.

A lawfully formed contract is protected by law.

Chapter Two Formation of Contracts

Article 9 Capacity; Contract through Agent

In entering into a contract, the parties shall have the appropriate capacities for civil rights and civil acts.

A party may appoint an agent to enter into a contract on its behalf under the law.

Article 10 Forms of Contract; Writing Requirement

A contract may be made in a writing, in an oral conversation, as well as in any other form. A contract shall be in writing if a relevant law or administrative regulation so requires. A contract shall be in writing if the parties have so agreed.

Article 11 Definition of Writing

A writing means a memorandum of contract, letter or electronic message (including telegram, telex, facsimile, electronic data exchange and electronic mail), etc. which is capable of expressing its contents in a tangible form.

Article 12 Terms of Contract

The terms of a contract shall be prescribed by the parties, and generally include the following:

- (i) names of the parties and the domiciles thereof;
- (ii) subject matter;
- (iii) quantity;
- (iv) quality;
- (v) price or remuneration;
- (vi) time, place and method of performance;
- (vii) liabilities for breach of contract;
- (viii) method of dispute resolution.

The parties may enter into a contract by referencing a model contract for the relevant contract category.

Article 13 Offer-Acceptance

A contract is concluded by the exchange of an offer and an acceptance.

Article 14 Definition of Offer

An offer is a party's manifestation of intention to enter into a contract with the other party, which shall comply with the following:

- (i) Its terms are specific and definite;
- (ii) It indicates that upon acceptance by the offeree, the offeror will be bound thereby.

Article 15 Invitation to Offer

An invitation to offer is a party's manifestation of intention to invite the other party to make an offer thereto. A delivered price list, announcement of auction, call for tender, prospectus, or commercial advertisement, etc. is an invitation to offer.

A commercial advertisement is deemed an offer if its contents meet the requirements of an offer.

Article 16 Effectiveness of Offer, Offer through Electronic Message

An offer becomes effective when it reaches the offeree.

When a contract is concluded by the exchange of electronic messages, if the recipient of an electronic message has designated a specific system to receive it, the time when the electronic message enters into such specific system is deemed its time of arrival; if no specific system has been designated, the time when the electronic message first enters into any of the recipient's systems is deemed its time of arrival.

Article 17 Withdrawal of Offer

An offer may be withdrawn. The notice of withdrawal shall reach the offeree before or at the same time as the offer.

Article 18 Revocation of Offer

An offer may be revoked. The notice of revocation shall reach the offeree before it has dispatched a notice of acceptance.

Article 19 Irrevocable Offer

An offer may not be revoked:

- (i) if it expressly indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable;

(ii) if the offeree has reason to regard the offer as irrevocable, and has undertaken preparation for performance.

Article 20 Extinguishment of Offer

An offer is extinguished in any of the following circumstances:

- (i) The notice of rejection reaches the offeror;
- (ii) The offeror lawfully revokes the offer;
- (iii) The offeree fails to dispatch its acceptance at the end of the period for acceptance;
- (iv) The offeree makes a material change to the terms of the offer.

Article 21 Definition of Acceptance

An acceptance is the offeree's manifestation of intention to assent to an offer.

Article 22 Mode of Acceptance; Acceptance by Conduct

An acceptance shall be manifested by notification, except where it may be manifested by conduct in accordance with the relevant usage or as indicated in the offer.

Article 23 Timely Dispatch of Acceptance

An acceptance shall reach the offeror within the period prescribed in the offer.

Where the offer does not prescribe a period for acceptance, the acceptance shall reach the offeror as follows:

- (i) Where the offer is made orally, the acceptance shall be dispatched immediately, unless otherwise agreed by the parties;
- (ii) Where the offer is made in a non-oral manner, the acceptance shall reach the offeror within a reasonable time.

Article 24 Commencement of the Period for Acceptance

Where an offer is made by a letter or a telegram, the period for acceptance commences on the date shown on the letter or the date on which the telegram is handed in for dispatch. If the letter does not specify a date, the period commences on the posting date stamped on the envelop. Where the offer is made through an instantaneous communication device such as telephone or facsimile, etc., the period for acceptance commences once the offer reaches the offeree.

Article 25 Contract Formed upon Effectiveness of Acceptance

A contract is formed once the acceptance becomes effective.

Article 26 Effectiveness of Acceptance

A notice of acceptance becomes effective once it reaches the offeror. Where the acceptance does not require notification, it becomes effective once an act of acceptance is performed in accordance with the relevant usage or as required by the offer.

Where a contract is concluded by the exchange of electronic messages, the time of arrival of the acceptance shall be governed by Paragraph 2 of Article 16 hereof.

Article 27 Withdrawal of Acceptance

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

Article 28 Late Acceptance

An acceptance dispatched by the offeree after expiration of the period for acceptance constitutes a new offer, unless the offeror timely advises the offeree that the acceptance is valid.

Article 29 Delayed Transmission of Acceptance

If the offeree dispatched its acceptance within the period for acceptance, and the acceptance, which would otherwise have reached the offeror in due time under normal circumstances, reaches the offeror after expiration of the period for acceptance due to any other reason, the acceptance is valid, unless the offeror timely advises the offeree that the acceptance has been rejected on grounds of the delay.

Article 30 Acceptance Containing Material Change

The terms of the acceptance shall be identical to those of the offer. A purported acceptance dispatched by the offeree which materially alters the terms of the offer constitutes a new offer. A change in the subject matter, quantity, quality, price or remuneration, time, place and method of performance, liabilities for breach of contract or method of dispute resolution is a material change to the terms of the offer.

Article 31 Acceptance Containing Non-material Changes

An acceptance containing nonmaterial changes to the terms of the offer is nevertheless valid and the terms thereof prevail as the terms of the contract, unless the offeror timely objects to such changes or the offer indicated that acceptance may not contain any change to the terms thereof.

Article 32 Time of Formation in Case of Memorandum of Contract

Where the parties enter into a contract by a memorandum of contract, the contract is formed when it is signed or sealed by the parties.

Article 33 Time of Formation in Case of Letters or Electronic Messages; Confirmation Letter

Where the parties enter into a contract by the exchange of letters or electronic messages, one party may require execution of a confirmation letter before the contract is formed. The contract is formed upon execution of the confirmation letter.

Article 34 Place of Formation; Electronic Messages

The place where the acceptance becomes effective is the place of formation of a contract. Where a contract is concluded by the exchange of electronic messages, the recipient's main place of business is the place of formation of the contract; if the recipient does not have a main place of business, its habitual residence is the place of formation of the contract. If the parties have agreed otherwise, such agreement prevails.

Article 35 Place of Formation in Case of Memorandum of Contract

Where a contract is concluded by a memorandum of contract, its place of formation is the place where the parties sign or seal the contract.

Article 36 Effect of Failure to Conclude Contract in Writing

Where a contract is to be concluded by a writing as required by the relevant law or administrative regulation or as agreed by the parties, if the parties failed to conclude the contract in writing but one party has performed its main obligation and the other party has accepted the performance, the contract is formed.

Article 37 Effect of Failure to Sign in Case of Memorandum of Contract

Where a contract is to be concluded by a memorandum of contract, if prior to signing or sealing of the contract, one party has performed its main obligation and the other party has accepted the performance, the contract is formed.

Article 38 Contract under State Mandatory Plan

Where the state has, in light of its requirements, issued a mandatory plan or state purchase order, the relevant legal persons and other organizations shall enter into a contract based on the rights and obligations of the parties prescribed by the relevant laws and administrative regulations.

Article 39 Standard Terms; Duty to Call Attention

Where a contract is concluded by way of standard terms, the party supplying the standard terms shall abide by the principle of fairness in prescribing the rights and obligations of the parties and shall, in a reasonable manner, call the other party's attention to the provision(s) whereby such party's liabilities are excluded or limited, and shall explain such provision(s) upon request by the other party.

Standard terms are contract provisions which were prepared in advance by a party for repeated use, and which are not negotiated with the other party in the course of concluding the contract.

Article 40 Invalidity of Certain Standard Terms

A standard term is invalid if it falls into any of the circumstances set forth in Article 52 and Article 53 hereof, or if it excludes the liabilities of the party supplying such term, increases the liabilities of the other party, or deprives the other party of any of its material rights.

Article 41 Dispute Concerning Construction of Standard Term

In case of any dispute concerning the construction of a standard term, such term shall be interpreted in accordance with common sense. If the standard term is subject to two or more interpretations, it shall be interpreted against the party supplying it. If a discrepancy exists between the standard term and a non-standard term, the non-standard term prevails.

Article 42 Pre-contract Liabilities

Where in the course of concluding a contract, a party engaged in any of the following conducts, thereby causing loss to the other party, it shall be liable for damages:

- (i) negotiating in bad faith under the pretext of concluding a contract;
- (ii) intentionally concealing a material fact relating to the conclusion of the contract or supplying false information;
- (iii) any other conduct which violates the principle of good faith.

Article 43 Trade Secrets; Liability for Disclosure or Improper Use

A party may not disclose or improperly use any trade secret which it became aware of in the course of negotiating a contract, regardless of whether a contract is formed. If the party disclosed or improperly used such trade secret, thereby causing loss to the other party, it shall be liable for damages.

Chapter Three Validity of Contracts

Article 44 Effectiveness of Contract

A lawfully formed contract becomes effective upon its formation. Where effectiveness of a contract is subject to any procedure such as approval or registration, etc. as required by a relevant law or administrative regulation, such provision applies.

Article 45 Conditions Precedent; Conditions Subsequent; Improper Impairment or

Facilitation

The parties may prescribe that effectiveness of a contract be subject to certain conditions. A contract subject to a condition precedent becomes effective once such condition is satisfied. A contract subject to a condition subsequent is extinguished once such condition is satisfied.

Where in order to further its own interests, a party improperly impaired the satisfaction of a condition, the condition is deemed to have been satisfied; where a party improperly facilitated the satisfaction of a condition, the condition is deemed not to have been satisfied.

Article 46 Contract Term

The parties may prescribe a term for a contract. A contract subject to a time of commencement becomes effective at such time. A contract subject to a time of expiration is extinguished at such time.

Article 47 Contract by Person with Limited Capacity

A contract concluded by a person with limited capacity for civil act is valid upon ratification by the legal agent thereof, provided that a contract from which such person accrues benefits only or the conclusion of which is appropriate for his age, intelligence or mental health does not require ratification by his legal agent.

The other party may demand that the legal agent ratify the contract within one month. If the legal agent fails to manifest his intention, he is deemed to have declined to ratify the contract. Prior to ratification of the contract, the other party in good faith is entitled to cancel the contract. Cancellation shall be effected by notification.

Article 48 Contract by Unauthorized Agent

Absent ratification by the principal, a contract concluded on his behalf by a person who lacked agency authority, who acted beyond his agency authority or whose agency authority was extinguished is not binding upon the principal unless ratified by him, and the person performing such act is liable.

The other party may demand that the principal ratify the contract within one month. Where the principal fails to manifest his intention, he is deemed to have declined to ratify the contract. Prior to ratification of the contract, the other party in good faith is entitled to cancel the contract. Cancellation shall be effected by notification.

Article 49 Contract by Person with Apparent Agency Authority

Where the person lacking agency authority, acting beyond his agency authority, or whose agency authority was extinguished concluded a contract in the name of the principal, if it was reasonable for the other party to believe that the person performing the act had agency authority, such act of agency is valid.

Article 50 Contract Executed by Legal Representative

Where the legal representative or the person-in-charge of a legal person or an organization of any other nature entered into a contract acting beyond his scope of authority, unless the other party knew or should have known that he was acting beyond his scope of authority, such act of representation is valid.

Article 51 Unauthorized Disposal of Property through Contract

Where a piece of property belonging to another person was disposed of by a person without the power to do so, such contract is nevertheless valid once the person with the power to its disposal has ratified the contract, or if the person lacking the power to dispose of it when the contract was concluded has subsequently acquired such power.

Article 52 Invalidating Circumstances

A contract is invalid in any of the following circumstances:

- (i) One party induced conclusion of the contract through fraud or duress, thereby harming the interests of the state;
- (ii) The parties colluded in bad faith, thereby harming the interests of the state, the collective or any third party;
- (iii) The parties intended to conceal an illegal purpose under the guise of a legitimate transaction;
- (iv) The contract harms public interests;
- (v) The contract violates a mandatory provision of any law or administrative regulation.

Article 53 Invalidity of Certain Exculpatory Provisions

The following exculpatory provisions in a contract are invalid:

- (i) excluding one party's liability for personal injury caused to the other party;
- (ii) excluding one party's liability for property loss caused to the other party by its intentional misconduct or gross negligence.

Article 54 Contract Subject to Amendment or Cancellation

Either of the parties may petition the People's Court or an arbitration institution for amendment or cancellation of a contract if:

- (i) the contract was concluded due to a material mistake;
- (ii) the contract was grossly unconscionable at the time of its conclusion.

If a party induced the other party to enter into a contract against its true intention by fraud or duress, or by taking advantage of the other party's hardship, the aggrieved party is

entitled to petition the People's Court or an arbitration institution for amendment or cancellation of the contract.

Where a party petitions for amendment of the contract, the People's Court or arbitration institution may not cancel the contract instead.

Article 55 Extinguishment of Cancellation Right

A party's cancellation right is extinguished in any of the following circumstances:

- (i) It fails to exercise the cancellation right within one year, commencing on the date when the party knew or should have known the cause for the cancellation;
- (ii) Upon becoming aware of the cause for cancellation, it waives the cancellation right by express statement or by conduct.

Article 56 Effect of Invalidation or Cancellation; Partial Invalidation or Cancellation

An invalid or canceled contract is not legally binding *ab initio*. Where a contract is partially invalid, and the validity of the remaining provisions thereof is not affected as a result, the remaining provisions are nevertheless valid.

Article 57 Independence of Dispute Resolution Provision

The invalidation, cancellation or discharge of a contract does not impair the validity of the contract provision concerning the method of dispute resolution, which exists independently in the contract.

Article 58 Remedies in Case of Invalidation or Cancellation

After a contract was invalidated or canceled, the parties shall make restitution of any property acquired thereunder; where restitution in kind is not possible or necessary, allowance shall be made in money based on the value of the property. The party at fault shall indemnify the other party for its loss sustained as a result. Where both parties were at fault, the parties shall bear their respective liabilities accordingly.

Article 59 Remedies in Case of Collusion in Bad Faith

Where the parties colluded in bad faith, thereby harming the interests of the state, the collective or a third person, any property acquired as a result shall be turned over to the state or be returned to the collective or the third person.

Chapter Four Performance of Contracts

Article 60 Full Performance; Performance in Good Faith

The parties shall fully perform their respective obligations in accordance with the

contract.

The parties shall abide by the principle of good faith, and perform obligations such as notification, assistance, and confidentiality, etc. in light of the nature and purpose of the contract and in accordance with the relevant usage.

Article 61 Indeterminate Terms; Supplementary Agreement

If a term such as quality, price or remuneration, or place of performance etc. was not prescribed or clearly prescribed, after the contract has taken effect, the parties may supplement it through agreement; if the parties fail to reach a supplementary agreement, such term shall be determined in accordance with the relevant provisions of the contract or in accordance with the relevant usage.

Article 62 Gap Filling

Where a relevant term of the contract was not clearly prescribed, and cannot be determined in accordance with Article 61 hereof, one of the following provisions applies:

- (i) If quality requirement was not clearly prescribed, performance shall be in accordance with the state standard or industry standard; absent any state or industry standard, performance shall be in accordance with the customary standard or any particular standard consistent with the purpose of the contract;
- (ii) If price or remuneration was not clearly prescribed, performance shall be in accordance with the prevailing market price at the place of performance at the time the contract was concluded, and if adoption of a price mandated by the government or based on government issued pricing guidelines is required by law, such requirement applies;
- (iii) Where the place of performance was not clearly prescribed, if the obligation is payment of money, performance shall be at the place where the payee is located; if the obligation is delivery of immovable property, performance shall be at the place where the immovable property is located; for any other subject matter, performance shall be at the place where the obligor is located;
- (iv) If the time of performance was not clearly prescribed, the obligor may perform, and the obligee may require performance, at any time, provided that the other party shall be given the time required for preparation;
- (v) If the method of performance was not clearly prescribed, performance shall be rendered in a manner which is conducive to realizing the purpose of the contract;
- (vi) If the party responsible for the expenses of performance was not clearly prescribed, the obligor shall bear the expenses.

Article 63 Performance at Government Mandated Price

Where a contract is to be implemented at a price mandated by the government or based on government issued pricing guidelines, if the government adjusts the price during the prescribed period of delivery, the contract price shall be the price at the time of delivery. Where a party delays in delivering the subject matter, the original price applies if the price has increased, and the new price applies if the price has decreased. Where a party

delays in taking delivery or making payment, the new price applies if the price has increased, and the original price applies if the price has decreased.

Article 64 Performance toward a Third Person

Where the parties prescribed that the obligor render performance to a third person, if the obligor fails to render its performance to the third person, or rendered non-conforming performance, it shall be liable to the obligee for breach of contract.

Article 65 Performance by a Third Person

Where the parties prescribed that a third person render performance to the obligee, if the third person fails to perform or rendered non-conforming performance, the obligor shall be liable to the obligee for breach of contract.

Article 66 Simultaneous Performance

Where the parties owe performance toward each other and there is no order of performance, the parties shall perform simultaneously. Prior to performance by the other party, one party is entitled to reject its requirement for performance. If the other party rendered non-conforming performance, one party is entitled to reject its corresponding requirement for performance.

Article 67 Consecutive Performance

Where the parties owe performance toward each other and there is an order of performance, prior to performance by the party required to perform first, the party who is to perform subsequently is entitled to reject its requirement for performance. If the party required to perform first rendered non-conforming performance, the party who is to perform subsequently is entitled to reject its corresponding requirement for performance.

Article 68 Right to Suspend Performance

The party required to perform first may suspend its performance if it has conclusive evidence establishing that the other party is in any of the following circumstances:

- (i) Its business has seriously deteriorated;
- (ii) It has engaged in transfer of assets or withdrawal of funds for the purpose of evading debts;
- (iii) It has lost its business creditworthiness;
- (iv) It is in any other circumstance which will or may cause it to lose its ability to perform.

Where a party suspends performance without conclusive evidence, it shall be liable for breach of contract.

Article 69 Notification upon Suspension of Performance; Termination

If a party suspends its performance in accordance with Article 68 hereof, it shall timely notify the other party.

If the other party provides appropriate assurance for its performance, the party shall resume performance. After performance was suspended, if the other party fails to regain its ability to perform and fails to provide appropriate assurance within a reasonable time, the suspending party may terminate the contract.

Article 70 Difficulty in Rendering Performance Due to Combination

Where after effecting combination, division, or change of domicile, the obligee failed to notify the obligor, thereby making it difficult to render performance, the obligor may suspend its performance or place the subject matter in escrow.

Article 71 Right to Reject Early Performance; Exception

The obligee may reject the obligor's early performance, except where such early performance does not harm the obligee's interests.

Any additional expense incurred by the obligee due to the obligor's early performance shall be borne by the obligor.

Article 72 Right to Reject Partial Performance; Exception

An obligee may reject the obligor's partial performance, except where such partial performance does not harm the obligee's interests.

Any additional expense incurred by the obligee due to the obligor's partial performance shall be borne by the obligor.

Article 73 Subrogation; Limitation

Where the obligor delayed in exercising its creditor's right against a third person that was due, thereby harming the obligee, the obligee may petition the People's Court for subrogation, except where such creditor's right is exclusively personal to the obligor. The scope of subrogation is limited to the extent of the obligee's right to performance. The necessary expenses for subrogation by the obligee shall be borne by the obligor.

Article 74 Obligee's Right to Cancel Manifestly Unreasonable Act by Obligor

Where the obligor waived its creditor's right against a third person that was due or assigned its property without reward, thereby harming the obligee, the obligee may petition the People's Court for cancellation of the obligor's act. Where the obligor assigned its property at a low price which is manifestly unreasonable, thereby harming the obligee, and the assignee was aware of the situation, the obligee may also petition the People's Court for cancellation of the obligor's act.

The scope of cancellation right is limited to the extent of the obligee's right to performance. The necessary expenses for the obligee's exercise of its cancellation right

shall be borne by the obligor.

Article 75 Time Limit for Exercising Obligee's Cancellation Right

The obligee's cancellation right shall be exercised within one year, commencing on the date when it became, or should have become, aware of the cause for cancellation. Such cancellation right is extinguished if not exercised within five years, commencing on the date of occurrence of the obligor's act.

Article 76 A Party's Internal Change Not Excuse for Nonperformance

Once a contract becomes effective, a party may not refuse to perform its obligations thereunder on grounds of any change in its name or change of its legal representative, person in charge, or the person handling the contract.

Chapter Five Amendment and Assignment of Contracts

Article 77 Amendment; Amendment Subject to Approval

A contract may be amended if the parties have so agreed. Where amendment to the contract is subject to any procedure such as approval or registration, etc. as required by a relevant law or administrative regulation, such provision applies.

Article 78 Ambiguous Amendment Not Effective

A contract term is construed not to have been amended if the parties failed to clearly prescribe the terms of the amendment.

Article 79 Assignment of Rights; Exceptions

The obligee may assign its rights under a contract in whole or in part to a third person, except where such assignment is prohibited:

- (i) in light of the nature of the contract;
- (ii) by agreement between the parties;
- (iii) by law.

Article 80 Duty to Notify When Assigning Rights; Revocation of Assignment Subject to Assignee's Consent

Where the obligee assigns its rights, it shall notify the obligor. Such assignment is not binding upon the obligor if notice was not given.

A notice of assignment of rights given by the obligee may not be revoked, except with the consent of the assignee.

Article 81 Assumption of Incidental Right in Case of Assignment

Where the obligee assigns a right, the assignee shall assume any incidental right associated with the obligee's right, except where such incidental right is exclusively personal to the obligee.

Article 82 Assigned Rights Subject to Accrued Defenses of Obligor

Upon receipt of the notice of assignment of the obligee's right, the obligor may, in respect of the assignee, avail itself of any defense it has against the assignor.

Article 83 Availability of Set-off to Obligor

Upon receipt of the notice of assignment of the obligee's right, if the obligor has any right to performance by the assignor which is due before or at the same time as the assigned obligee's right, the obligor may avail itself of any set-off against the assignee.

Article 84 Delegation of Obligations Subject to Consent by Obligee

Where the obligor delegates its obligations under a contract in whole or in part to a third person, such delegation is subject to consent by the obligee.

Article 85 Availability of Defenses to New Obligor

Where the obligor has delegated an obligation, the new obligor may avail itself of any of the original obligor's defenses against the obligee.

Article 86 Assumption of Incidental Obligation in Case of Delegation

Where the obligor delegates an obligation, the new obligor shall assume any incidental obligation associated with the main obligation, except where such incidental obligation is exclusively personal to the original obligor.

Article 87 Assignment Subject to Approval

Where the obligee's assignment of a right or the obligor's delegation of an obligation is subject to any procedure such as approval or registration, etc. as required by a relevant law or administrative regulation, such provision applies.

Article 88 Concurrent Assignment and Delegation

Upon consent by the other party, one party may concurrently assign its rights and delegate its obligations under a contract to a third person.

Article 89 Provisions Applicable to Concurrent Assignment

Where a party concurrently assigns its rights and delegates its obligations, the provisions in Article 79, Articles 81 to 83, and Articles 85 to 87 apply.

Article 90 Effect of Combination or Division of Contract Party

Where a party has effected combination after it entered into a contract, the legal person or organization of any other nature resulting from the combination assumes the rights and obligations thereunder. Where a party has effected division after it entered into a contract, unless otherwise agreed by the obligee and obligor thereunder, the legal persons or other organizations resulting from the division jointly and severally assume the rights and obligations thereunder.

Chapter Six Discharge of Contractual Rights and Obligations

Article 91 Conditions for Discharge

The rights and obligations under a contract are discharged in any of the following circumstances:

- (i) The obligations were performed in accordance with the contract;
- (ii) The contract was terminated;
- (iii) The obligations were set off against each other;
- (iv) The obligor placed the subject matter in escrow in accordance with the law;
- (v) The obligee released the obligor from performance;
- (vi) Both the obligee's rights and obligor's obligations were assumed by one party;
- (vii) Any other discharging circumstance provided by law or prescribed by the parties occurred.

Article 92 Post-discharge Obligations

Upon discharge of the rights and obligations under a contract, the parties shall abide by the principle of good faith and perform obligations such as notification, assistance and confidentiality, etc. in accordance with the relevant usage.

Article 93 Termination by Agreement; Termination Right

The parties may terminate a contract if they have so agreed.

The parties may prescribe a condition under which one party is entitled to terminate the contract. Upon satisfaction of the condition for termination of the contract, the party with the termination right may terminate the contract.

Article 94 Legally Prescribed Conditions Giving Rise to Termination Right

The parties may terminate a contract if:

- (i) force majeure frustrated the purpose of the contract;
- (ii) before the time of performance, the other party expressly stated or indicated by its conduct that it will not perform its main obligations;
- (iii) the other party delayed performance of its main obligations, and failed to perform within a reasonable time after receiving demand for performance;
- (iv) the other party delayed performance or otherwise breached the contract, thereby frustrating the purpose of the contract;
- (v) any other circumstance provided by law occurred.

Article 95 Time Limit for Termination; Extinguishment of Termination Right

Where the law or the parties prescribe a period for exercising termination right, failure by a party to exercise it at the end of the period shall extinguish such right.

Where neither the law nor the parties prescribe a period for exercising termination right, failure by a party to exercise it within a reasonable time after receiving demand from the other party shall extinguish such right.

Article 96 Termination by Notification; Termination Subject to Approval

The party availing itself of termination of a contract in accordance with Paragraph 2 of Article 93 and Article 94 hereof shall notify the other party. The contract is terminated when the notice reaches the other party. If the other party objects to the termination, the terminating party may petition the People's Court or an arbitration institution to affirm the validity of the termination.

Where termination of a contract is subject to any procedure such as approval or registration, etc. as required by a relevant law or administrative regulation, such provision applies.

Article 97 Remedies in Case of Termination

Upon termination of a contract, a performance which has not been rendered is discharged; if a performance has been rendered, a party may, in light of the degree of performance and the nature of the contract, require the other party to restore the subject matter to its original condition or otherwise remedy the situation, and is entitled to claim damages.

Article 98 Settlement and Winding-up Provisions Not Affected by Discharge

Discharge of contractual rights and obligations does not affect the validity of contract provisions concerning settlement of account and winding-up.

Article 99 Set-off; Set-off Not Subject to Condition

Where each party owes performance to the other party that is due, and the subject matters of the obligations are identical in type and quality, either party may set off its obligation

against the obligation of the other party, except where set-off is prohibited by law or in light of the nature of the contract.

The party availing itself of set-off shall notify the other party. The notice becomes effective when it reaches the other party. Set-off may not be subject to any condition or time limit.

Article 100 Set-off Involving Non-identical Subject Matters

Where each party owes performance to the other party that is due, and the subject matters of the obligations are not identical in type and quality, the parties may effect set-off by mutual agreement.

Article 101 Conditions Giving Rise to Right to Place Subject Matter in Escrow

Where any of the following circumstances makes it difficult to render performance, the obligor may place the subject matter in escrow:

- (i) The obligee refuses to take delivery of the subject matter without cause;
- (ii) The obligee cannot be located;
- (iii) The obligee is deceased or incapacitated, and his heir or guardian is not determined;
- (iv) Any other circumstance provided by law occurs.

Where the subject matter is not fit for escrow, or the escrow expenses will be excessive, the obligor may auction or liquidate the subject matter and place the proceeds in escrow.

Article 102 Duty to Notify in Case of Escrow

After placing the subject matter in escrow, the obligor shall timely notify the obligee or his heir or guardian, except where the obligee cannot be located.

Article 103 Risk of Loss; Fruits of Subject Matter Accrued during Escrow

Once the subject matter is in escrow, the risk of its damage or loss is borne by the obligee. The fruits of the subject matter accrued during escrow belong to the obligee. Escrow expenses shall be borne by the obligee.

Article 104 Taking Delivery of Subject Matter in Escrow Conditional upon Performance; Time Limit

The obligee may take delivery of the subject matter in escrow at any time, provided that if the obligee owes performance toward the obligor that is due, prior to the obligee's performance or provision of assurance, the escrow agent shall reject the obligee's attempt to take delivery of the subject matter in escrow as required by the obligor.

The right of the obligee to take delivery of the subject matter in escrow is extinguished if not exercised within five years, commencing on the date when the subject matter was

placed in escrow. After deduction of escrow expenses, the subject matter in escrow shall be turned over to the state.

Article 105 Release

Where the obligee released the obligor from performance in part or in whole, the rights and obligations under the contract are discharged in part or in whole.

Article 106 Merger of Rights and Obligations

If the same party assumed all the rights and obligations under a contract, the rights and obligations thereunder are discharged, except where the contract involves the interests of a third person.

Chapter Seven Liabilities for Breach of Contracts

Article 107 Types of Liabilities for Breach

If a party fails to perform its obligations under a contract, or rendered non-conforming performance, it shall bear the liabilities for breach of contract by specific performance, cure of non-conforming performance or payment of damages, etc.

Article 108 Anticipatory Breach

Where one party expressly states or indicates by its conduct that it will not perform its obligations under a contract, the other party may hold it liable for breach of contract before the time of performance.

Article 109 Monetary Specific Performance

If a party fails to pay the price or remuneration, the other party may require payment thereof.

Article 110 Non-monetary Specific Performance; Exceptions

Where a party fails to perform, or rendered non-conforming performance of, a non-monetary obligation, the other party may require performance, except where:

- (i) performance is impossible in law or in fact;
- (ii) the subject matter of the obligation does not lend itself to enforcement by specific performance or the cost of performance is excessive;
- (iii) the obligee does not require performance within a reasonable time.

Article 111 Liabilities in Case of Quality Non-compliance

Where a performance does not meet the prescribed quality requirements, the breaching party shall be liable for breach in accordance with the contract. Where the liabilities for breach were not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the aggrieved party may, by reasonable election in light of the nature of the subject matter and the degree of loss, require the other party to assume liabilities for breach by way of repair, replacement, remaking, acceptance of returned goods, or reduction in price or remuneration, etc.

Article 112 Liability for Damages Notwithstanding Subsequent Performance or Cure of Non-conforming Performance

Where a party failed to perform or rendered non-conforming performance, if notwithstanding its subsequent performance or cure of non-conforming performance, the other party has sustained other loss, the breaching party shall pay damages.

Article 113 Calculation of Damages; Damages to Consumer

Where a party failed to perform or rendered non-conforming performance, thereby causing loss to the other party, the amount of damages payable shall be equivalent to the other party's loss resulting from the breach, including any benefit that may be accrued from performance of the contract, provided that the amount shall not exceed the likely loss resulting from the breach which was foreseen or should have been foreseen by the breaching party at the time of conclusion of the contract.

Where a merchant engages in any fraudulent activity while supplying goods or services to a consumer, it is liable for damages in accordance with the Law of the People's Republic of China on Protection of Consumer Rights.

Article 114 Liquidated Damages; Adjustment; Continuing Performance Notwithstanding Payment of Liquidated Damages

The parties may prescribe that if one party breaches the contract, it will pay a certain sum of liquidated damages to the other party in light of the degree of breach, or prescribe a method for calculation of damages for the loss resulting from a party's breach.

Where the amount of liquidated damages prescribed is below the loss resulting from the breach, a party may petition the People's Court or an arbitration institution to increase the amount; where the amount of liquidated damages prescribed exceeds the loss resulting from the breach, a party may petition the People's Court or an arbitration institution to decrease the amount as appropriate.

Where the parties prescribed liquidated damages for delayed performance, the breaching party shall, in addition to payment of the liquidated damages, render performance.

Article 115 Deposit

The parties may prescribe that a party will give a deposit to the other party as assurance for the obligee's right to performance in accordance with the Security Law of the People's Republic of China. Upon performance by the obligor, the deposit shall be set off against the price or refunded to the obligor. If the party giving the deposit failed to perform its obligations under the contract, it is not entitled to claim refund of the deposit; where the party receiving the deposit failed to perform its obligations under the contract, it shall return to the other party twice the amount of the deposit.

Article 116 Election Between Deposit or Liquidated Damages Clauses

If the parties prescribed payment of both liquidated damages and a deposit, in case of breach by a party, the other party may elect in alternative to apply the liquidated damages clause or the deposit clause.

Article 117 Force Majeure

A party who was unable to perform a contract due to force majeure is exempted from liability in part or in whole in light of the impact of the event of force majeure, except otherwise provided by law. Where an event of force majeure occurred after the party's delay in performance, it is not exempted from liability.

For purposes of this Law, force majeure means any objective circumstance which is unforeseeable, unavoidable and insurmountable.

Article 118 Duty to Notify in Case of Force Majeure

If a party is unable to perform a contract due to force majeure, it shall timely notify the other party so as to mitigate the loss that may be caused to the other party, and shall provide proof of force majeure within a reasonable time.

Article 119 Non-Breaching Party's Duty to Mitigate Loss in Case of Breach

Where a party breached the contract, the other party shall take the appropriate measures to prevent further loss; where the other party sustained further loss due to its failure to take the appropriate measures, it may not claim damages for such further loss. Any reasonable expense incurred by the other party in preventing further loss shall be borne by the breaching party.

Article 120 Bilateral Breach

In case of bilateral breach, the parties shall assume their respective liabilities accordingly.

Article 121 Breach Due to Act of Third Person

Where a party's breach was attributable to a third person, it shall nevertheless be liable to the other party for breach. Any dispute between the party and such third person shall be

resolved in accordance with the law or the agreement between the parties.

Article 122 Election of Remedy in Tort or in Contract

Where a party's breach harmed the personal or property interests of the other party, the aggrieved party is entitled to elect to hold the party liable for breach of contract in accordance herewith, or hold the party liable for tort in accordance with any other relevant law.

Chapter Eight Other Provisions Article

Article 123 Applicability of Other Laws

Where another law provides otherwise in respect of a certain contract, such provisions prevail.

Article 124 Applicability to Non-categorized Contracts

Where there is no express provision in the Specific Provisions hereof or any other law concerning a certain contract, the provisions in the General Principles hereof apply, and reference may be made to the provisions in the Specific Provisions hereof or any other law applicable to a contract which is most similar to such contract.

Article 125 Contract Interpretation; Language Versions

In case of any dispute between the parties concerning the construction of a contract term, the true meaning thereof shall be determined according to the words and sentences used in the contract, the relevant provisions and the purpose of the contract, and in accordance with the relevant usage and the principle of good faith.

Where a contract was executed in two or more languages and it provides that all versions are equally authentic, the words and sentences in each version are construed to have the same meaning. In case of any discrepancy in the words or sentences used in the different language versions, they shall be interpreted in light of the purpose of the contract.

Article 126 Choice of Law in Foreign-related Contracts; Contracts Subject to Mandatory Application of Chinese Law

Parties to a foreign related contract may select the applicable law for resolution of a contractual dispute, except otherwise provided by law. Where parties to the foreign related contract failed to select the applicable law, the contract shall be governed by the law of the country with the closest connection thereto.

For a Sino-foreign Equity Joint Venture Enterprise Contract, Sino-foreign Cooperative Joint Venture Contract, or a Contract for Sino-foreign Joint Exploration and Development of Natural Resources which is performed within the territory of the

People's Republic of China, the law of the People's Republic of China applies.

Article 127 Role of Regulatory Authorities

Within the scope of their respective duties, the authority for the administration of industry and commerce and other relevant authorities shall, in accordance with the relevant laws and administrative regulations, be responsible for monitoring and dealing with any illegal act which, through the conclusion of a contract, harms the state interests or the public interests; where such act constitutes a crime, criminal liability shall be imposed in accordance with the law.

Article 128 Dispute Resolution

The parties may resolve a contractual dispute through settlement or mediation. Where the parties do not wish to, or are unable to, resolve such dispute through settlement or mediation, the dispute may be submitted to the relevant arbitration institution for arbitration in accordance with the arbitration agreement between the parties. Parties to a foreign related contract may apply to a Chinese arbitration institution or another arbitration institution for arbitration. Where the parties did not conclude an arbitration agreement, or the arbitration agreement is invalid, either party may bring a suit to the People's Court. The parties shall perform any judgment, arbitral award or mediation agreement which has taken legal effect; if a party refuses to perform, the other party may apply to the People's Court for enforcement.

Article 129 Time Limit for Action

For a dispute arising from a contract for the international sale of goods or a technology import or export contract, the time limit for bringing a suit or applying for arbitration is four years, commencing on the date when the party knew or should have known that its rights were harmed. For a dispute arising from any other type of contract, the time limit for bringing a suit or applying for arbitration shall be governed by the relevant law.

SPECIFIC PROVISIONS

Chapter Nine Sales Contracts

Article 130 Definition of Sales Contract

A sales contract is a contract whereby the seller transfers title to the subject matter to the buyer, who pays the price.

Article 131 Additional Terms

In addition to the terms set forth in Article 12 hereof, a sales contract may include terms such as packing method, inspection standard and inspection method, method of

settlement of account, and the language versions of the contract and the authenticity thereof, etc.

Article 132 Title or Disposal Power; Prohibition of or Restriction on Transfer

The seller shall have title to, or the power to dispose of, the subject matter for sale. Where a law or administrative regulation prohibits or restricts the transfer of the subject matter, such provision applies.

Article 133 Passing of Title

Title to the subject matter passes at the time of its delivery, except otherwise provided by law or agreed by the parties.

Article 134 Conditional Sale

The parties may prescribe in the sales contract that title to the subject matter remain in the seller until the buyer has paid the price or has performed other obligations.

Article 135 Seller's Obligations with Respect to Title Transfer

The seller shall perform the obligations of delivering to the buyer the subject matter or the document for taking delivery thereof, as well as transferring title to the subject matter.

Article 136 Delivery of Related Materials by Seller

In addition to the document for taking delivery, the seller shall deliver to the buyer documents and materials related to the subject matter in accordance with the contract or in accordance with the relevant usage.

Article 137 Sales Involving Intellectual Property

In a sale of any subject matter which contains intellectual property such as computer software, etc., the intellectual property in the subject matter does not vest in the buyer, except otherwise provided by law or agreed by the parties.

Article 138 Time of Delivery

The seller shall deliver the subject matter at the prescribed time. Where the contract prescribes a period during which delivery is to take place, the seller may deliver at any time during the delivery period.

Article 139 Absence of Provision for Time of Delivery

Where the time for delivery of the subject matter was not prescribed or clearly prescribed, Article 61 and Item 4 of Article 62 apply.

Article 140 Time of Delivery of Subject Matter Already in Buyer's Possession

Where the subject matter was in buyer's possession prior to conclusion of the contract, the time when the contract becomes effective is the time of delivery

Article 141 Absence of Provision for Place of Delivery

The seller shall deliver the subject matter at the prescribed place.

Where the place of delivery was not prescribed or clearly prescribed, and cannot be determined in accordance with

Article 61 hereof, the following provisions apply:

- (i) If the subject matter needs carriage, the seller shall deliver the subject matter to the first carrier for transmission to the buyer;
- (ii) Where the subject matter does not need carriage, if at the time of conclusion of the contract, the buyer and the seller knew the subject matter was at a particular place, the seller shall deliver the subject matter at such place; and if they did not know the location of the subject matter, delivery shall take place at the seller's place of business at the time of conclusion of the contract.

Article 142 Passing of Risk

The risk of damage to or loss of the subject matter is borne by the seller prior to delivery, and by the buyer after delivery, except otherwise provided by law or agreed by the parties.

Article 143 Risk Allocation in Case of Delayed Delivery

Where the subject matter was not delivered at the prescribed time due to any reason attributable to the buyer, the buyer shall bear the risk of damage to or loss of the subject matter as from the date of breach.

Article 144 Risk Allocation for Subject Matter in Transit

Where the seller sells the subject matter which has been delivered to a carrier for transportation and is in transit, unless otherwise agreed by the parties, the risk of damage or loss is borne by the buyer as from the time of formation of the contract.

Article 145 Passing of Risk in Case of Seller Arranged Carriage

Where the place of delivery was not prescribed or clearly prescribed, if the subject matter needs carriage as provided in Item (i) of Paragraph 2 of Article 141, the risk of damage to or loss of the subject matter is borne by the buyer as from the time the seller delivers the subject matter to the first carrier.

Article 146 Risk Allocation in Case of Delay in Taking Delivery

Where the seller placed the subject matter at the place of delivery in accordance with the contract or in accordance with Item (ii) of Paragraph 2 of Article 141 hereof and the buyer fails to take delivery in breach of the contract, the risk of damage to or loss of the subject matter is borne by the buyer as from the date of breach.

Article 147 Passing of Risk Notwithstanding Failure to Deliver Documents

Failure by the seller to deliver the documents and materials relating to the subject matter in accordance with the contract does not affect passing of the risk of damage to or loss of the subject matter.

Article 148 Rejection on Grounds of Quality Non-compliance; Risk Allocation in Case of Rejection

Where the purpose of the contract is frustrated due to failure of the subject matter to meet the quality requirements, the buyer may reject the subject matter or terminate the contract. If the buyer rejects the subject matter or terminates the contract, the risk of damage to or loss of the subject matter is borne by the seller.

Article 149 Right to Remedy Notwithstanding Assumption of Risk

Buyer's assumption of the risk of damage to or loss of the subject matter does not prejudice its right to hold the seller liable for breach of contract if the seller rendered non-conforming performance.

Article 150 Third Party Claim Warranty

The seller is obligated to warrant that the buyer will be free from any third party claim against it in respect of the subject matter delivered, except otherwise provided by law.

Article 151 Buyer's Knowledge Releasing Third Party Claim Warranty

Where the buyer knew or should have known that the subject matter was subject to a third party claim at the time of conclusion of the contract, the seller does not assume the obligation prescribed in Article 150 hereof.

Article 152 Right to Withhold Payment in Case of Third Party Claim

Where the buyer has conclusive evidence establishing that a third person may make a claim on the subject matter, it may withhold payment of the corresponding price, except where the seller has provided appropriate assurance.

Article 153 Quality Specifications

The seller shall deliver the subject matter in compliance with the prescribed quality requirements. Where the seller gave quality specifications for the subject matter, the subject matter delivered shall comply with the quality requirements set forth therein.

Article 154 Absence of Prescribed Quality Requirements

Where the quality requirements for the subject matter were not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, Item (i) of Article 62 hereof applies.

Article 155 Quality Non-compliance Giving Rise to Claims

If the subject matter delivered by the seller fails to comply with the quality requirements, the buyer may hold the seller liable for breach of contract in accordance with Article 111 hereof.

Article 156 Packing Method

The seller shall deliver the subject matter packed in the prescribed manner. Where a packing method was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the subject matter shall be packed in a customary manner, or, if there is no customary manner, in a manner adequate to protect the subject matter.

Article 157 Inspection upon Receipt of Subject Matter

Upon receipt of the subject matter, the buyer shall inspect it within the prescribed inspection period. Where no inspection period was prescribed, the buyer shall timely inspect the subject matter.

Article 158 Consequence of Failure to Inspect; Exceptions

Where an inspection period was prescribed, the buyer shall notify the seller of any non-compliance in quantity or quality of the subject matter within such inspection period. Where the buyer delayed in notifying the seller, the quantity or quality of the subject matter is deemed to comply with the contract.

Where no inspection period was prescribed, the buyer shall notify the seller within a reasonable period, commencing on the date when the buyer discovered or should have discovered the quantity or quality non-compliance. If the buyer fails to notify within a reasonable period or fails to notify within 2 years, commencing on the date when it received the subject matter, the quantity or quality of the subject matter is deemed to comply with the contract, except that if there is a warranty period in respect of the subject matter, the warranty period applies and supersedes such two year period.

Where the seller knew or should have known the non-compliance of the subject matter, the buyer is not subject to the time limits for notification prescribed in the previous two paragraphs.

Article 159 Absence of Price Provision

The buyer shall pay the price in the prescribed amount. Where the price was not prescribed or clearly prescribed, the provisions of Article 61 and Item (ii) of Article 62 apply.

Article 160 Place of Payment

The buyer shall pay the price at the prescribed place. Where the place of payment was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the buyer shall make payment at the seller's place of business, provided that if the parties agreed that payment shall be conditional upon delivery of the subject matter or the document for taking delivery thereof, payment shall be made at the place where the subject matter, or the document for taking delivery thereof, is delivered.

Article 161 Time of Payment

The buyer shall pay the price at the prescribed time. Where the time for payment was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the buyer shall make payment at the same time it receives the subject matter or the document for taking delivery thereof.

Article 162 Buyer's Option in Case Delivered Quantity Exceeds Prescribed Amount

Where the seller delivered the subject matter in a quantity greater than that prescribed in the contract, the buyer may accept or reject the excess quantity. Where the buyer accepts the excess quantity, it shall pay the price based on the contract rate; where the buyer rejects the excess quantity, it shall timely notify the seller.

Article 163 Title to Fruits Before and After Delivery

The fruits of the subject matter belong to the seller if accrued before delivery, and to the buyer if accrued after delivery.

Article 164 Effect of Termination on Grounds of Non-compliance of Main or Ancillary Components

Where a contract is terminated due to non-compliance of any main component of the subject matter, the effect of termination extends to the ancillary components. Where the contract is terminated due to non-compliance of any ancillary component of the subject matter, the effect of termination does not extend to the main components.

Article 165 Termination in Part or in Whole

Where the subject matter comprises of a number of components, one of which does not comply with the contract, the buyer may terminate the portion of the contract in respect of such component, provided that if severance of such component with the other components will significantly diminish the value of the subject matter, the party may terminate the contract in respect of such number of components.

Article 166 Effect of Termination in Case of Delivery in Installments

Where the seller is to deliver the subject matter in installments, if the seller's failure to deliver or non-conforming delivery of one installment frustrates the purpose of the contract in respect of such installment, the buyer may terminate the portion of the contract in respect thereof.

If the seller's failure to deliver or non-conforming delivery of one installment frustrates the purpose of the contract in respect of all subsequent installments notwithstanding their delivery, the buyer may terminate the portion of the contract in respect of such installment as well as any subsequent installment.

If the buyer is to terminate the portion of the contract in respect of a particular installment which is interdependent with all other installments, it may terminate the contract in respect of all delivered and undelivered installments.

Article 167 Termination in Case of Sale by Installment Payment

In a sale by installment payment, where the buyer failed to make payments as they became due, if the delinquent amount has reached one fifth of the total price, the seller may require payment of the full price from the buyer or terminate the contract. If the seller terminates the contract, it may require the buyer to pay a fee for its use of the subject matter.

Article 168 Quality Provisions in Case of Sale by Sample

In a sale by sample, the parties shall place the sample under seal, and may specify the quality of the sample. The subject matter delivered by the seller shall comply with the sample as well as the quality specifications.

Article 169 Latent Defect in Sample

In a sale by sample, if the buyer was not aware of a latent defect in the sample, the subject matter delivered by the seller shall nevertheless comply with the normal quality standard for a like item, even though the subject matter delivered complies with the sample.

Article 170 Sale by Trial

In a sale by trial, the parties may prescribe the trial period. Where a trial period was not

prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, it shall be determined by the seller.

Article 171 Purchase or Rejection During Trial Period

In a sale by trial, the buyer may either purchase or reject the subject matter during the trial period. At the end of the trial period, the buyer is deemed to have made the purchase if it fails to manifest its intention to purchase or reject the subject matter.

Article 172 Sale by Tender Governed by Relevant Laws

In a sale by tender, matters such as the rights and obligations of the parties and the tendering procedure, etc. are governed by the relevant laws and administrative regulations.

Article 173 Sale by Auction Governed by Relevant Laws

In a sale by auction, matters such as the rights and obligations of the parties and the auctioning procedure, etc. are governed by the relevant laws and administrative regulations.

Article 174 General Applicability to Contracts for Value

For any other contract for value, if the law provides for such contract, such provisions apply; absent any such provision, reference shall be made to the relevant provisions governing sales contracts.

Article 175 Applicability to Barter Transaction

Where the parties agree on a barter transaction involving transfer of title to the subject matters, such transaction shall be governed by reference to the relevant provisions governing sales contracts.

Chapter Ten Contracts for Supply of Power, Water, Gas , Or Heat

Article 176 Definition of Power Supply Contract

A power supply contract is a contract whereby the power supplier supplies power to the power customer, who pays the electricity charge.

Article 177 Terms of Power Supply Contract

A power supply contract includes terms such as the method, quality, and time of power supply, and the capacity, location and nature of power use, and the metering method, electricity rate, the method of settlement of electricity charge, and the responsibility for

maintenance of the power supply and power use facilities, etc.

Article 178 Place of Performance of Power Supply Contract

The place of performance of a power supply contract shall be the place prescribed by the parties, and if not prescribed or clearly prescribed, the place of performance shall be the boundary where ownership of the power supply facilities is divided.

Article 179 Obligations of Power Supplier

The power supplier shall supply power in a safe manner in accordance with the power supply quality standard mandated by the state and in accordance with the contract. Where the power supplier failed to supply power in a safe manner in accordance with the power supply quality standard mandated by the state and in accordance with the contract, thereby causing loss to the power customer, it shall be liable for damages.

Article 180 Obligation to Notify in Case of Scheduled Suspension

Where the power supplier needs to suspend power supply due to reasons such as periodical maintenance or provisional maintenance of the power supply facilities, legally required power rationing, or illegal use of power by the power customer, etc., it shall notify the power customer in advance in accordance with the relevant stipulations of the state. Where the power supplier suspended power supply without notifying the power customer in advance, thereby causing loss to the power customer, it shall be liable for damages.

Article 181 Obligation to Make Emergency Repair in Case of Power Outage

Where a power outage is caused by reasons such as natural disasters, etc., the power supplier shall timely make emergency repair in accordance with the relevant stipulations of the state. Where the power supplier failed to timely make emergency repair, thereby causing loss to the power customer, it shall be liable for damages.

Article 182 Payment of Electricity Charge

The power customer shall timely pay the electricity charge in accordance with the relevant stipulations of the state and in accordance with the contract. Where the power customer delayed in paying the electricity charge, it shall pay liquidated damages in accordance with the contract. Where the power customer failed to pay the electricity charge and liquidated damages within a reasonable time after receiving demand for payment, the power supplier may shut off the power supply in accordance with the procedure prescribed by the state.

Article 183 Power Customer's Obligation of Proper Use

The power customer shall use power in a safe manner in accordance with the relevant

stipulations of the state and in accordance with the contract. Where the power customer failed to use power in a safe manner in accordance with the relevant stipulations of the state and in accordance with the contract, thereby causing loss to the power supplier, it shall be liable for damages.

Article 184 Applicability to Contract for Supply of Water, Gas or Heat

A contract for the supply of water, gas or heat shall be governed by reference to the relevant provisions governing power supply contracts.

Chapter Eleven Gift Contracts

Article 185 Definition of Gift Contract

A gift contract is a contract whereby the donor conveys his property to the donee without reward and the donee manifests his acceptance of the gift.

Article 186 Revocation Prior to Transfer of Rights; Exception

Prior to the transfer of rights to the gift property, the donor may revoke the gift. The previous paragraph does not apply to any gift contract the nature of which serves public interests or fulfills a moral obligation, such as disaster relief, poverty relief, etc., or any gift contract which has been notarized.

Article 187 Observance of Conveyance Procedure

Where conveyance of the gift property is subject to any procedure such as registration, etc. under the law, the relevant procedure shall be carried out.

Article 188 Donee's Right to Require Delivery in Certain Cases

In the case of a gift contract the nature of which serves public interests or fulfills a moral obligation, such as disaster relief, poverty relief, etc., or a gift contract which has been notarized, if the donor fails to deliver the gift property, the donee may require delivery.

Article 189 Liability of Donor for Misconduct or Gross Negligence

Where the gift property is damaged or lost due to any intentional misconduct or gross negligence of the donor, he shall be liable for damages.

Article 190 Gift May Be Subject to Obligations

A gift may be subject to obligations.

Where the gift is subject to obligations, the donee shall perform his obligations in

accordance with the contract.

Article 191 Donor Not Liable for Defect; Exceptions

The donor is not liable for any defect in the gift property. Where the gift is subject to obligations, and the gift property is defective, the donor has the same warranty obligations as a seller to the extent of the prescribed obligations.

Where the donor intentionally omitted to inform the donee of the defect or warranted the absence of any defect, thereby causing loss to the donee, he shall be liable for damages.

Article 192 Circumstances Giving Rise to Revocation Right

Where the donee is in any of the following circumstances, the donor may revoke the gift:

- (i) seriously harming the donor or any immediate family member thereof;
- (ii) failing to perform support obligations owed to the donor;
- (iii) failing to perform the obligations under the gift contract.

The donor shall exercise his revocation right within one year after he became, or should have become, aware of the cause for revocation.

Article 193 Exercise of Revocation Right by Heir

Where the donor is deceased or incapacitated due to the donee's illegal act, his heir or legal agent may revoke the gift.

The heir or legal agent of the donor shall exercise the right of revocation within six months after he became, or should have become, aware of the cause for revocation.

Article 194 Remedies in Case of Revocation

Upon revocation of the gift, the person with the revocation right may claim restitution of the gift property from the donee.

Article 195 Economic Hardship Releases Gift Obligation

If the donor's economic situation has deteriorated significantly, thereby seriously impacting on his business operation or family life, he may be released from the gift obligations.

Chapter Twelve Contracts for Loan of Money

Article 196 Definition of Contract for Loan of Money

A contract for loan of money is a contract whereby the borrower borrows a sum of money from the lender, and returns the sum borrowed and pays interest thereon at the prescribed

time.

Article 197 Writing Requirement; Terms

A contract for loan of money shall be in writing, except where the loan is between natural persons who have agreed otherwise.

A contract for loan of money includes terms such as the loan's type, currency, purpose, amount, interest rate, term and method of repayment, etc.

Article 198 Assurance by Borrower

In entering into a contract for loan of money, the lender may require the borrower to provide assurance. Such assurance shall be arranged in accordance with the Security Law of the People's Republic of China.

Article 199 Borrower's Disclosure Obligation

In entering into a contract for loan of money, the borrower shall provide true information concerning its business operation and financial condition in connection with the loan as required by the lender.

Article 200 Deduction of Interest in Advance Prohibited

No interest shall be deducted from the principal in advance. Where any interest amount is deducted from the principal in advance, the repayment of principal and calculation of interest shall be based on the actual amount borrowed.

Article 201 Remedies in Case of Failure to Make Loan Amount Available Or Failure to Draw Down

Where the lender failed to make the loan amount available on the prescribed date and in the prescribed amount, thereby causing loss to the borrower, it shall pay damages.

Where the borrower failed to draw down on the prescribed date and in the prescribed amount, it shall nevertheless pay the interest on the prescribed date and in the prescribed amount.

Article 202 Lender Entitled to Monitor Use of Proceeds

The lender may examine and monitor the application of the proceeds in accordance with the contract. The borrower shall periodically provide the lender with materials such as related financial and accounting reports, etc. in accordance with the contract.

Article 203 Lender's Remedies in Case of Borrower's Misuse of Proceeds

Where the borrower fails to use the proceeds for the prescribed purpose, the lender may

withhold funding, call the loan, or terminate the contract.

Article 204 Minimum and Maximum Interest Rates

The interest rate on the loan provided by a financial institution engaged in lending operation shall be prescribed between the minimum and maximum rates mandated by the People's Bank of China.

Article 205 Time of Interest Payment

The borrower shall pay the interest at the prescribed time. Where the time of interest payment was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, if the loan term is less than one year, the interest shall be paid together with the principal at the time of repayment; if the loan term is one year or longer, the interest shall be paid at the end of each annual period, and where the remaining period is less than one year, the interest shall be paid together with the principal at the time of repayment.

Article 206 Time of Principal Repayment

The borrower shall repay the principal at the prescribed time. Where the time of repayment was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the borrower may repay at any time; and the lender may demand repayment from the borrower within a reasonable time.

Article 207 Delayed Repayment Interest

Where the borrower failed to repay the loan at the prescribed time, it shall pay delayed repayment interest in accordance with the contract or the relevant stipulations of the state.

Article 208 Calculation of Interest in Case of Prepayment

Where the borrower prepays the loan, unless otherwise agreed by the parties, the interest shall be calculated based on the actual period of loan.

Article 209 Extension of Loan Term

The borrower may apply to the lender for extension of the loan term before its maturity. Upon consent by the lender, the loan term may be extended.

Article 210 Time of Effectiveness of Loan Contract between Natural Persons

A contract for loan of money between natural persons becomes effective at the time the lender makes the loan amount available.

Article 211 Interest under Loan Contract between Natural Persons

Under a contract for loan of money between natural persons, if payment of interest was not prescribed or clearly prescribed, the loan is deemed interest free.

Under a contract for loan of money between natural persons, the interest rate on the loan may not contravene the relevant stipulations of the state regarding limit on loan interest rate.

Chapter Thirteen Leasing Contracts Article 212 Definition of Leasing Contract

A leasing contract is a contract whereby the lessor delivers to the lessee the lease item for it to use or accrue benefit from, and the lessee pays the rent.

Article 213 Terms of Leasing Contract

A leasing contract includes terms such as the name, quantity and purpose of the lease item, lease term, amount of rent, time and method of rent payment, as well as maintenance and repair of the lease item, etc.

Article 214 Limit on Lease Term; Renewal

The lease term may not exceed twenty years. If the lease term exceeds twenty years, the portion of the lease term beyond the initial twenty year period is invalid.

At the end of the lease term, the parties may renew the lease, provided that the renewed term may not exceed twenty years commencing on the date of renewal.

Article 215 Writing Requirement in Case Lease Term Is Six Months or Longer

Where the lease term is six months or longer, the lease shall be in writing. If the parties fail to adopt a writing, the lease is deemed a non-term lease.

Article 216 Lessor's Obligation to Deliver Lease Item

The lessor shall deliver the lease item to the lessee in accordance with the contract and shall, during the lease term, keep the lease item fit for the prescribed purpose.

Article 217 Manner of Using Lease Item

The lessee shall use the lease item in the prescribed manner. Where the manner of use of the lease item was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the lease item shall be used in a manner consistent with its nature.

Article 218 Lessee Not Liable for Wear and Tear

Where the lessee used the lease item in the prescribed manner or in a manner consistent with its nature, thereby causing wear and tear to the lease item, it is not liable for damages.

Article 219 Lessor Entitled to Terminate in Case of Unauthorized Use

Where the lessee failed to use the lease item in the prescribed manner or in a manner consistent with its nature, thereby causing damage to it, the lessor may terminate the contract and claim damages.

Article 220 Lessor's Maintenance Obligations

The lessor shall perform the obligations of maintenance and repair of the lease item, except otherwise agreed by the parties.

Article 221 Lessee's Remedies in Case of Lessor's Failure to Maintain Lease Item

Where the lease item needs maintenance or repair, the lessee may require the lessor to perform maintenance or repair within a reasonable time.
If the lessor fails to fulfill its obligations of maintenance or repair, the lessee may maintain or repair the lease item on its own at the lessor's expense. Where the lessee's use of the lease item is impaired due to maintenance or repair thereof, the rent shall be reduced or the lease term shall be extended accordingly.

Article 222 Lessee's Obligation of Due Care

The lessee shall keep the lease item with due care and shall be liable for damages if the lease item was damaged or lost due to improper care.

Article 223 Improvement or Addition

Subject to consent by the lessor, the lessee may make improvement on or addition to the lease item.

If the lessee made improvement on or addition to the lease item without consent by the lessor, the lessor may require the lessee to restore the lease item to its original condition or claim damages.

Article 224 Sublease

Subject to consent by the lessor, the lessee may sublease the lease item to a third person. Where the lessee subleases the lease item, the leasing contract between the lessee and the lessor remains valid, and if the third person causes damage to the lease item, the lessee shall pay damages.

Where the lessee subleases the lease item without the consent of the lessor, the lessor may terminate the contract.

Article 225 Benefit Accrued from Lease Item During Lease Term

During the lease term, any benefit accrued from the possession or use of the lease item belongs to the lessee, except otherwise agreed by the parties.

Article 226 Time for Rent Payment

The lessee shall pay the rent at the prescribed time. Where the time of payment was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the rent shall be paid at the end of the lease term if it is less than one year; if the lease term is one year or longer, the rent shall be paid at the end of each annual period, and where the remaining period is less than one year, the rent shall be paid at the end of the lease term.

Article 227 Lessor's Remedies in Case of Non-Payment of Rent

Where the lessee failed to pay or delayed in paying the rent without cause, the lessor may require the lessee to pay the rent within a reasonable period. If the lessee fails to pay the rent at the end of such period, the lessor may terminate the contract.

Article 228 Lessee's Remedies in Case of Third Party Claim; Duty to Notify

If due to any claim by a third person, the lessee is unable to use or accrue benefit from the lease item, the lessee may require reduction in rent or refuse to pay rent.

In case of any claim by a third person, the lessee shall timely notify the lessor.

Article 229 Leasing Contract Not Affected by Change of Ownership

Any change of ownership to the lease item does not affect the validity of the leasing contract.

Article 230 Sale of Dwelling Unit under Lease

Where the lessor is to sell a dwelling unit under a lease, it shall give the lessee a reasonable advance notice before the sale, and the lessee has the right of first refusal under the same conditions.

Article 231 Lessee's Remedies in Case of Damage Not Attributable to Itself

Where the lease item was damaged or lost in part or in whole due to any reason not attributable to the lessee, the lessee may require reduction in rent or refuse to pay rent; where the purpose of the contract is frustrated due to damage to or loss of the lease item in part or in whole, the lessee may terminate the contract.

Article 232 Non-Term Lease

Where the term of a lease was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, such lease is deemed a non-term lease. Either party may terminate the contract at any time, provided that the lessor shall give the lessee a reasonable advance notice before it terminates the contract.

Article 233 Lessee Entitled to Terminate in Case of Danger to Safety or Health

Where the lease item poses a danger to the safety or health of the lessee, the lessee may terminate the contract at any time even if the lessee was aware of the quality non-compliance of the lease item at the time of conclusion of the contract.

Article 234 Lease of Dwelling Unit Assumable

Where the lessee is deceased during the term of a dwelling unit lease, the person jointly living in the unit with the lessee while the lessee was alive may continue leasing it on the terms of the original leasing contract.

Article 235 Condition of Lease Item at End of Lease Term

The lessee shall return the lease item at the end of the lease term. The returned lease item shall be in a condition resulting from its use in the prescribed manner or in a manner consistent with its nature.

Article 236 Effect of Continued Use Beyond Lease Term

Upon expiration of the lease term, if the lessee continues to use the lease item without objection by the lessor, the original leasing contract remains effective, provided that it becomes a non-term lease.

Chapter Fourteen Financial Leasing Contracts

Article 237 Definition of Financial Leasing Contract

A financial leasing contract is a contract whereby the lessor, upon purchase of the lessee-selected lease item from a lessee-selected seller, provides the lease item to the lessee for its use, and the lessee pays the rent.

Article 238 Terms of Financial Leasing Contract; Writing Requirement

A financial leasing contract includes terms such as the name, quantity, specifications, technical performance, and method of inspection of the lease item, the lease term, the rental components and the time, method and currency of payment, as well as the ownership of the lease item at the end of the lease term, etc.

A financial leasing contract shall be in writing.

Article 239 Lessee's Assumption of Buyer's Rights

Under the sales contract concluded by the lessor according to the lessee's selection of the seller and the lease item, the seller shall deliver the subject matter to the lessee in accordance with the contract, and the lessee enjoys the rights of the buyer in respect of taking delivery of the subject matter.

Article 240 Lessee's Assumption of Buyer's Remedies in Case of Seller's Non-performance

The lessor, the seller and the lessee may agree that any claim arising from the seller's non-performance of its obligations under the sales contract will be made by the lessee. Where the lessee makes such a claim, the lessor shall provide assistance.

Article 241 Certain Amendment of Sales Contract Subject to Consent by Lessee
Absent consent by the lessee, the lessor may not amend any lessee-related term in the sales contract concluded by it according to the lessee's selection of the seller and the lease item.

Article 242 Exclusion of Lease Item from Bankruptcy Assets of Lessee

Title to the lease item vests in the lessor. In case the lessee enters into bankruptcy, the lease item is not part of its bankruptcy assets.

Article 243 Determination of Rental Components

Unless otherwise agreed by the parties, the rent under a financial leasing contract shall be determined based on the major portion of or full costs of purchasing the lease item and the lessor's reasonable profit.

Article 244 Lessor Not Liable for Non-fitness of Lease Item; Exceptions

Where the lease item does not comply with the contract or is not fit for the intended purpose, the lessor is not liable, except where the lessee relied on the skills of the lessor in selecting the lease item or the lessor interfered in the selection thereof.

Article 245 Warranty by Lessor

The lessor shall give warranty in respect of the lessee's possession and use of the lease item.

Article 246 Lessor Not Liable for Damage or Injury

If while in the possession of the lessee, the lease item caused personal injury or property

damage to any third person, the lessor is not liable.

Article 247 Lessee's Obligation of Due Care; Maintenance Obligations

The lessee shall keep and use the lease item with due care.

While in possession of the lease item, the lessee shall perform the obligations of maintenance and repair thereof.

Article 248 Lessor's Remedies in Case of Non-payment by Lessee

The lessee shall pay the rent in accordance with the contract. Where the lessee fails to pay the rent within a reasonable period after receiving demand for payment from the lessor, the lessor may require payment of the full rent; or it may terminate the contract and repossess the lease item.

Article 249 Partial Refund in Case of Termination by Lessor

Where the parties agreed that title to the lease item will vest in the lessee at the end of the lease term, and after paying a major portion of the rent, the lessee is unable to pay the remaining balance, resulting in the lessor's termination of the contract and repossession of the lease item, if the value of the repossessed lease item exceeds the rent owed by the lessee and other expenses, the lessee may require partial refund.

Article 250 Ownership of Lease Item at End of Lease Term

The lessor and the lessee may agree on the ownership of the lease item at the end of the lease term. Where ownership of the lease item was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, title to the lease item shall vest in the lessor.

Chapter Fifteen Contracts of Hired Works

Article 251 Definition of Contract of Hired Work

A contract of hired work is a contract whereby the hiree completes certain work as required by the hirer and delivers the work product, and the hirer pays the remuneration.

Hired works include works such as processing, custom-made work, repair, reproduction, testing, and inspection, etc.

Article 252 Terms of Contract of Hired Work

A contract of hired work includes terms such as the subject matter of hire, quantity,

quality, remuneration, method of hire, supply of materials, time of performance, standard applicable to and method of acceptance inspection, etc.

Article 253 Use of Hiree's Own Resources; Delegation of Main Task Subject to Consent

The hiree shall use its own equipment, skills and labor to complete the main tasks, except otherwise agreed by the parties.

Where the hiree has delegated a main task of the hired work to a third person for completion, it shall be responsible to the hirer for the work product completed thereby; if the delegation was not approved by the hirer, the hirer may also terminate the contract.

Article 254 Delegation of Ancillary Task by Hiree

The hiree may delegate any ancillary task of the hired work to a third person for completion. Where the hiree delegated any ancillary task of the hired work to a third person for completion, it shall be responsible to the hirer for the work product completed thereby.

Article 255 Materials Supplied by Hiree Subject to Inspection

Where the hiree is to supply the materials, it shall select the materials in accordance with the contract and shall make such materials available for inspection by the hirer.

Article 256 Hiree's Timely Inspection of Materials Supplied by Hirer

Where the hirer is to supply the materials, it shall supply the materials in accordance with the contract. The hiree shall timely inspect the materials supplied by the hirer, and where non-compliance is discovered, it shall timely instruct the hirer to replace or supplement the materials or otherwise cure the non-compliance.

The hiree may not replace the materials supplied by the hirer without authorization, and may not replace any component which does not require repair.

Article 257 Hiree's Remedies in Case of Hirer's Delay in Responding

Where the hiree discovers that the drawings or technical requirements provided by the hirer are unreasonable, it shall timely notify the hirer. Where the hiree sustains any loss due to reasons such as the hirer's delay in responding, etc., the hirer shall pay damages.

Article 258 Hirer Responsible for Its Change of Requirements

Where the hirer changed its requirements for the hired work while the work was under way, thereby causing loss to the hiree, the hirer shall indemnify the hiree.

Article 259 Hirer's Obligation to Assist in Performance

Where performance of the hired work requires assistance by the hirer, it is obligated to provide assistance. Where the hired work is not capable of being completed due to failure by the hirer to fulfill its obligation to assist, the hiree may demand performance from the hirer within a reasonable period and extend the time of its own performance; where the hirer fails to perform at the end of such period, the hiree may terminate the contract.

Article 260 Hirer's Right to Monitor

In the course of performing the hired work, the hiree shall consent to any necessary monitoring and inspection by the hirer. Any monitoring or inspection conducted by the hirer may not impair the normal work of the hiree.

Article 261 Delivery of Work Product by Hiree

Upon completion of the hired work, the hiree shall deliver the work product to the hirer and shall submit thereto the required technical materials and related quality certificate. The hirer shall conduct acceptance inspection of the work product.

Article 262 Hirer's Remedies in Case of Quality Non-compliance

Where the work product delivered by the hiree fails to meet the quality requirements, the hirer may require the hiree to assume liabilities for breach of contract by way of repair, remaking, reduction in remuneration, or payment of damages.

Article 263 Time of Payment of Remuneration

The hirer shall pay the remuneration at the prescribed time. Where the time of payment was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the hirer shall make payment at the time of the hiree's delivery of the work product; where the work product is partially delivered, the hirer shall make payment accordingly.

Article 264 Hiree's Possessory Lien in Case of Non-Payment

Where the hirer fails to pay the remuneration or cost of materials, etc. to the hiree, the hiree is entitled to a possessory lien on the work product completed, except otherwise agreed by the parties.

Article 265 Hiree's Obligation of Due Care for Materials and Work Product

The hiree shall keep the materials supplied by the hirer and the completed work product with due care, and shall be liable for damages in case of any damage or loss due to improper care.

Article 266 Hiree's Confidentiality Obligations

The hiree shall keep the relevant information confidential as required by the hirer, and may not retain any replica or technical material without permission by the hirer.

Article 267 Liability of Joint Hirees

Joint hirees are jointly and severally liable to the hirer, except otherwise agreed by the parties.

Article 268 Hirer's Termination Right Subject to Indemnification

The hirer may terminate the contract of hired work at any time, provided that it shall indemnify the hiree for its loss as a result, if any.

Chapter Sixteen Contracts for Construction Projects

Article 269 Definition of Contract for Construction Project

A contract for construction project is a contract whereby the contractor performs project construction, and the developer pays the price.
Contracts for construction projects include contracts for survey, design, and construction.

Article 270 Writing Requirement

A contract for construction project shall be in writing.

Article 271 Tendering Process in Construction Project

Tendering for a construction project shall be conducted in an open, fair and impartial manner in accordance with the relevant laws.

Article 272 Contracting and Subcontracting in Construction Projects

The developer may enter into a contract for construction project with a prime contractor, or enter into contracts for survey, design, and construction with the surveyor, designer, and constructor respectively. The developer may not divide a construction project which should be completed by one contractor into several parts and contract them out to several contractors.

Subject to consent by the developer, the prime contractor or the contractor for survey, design, or construction may delegate part of the contracted work to a third person. The third person and the prime contractor or the contractor for survey, design, or construction shall be jointly and severally liable to the developer in respect of the work product completed by such third person. The contractor may not assign in whole to any third person the contracted construction project, or divide the whole contracted construction project into several parts and separately assign each part to a third person under the guise

of sub-contracting.

The contractor is prohibited from sub-contracting any part of the project to an entity not appropriately qualified. A sub-contractor is prohibited from further sub-contracting its contracted work. The main structure of the construction project must be constructed by the contractor itself.

Article 273 Major State Construction Projects

A contract for a major state construction project shall be concluded in accordance with the procedure prescribed by the state and in compliance with the state-approved documents such as the investment plan and feasibility studies report, etc.

Article 274 Terms of Contract for Survey or Design

A contract for survey or design includes terms such as the time limit for submission of the relevant basic information and documents (including budget estimate), the quality requirements, fees, and other conditions of cooperation, etc.

Article 275 Terms of Construction Contract

A construction contract includes terms such as the scope of the project, the construction period, the time for commencement and completion of any work to be commissioned in the interim, the quality of the project, the cost of the project, the time for delivery of technical materials, the responsibilities for the supply of materials and equipment, the appropriation of funds and settlement of account, inspection upon completion of the project, the scope and period of quality warranty, and cooperation between the parties, etc.

Article 276 Supervision of Construction Project

Where the construction project is subject to supervision, the developer shall enter into an agency appointment contract for project supervision with a project supervisor in writing. The rights, obligations and associated legal liabilities of the developer and supervisor shall be prescribed in accordance with the provisions hereof concerning agency appointment contracts and the provisions of other relevant laws and administrative regulations.

Article 277 Developer's Right to Inspect

Provided that the developer does not interfere with the normal operation of the contractor, it may inspect the progress and quality of the work at any time.

Article 278 Concealed Work

In the case of concealed work, the contractor shall give the developer notice for inspection prior to concealment. Where the developer fails to timely conduct inspection,

the contractor may extend the relevant project milestones, and is entitled to claim damages for work stoppage or work slowdown, etc.

Article 279 Inspection of Completed Project; No Use Prior to Inspection

Upon completion of the construction project, the developer shall conduct acceptance inspection according to the construction drawings and specifications, and in accordance with the rules of construction inspection and quality inspection standard prescribed by the state. Once the construction project has passed the acceptance inspection, the developer shall pay the prescribed price and accept the construction project.

The completed construction project may be put into use only after it has passed the acceptance inspection; if the construction project has not been inspected or has failed the inspection, it may not be put into use.

Article 280 Developer's Remedies in Case of Non-compliant Survey or Design

Where the developer sustains any loss from construction delay due to non-compliance of the survey or design or due to delayed delivery of the survey or design documents, the surveyor or the designer shall continue to improve the survey or design, reduce or forgo the survey fee or design fee, and pay damages.

Article 281 Developer's Remedies in Case of Non-conforming Construction

Where the construction project fails to meet the prescribed quality requirements due to any reason attributable to the constructor, the developer is entitled to require the constructor to repair, re-construct or make alteration free of charge within a reasonable time. Where delivery of the project is delayed due to such repair, re-construction or alteration, the constructor shall be liable for breach of contract.

Article 282 Contractor Liable for Personal and Property Damage

Where the construction project caused personal injury and property damage during its reasonable usage period due to any reason attributable to the contractor, the contractor shall be liable for damages.

Article 283 Contractor's Remedies in Case of Developer's Failure to Provide Necessary Conditions

Where the developer fails to provide raw materials, equipment, site, funds, or technical information at the prescribed time and in accordance with the contractual requirements, the contractor may extend the relevant project milestones, and is entitled to claim damages for work stoppage or slowdown, etc.

Article 284 Contractor's Remedies in Case of Project Interruption Due to Reasons Attributable to Developer

If an ongoing project is stopped or delayed due to any reason attributable to the developer,

the developer shall take the appropriate measures to make up or mitigate the loss, and shall indemnify the contractor for its loss and out-of-pocket expenses arising from resulting work stoppage, slowdown, reshipment, re-dispatch of mechanical equipment, and excess inventory of materials and assemblies, etc.

Article 285 Surveyor's Remedies in Case of Developer's Failure to Cooperate

Where in the course of survey or design, any repeating work, work stoppage or change of design occurs due to the developer's change of plan, the incorrect information provided by it, or its failure to provide the working conditions necessary for the survey or design at the prescribed time, the developer shall increase the fees in light of the actual amount of work done by the surveyor or designer.

Article 286 Contractor's Remedies in Case of Developer's Failure to Pay Price

If the developer failed to pay the price in accordance with the contract, the contractor may demand payment from the developer within a reasonable period. Where the developer fails to pay the price at the end of such period, the contractor may enter into an agreement with the developer to liquidate the project, and may also petition the People's Court to auction the project in accordance with the law, unless such project is not fit for liquidation or auction in light of its nature.

The construction project price shall be paid in priority out of proceeds from the liquidation or auction of the project.

Article 287 Provisions Governing Contracts of Hired Works Applicable

Chapter Seventeen Carriage Contracts

Section One General Provisions

Article 288 Definition of Carriage Contract

A carriage contract is a contract whereby the carrier carries the passenger or cargo from the place of departure to the prescribed destination, and the passenger, consignor or consignee pays the fare or freightage.

Article 289 Common Carrier May Not Deny Reasonable Carriage Requirement

A common carrier may not deny any normal and reasonable carriage requirement by a passenger or consignor.

Article 290 Obligation of Carrier to Carry in Safe and Timely Manner

The carrier shall safely carry the passenger or cargo to the prescribed destination within the prescribed time or within a reasonable time.

Article 291 Obligation of Carrier to Travel by Prescribed Route

The carrier shall carry the passenger or cargo to the prescribed destination by the prescribed route or the normal route.

Article 292 Passenger's Remedies in Case of Carrier's Failure to Travel by Prescribed Route

The passenger, consignor or consignee shall pay the fare or freightage. Where the carrier failed to carry the passenger or the cargo by the prescribed or normal route, thereby increasing the fare or freightage, the passenger, consignor or consignee may refuse to pay any increased portion thereof.

Section Two Passenger Carriage Contracts

Article 293 Formation of Passenger Carriage Contract

A passenger carriage contract is formed upon the carrier's delivery of the passenger ticket to the passenger, except otherwise agreed by the parties or provided by the relevant usage.

Article 294 Carrier's Remedies in Case of Passenger's Failure to Pay Fare

The passenger shall board the mode of transportation with a valid passenger ticket. If the passenger boards without a ticket, travels beyond the prescribed destination, boards a class higher than the prescribed class, or boards with an expired ticket, he shall pay the fare retroactively, and the carrier may charge additional fare in accordance with the relevant stipulations. Where the passenger fails to pay the fare, the carrier may refuse to carry.

Article 295 Passenger's Failure to Board on Time

Where the passenger is unable to board the mode of transportation at the time prescribed on the passenger ticket due to any reason attributable to himself, he shall carry out the formality for ticket refund or reschedule within the prescribed period. Where the passenger delays in carrying out the relevant formality, the carrier may refuse to refund the fare, and is no longer obligated to carry such passenger.

Article 296 Carry-on Luggage

In the course of carriage, the passenger's carry-on luggage shall be within the prescribed limit. Where his luggage exceeds the prescribed limit on carry-on luggage, the additional luggage shall be checked in.

Article 297 Boarding with Prohibited Item

The passenger may not carry in person, or place in his luggage, any hazardous material which is flammable, explosive, toxic, corrosive, or radioactive, etc., or possibly endangers people or property on board, or an otherwise prohibited item.

Where the passenger violates the previous paragraph, the carrier may unload, destroy or turn over to the relevant authority the prohibited item. Where the passenger insists on carrying in person or placing in his luggage the prohibited item, the carrier shall refuse to carry.

Article 298 Carrier's Obligation to Inform

The carrier shall timely inform the passenger of any major cause preventing it from normal carriage, as well as precautions relating to transportation safety.

Article 299 Passenger's Remedies in Case of Delay

The carrier shall carry the passenger according to the time and carrier number prescribed on the passenger ticket. Where the carrier delays in carriage, it shall, upon request by the passenger, either reschedule or refund the fare.

Article 300 Passenger's Remedies in Case of Unilateral Change of Mode of Transportation by Carrier

Where the carrier unilaterally changed the mode of transportation, thereby lowering the standard of service, it shall, upon request by the passenger, refund or reduce the fare; where the service standard is enhanced as a result, no additional fare shall be charged.

Article 301 Carrier's Obligation to Assist Passenger

In the course of carriage, the carrier shall use its best effort to assist any passenger who has a medical emergency, is in labor or encounters a dangerous situation.

Article 302 Carrier Liable for Injury of Passenger; Exceptions

The carrier shall be liable for damages in case of injury or death of the passenger in the course of carriage, except where such injury or death was attributable to the passenger's own health, or the carrier has established that such injury or death was caused by the passenger's intentional misconduct or gross negligence.

The provisions in the previous paragraph apply to a passenger who is exempted from buying a ticket or holds a discount ticket pursuant to the relevant stipulations, or who is permitted by the carrier to board without a ticket.

Article 303 Provisions Governing Loss of Passenger's Luggage

Where the passenger's carry-on luggage was damaged or lost in the course of carriage, the carrier shall be liable for damages if it was at fault.

Where the passenger's check-in luggage was damaged or lost, the relevant provisions governing cargo carriage apply.

Section Three Cargo Carriage Contracts

Article 304 Consignor's Obligation to Inform; Liability for Misrepresentation

In consigning its cargo, the consignor shall correctly provide the carrier with the name of the consignee or the consignee to whose order the cargo is deliverable, as well as any necessary information relating to carriage of the cargo, such as the name, nature, weight, and quantity of the cargo and the place for taking delivery thereof.

Where the carrier sustains any loss due to the consignor's provision of false information or omission of any material information, the consignor shall be liable for damages.

Article 305 Certain Cargo Carriage Subject to Approval

Where carriage of the cargo is subject to any procedure such as approval or inspection, etc., the consignor shall submit to the carrier the relevant documents evidencing completion of such procedure.

Article 306 Packing of Cargo in Prescribed Manner

The consignor shall pack the cargo in the prescribed manner. Where a packing method was not prescribed or clearly prescribed, Article 156 hereof applies.

Where the consignor violates the previous paragraph, the carrier may refuse to carry.

Article 307 Carriage of Hazardous Materials

In consigning any hazardous material which is inflammable, explosive, toxic, corrosive, or radioactive, etc., the consignor shall, in accordance with the stipulations of the state governing the carriage of hazardous materials, properly pack the hazardous material and affix thereon applicable signs and labels for hazardous materials, and shall submit its name and nature as well as related precautionary measures to the carrier in writing.

If the consignor violates the previous paragraph, the carrier may refuse to carry, and may also take the appropriate measures to prevent loss at the consignor's expense.

Article 308 Consignor's Right of Disposal Prior to Delivery

Prior to carrier's delivery of the cargo to the consignee, the consignor may require the carrier to suspend the carriage, return the cargo, change the destination or deliver the cargo to another consignee, provided that it shall indemnify the carrier for any loss it

sustains as a result.

Article 309 Taking Delivery of Cargo by Consignee

Upon arrival of the cargo, if the carrier knows of the consignee, it shall timely notify the consignee, who shall timely take delivery. Where the consignee delays in taking delivery, it shall pay expenses such as safekeeping fee, etc. to the carrier.

Article 310 Inspection by Consignee; Effect of Failure to Inspect

Upon taking delivery of the cargo, the consignee shall inspect the cargo at the prescribed time. Where the time for inspection was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the consignee shall inspect the cargo within a reasonable time. The consignee's failure to raise any objection concerning the quantity of, or any damage to, the cargo within the prescribed time or within a reasonable time is deemed prima facie evidence of delivery by the carrier in compliance with the description in the transportation documents.

Article 311 Carrier Liable for Damage or Loss during Carriage; Exceptions

The carrier is liable for damages in case of damage to or loss of the cargo in the course of carriage, provided that it is not liable for damages if it has established that such damage to or loss of the cargo was caused by force majeure, the intrinsic characteristics of the cargo, reasonable depletion, or the fault of the consignor or consignee.

Article 312 Amount of Damages in Case of Loss of Cargo

Where the parties agreed on the amount of damages in case of damage to or loss of the cargo, the damages payable is the prescribed amount; if the amount of damages was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, it shall be calculated based on the prevailing market price at the destination when the cargo was or should have been delivered. Where a law or administrative regulation provides otherwise in respect of the method for calculation of damages and any limitation on damages, such provisions apply.

Article 313 Liabilities of Joint Carriers Using the Same Method of Transportation

Where two or more carriers jointly carry the cargo using the same method of transportation, the carrier contracting with the consignor shall be responsible for the whole course of carriage. Where the loss occurred at a particular segment, the carrier contracting with the consignor and the carrier for such segment are jointly and severally liable

Article 314 Freightage in Case of Force Majeure

Where the cargo was lost in the course of carriage due to force majeure, if the freightage

has not been collected, the carrier may not require payment thereof; if the freightage has been collected, the consignor may claim refund.

Article 315 Carrier's Possessory Lien in Case of Non-payment

Where the consignor or consignee fails to pay the freightage, safekeeping fee and other expenses in connection with the carriage of the cargo, the carrier is entitled to a possessory lien on the corresponding portion of the cargo, except otherwise agreed by the parties.

Article 316 Placing Cargo in Escrow

Where the consignee is not known or refuses to take delivery of the cargo without cause, the carrier may place the cargo in escrow under Article 101 hereof.

Section Four Multi-modal Carriage Contract

Article 317 Rights and Obligations of Multi-modal Carriage Operator

A multi-modal carriage operator is responsible for performing, or arranging for performance of, the multi-modal carriage contract, and it enjoys the rights and assumes the obligations of a carrier throughout the course of carriage.

Article 318 Agreement between Multi-modal Carriage Operator and Segment Carriers

The multi-modal carriage operator and the segment carriers may prescribe their respective duties concerning each segment, provided that the obligations of the multi-modal carriage operator with respect to the entire course of carriage are not affected by any such agreement.

Article 319 Multi-modal Carriage Document

Upon receipt of the cargo delivered by the consignor, the multi-modal carriage operator shall issue thereto a multi-modal carriage document. The multi-modal carriage document may either be assignable or non-assignable as required by the consignor.

Article 320 Consignor's Liability Notwithstanding Assignment of Document

Where the multi-modal carriage operator sustains any loss due to the fault of the consignor in the course of consigning the cargo, the consignor shall be liable for damages notwithstanding its subsequent assignment of the multi-modal carriage document.

Article 321 Applicable Law Governing Loss of Cargo in Multi-modal Carriage

Where damage to or loss of the cargo occurred within a particular segment of the course

of a multi-modal carriage, the multi-modal carriage operator's liability for damages and any limitation thereon are governed by the applicable transportation law of the jurisdiction which such segment is under. Where the segment in which the cargo was damaged or lost cannot be determined, the liability for damages shall be borne in accordance with this Chapter.

A matter not provided for in this Chapter shall be governed by the relevant provision governing contracts of hired works.

Chapter Eighteen Technology Contracts

Section One General Provisions

Article 322 Definition of Technology Contract

A technology contract is a contract whereby the parties prescribe their rights and obligations in respect of the development or transfer of technology, or in respect of technical consulting or service.

Article 323 General Requirements Concerning Technology Contract

Conclusion of a technology contract shall be conducive to the advancement of science and technology, and expedite the conversion, application and dissemination of scientific and technological achievements.

Article 324 Terms of Technology Contract; Patents

Terms of a technology contract shall be prescribed by the parties, and generally include the following:

- (i) project name;
- (ii) contents, scope and requirement of the subject matter;
- (iii) the plan, schedule, period, place, territory and method of performance;
- (iv) confidentiality of technical information and materials;
- (v) allocation of responsibilities for risks;
- (vi) ownership of the technology and allocation of benefits accrued therefrom;
- (vii) standard applicable to and method of acceptance test;
- (viii) price, remuneration or licensing fee and the method of payment;
- (ix) liquidated damages or method for calculation of damages;
- (x) method of dispute resolution;
- (xi) definition of terms and phrases.

The parties may agree to include the following materials relating to the performance of the contract as an integral part thereof: technical background information, feasibility

studies and technical evaluation report, project task matrix and project plan, technical standard, technical specifications, original design and technique documents, as well as other technical documentation.

Where the technology contract involves any patent, it shall set forth the name of the invention/innovation, the patent applicant and the patentee, the date of application, the application number, patent number and the term of the patent.

Article 325 Payment Method; Royalty

The method for payment of the price, remuneration or licensing fee under a technology contract shall be prescribed by the parties, who may prescribe lump-sum payment based on one-time calculation or installment payment based on one-time calculation, and may also prescribe royalty payment or royalty payment plus advance payment of initial fee.

Where a royalty payment method is prescribed, the royalty may be calculated as a percentage of the product price, any increase in product value resulting from exploitation of the patent or use of the technical secret, profit, or product sales, and may also be calculated by any other method prescribed by the parties. The royalty rate may be fixed or subject to annual increase or decrease.

Where a royalty payment is prescribed, the parties shall prescribe in the contract a method for inspection of the relevant accounting books.

Article 326 Employee-developed Technology; Definition

Where the right to use and the right to transfer employee-developed technology belong to a legal person or an organization of any other nature, the legal person or organization may enter into a technology contract in respect of such employee-developed technology. The legal person or organization shall reward or remunerate the individual(s) who developed the technology with a percentage of the benefits accrued from the use and transfer of the employee-developed technology. Where the legal person or organization is to enter into a technology contract for the transfer of the employee-developed technology, the employee-developer has the right of first refusal under the same conditions.

An employee-developed technology is a technology developed in the course of completing a task assigned by a legal person or an organization of any other nature, or developed by primarily utilizing the material and technical resources thereof.

Article 327 Non-employee-developed Technology

The right to use and the right to transfer non-employee-developed technology belong to the individual developer, who may enter into a technology contract in respect thereof.

Article 328 Individual's Rights with Respect to Technology Developed Thereby

The individual who developed the technology is entitled to identify himself as the developer in the documentation related thereto, and to receive honor certificate and reward.

Article 329 Invalidity of Technology-monopolizing and Infringing Contract

A technology contract which illegally monopolizes technology, impairs technological advancement or infringes on the technology of a third person is invalid.

Section Two Technology Development Contract

Article 330 Definition of Technology Development Contract

A technology development contract is a contract concluded in respect of the development of a new technology, product, technique or material and the associated system.

Technology development contracts include commissioned development contracts and cooperative development contracts.

A technology development contract shall be in writing.

A contract on the conversion of a scientific achievement with potential for industrial application is governed by reference to the provisions applicable to technology development contracts.

Article 331 Obligations of Commissioning Party

The commissioning party under a commissioned development contract shall, in accordance with the contract, provide development funds and pay remuneration; supply technical materials and original data; complete its tasks of cooperation; and accept the developed technology.

Article 332 Obligations of Developer in Commissioned Development

The developer under a commissioned development contract shall, in accordance with the contract, prepare and implement the development plan; use development funds in a reasonable manner; timely complete the development and deliver the developed technology, as well as provide the relevant technical materials and necessary technical guidance so as to help the commissioning party master the developed technology.

Article 333 Commissioning Party's Breach

Where the commissioning party breached the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for breach of contract.

Article 334 Developer's Breach

Where the developer breached the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for breach of contract.

Article 335 Obligations of Parties in Cooperative Development

Parties to a cooperative development contract shall, in accordance with the contract, make investment, including investment in the form of technology; participate in the development by performing their respective tasks; and cooperate with each other in the development.

Article 336 Breach of Cooperative Contract

Where a party to a cooperative development contract breached the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for breach of contract.

Article 337 Termination of Contract in Case Technology Becomes Public

Where the technology which is the subject matter of a technology development contract was made public by a third person, thereby rendering performance of the technology development contract no longer meaningful, the parties may terminate the contract.

Article 338 Allocation of Responsibility for Risk of Failure; Duty to Inform upon Discovery of Circumstance Which May Lead to Failure

If in the course of implementing a technology development contract, the development failed in whole or in part due to any insurmountable technical difficulty, allocation of the responsibility for such risk shall be prescribed by the parties. Where the allocation of responsibility for such risk was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, it shall be shared by the parties in a reasonable manner.

Where a party discovers any circumstance which may lead to the failure of the development in whole or in part as described in the previous paragraph, it shall timely notify the other party and take the appropriate measures to mitigate loss; where the party failed to timely notify the other party and take the appropriate measures, thereby causing further loss, it shall be liable for such further loss.

Article 339 Right to Patent Application in Commissioned Development

Unless otherwise agreed by the parties, the right to apply for patent on the invention/innovation resulting from a commissioned development belongs to the developer. Where the developer is granted a patent, the commissioning party may exploit such patent free of charge.

Where the developer is to assign the right to apply for patent on the invention/innovation resulting from the commissioned development, the commissioning party has the right of first refusal under the same conditions.

Article 340 Right to Patent Application in Cooperative Development

Unless otherwise agreed by the parties, the right to apply for patent on the invention/innovation resulting from a cooperative development belongs to the parties therein jointly. Where a party is to assign its joint patent application right, the other parties have the right of first refusal under the same conditions.

Where a party in the cooperative development declares a waiver of its joint patent application right, the other party may apply by itself, or the other parties may jointly apply, as the case may be. Where a patent is granted on the invention/innovation, the party waiving its patent application right may exploit such patent free of charge. If a party in the cooperative development does not consent to the application for patent, the other party or parties may not apply for patent.

Article 341 Right to Use or Transfer Technical Secret

The right to use and transfer the technical secret resulting from a commissioned or cooperative development, and the method for allocation of benefits accrued therefrom shall be prescribed by the parties. Where such matters were not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, all of the parties are entitled to use and transfer the technology, provided that the developer in a commissioned development may not transfer the technology to a third person before it delivers the technology to the commissioning party.

Section Three Technology Transfer Contracts

Article 342 Types of Technology Transfer Contract

Technology transfer contracts include contracts for the assignment of patent, assignment of patent application right, transfer of technical secrets, and patent licensing. A technology transfer contract shall be in writing.

Article 343 Limit on Scope of Implementation May Not Restrict Competition

A technology transfer contract may set forth the scope of exploitation of the patent or the use of the technical secret by the transferor and the transferee, provided that it may not restrict technological competition and technological development.

Article 344 Term of Patent Licensing Contract May Not Exceed Patent Term

A patent licensing contract is only valid during the term of the patent. Where the term of the patent expires or the patent is invalidated, the patentee may not enter into a patent licensing contract with any other person in respect thereof.

Article 345 Obligations of Patent Licensor

The transferor under a patent licensing contract shall, in accordance with the contract, license the patent to the transferee, deliver the technical materials related to the exploitation of the patent, and provide the necessary technical guidance.

Article 346 Obligations of Patent Licensee

The transferee under a patent licensing contract shall exploit the patent in accordance with the contract and may not license the patent to any third person except as provided in the contract; and shall pay the licensing fee in accordance with the contract.

Article 347 Obligations of Transferor of Technical Secret

The transferor under a contract for transfer of technical secret shall, in accordance with the contract, supply the technical materials, provide technical guidance, and warrant the practical applicability and reliability of the technology, and shall abide by its confidentiality obligations.

Article 348 Obligations of Transferee of Technical Secret

The transferee under a contract for transfer of technical secret shall, in accordance with the contract, use the technology, pay the licensing fee and abide by its confidentiality obligations.

Article 349 Warranty of Title, Completeness, Correctness and Effectiveness

The transferor under a technology transfer contract shall warrant that it is the lawful owner of the technology provided, and shall warrant that the technology provided is complete, free from error, effective, and capable of achieving the prescribed goals.

Article 350 Transferee's Confidentiality Obligations

The transferee under a technology transfer contract shall, to the prescribed extent and within the prescribed period, abide by its confidentiality obligations in respect of the non-public and secret portion of the technology provided by the transferor.

Article 351 Transferor's Liabilities for Breach

Where the transferor failed to transfer technology in accordance with the contract, it shall refund the licensing fee in part or in whole, and shall be liable for breach of contract; where the transferor exploited the patent or used the technical secret beyond the prescribed scope, or unilaterally allowed the patent to be exploited or the technical secret to be used by a third person in breach of the contract, it shall cease the breach and be liable for breach of contract; where the transferor breached any prescribed confidentiality obligation, it shall be liable for breach of contract.

Article 352 Transferee's Liabilities for Breach

Where the transferee failed to pay the prescribed licensing fee, it shall pay the overdue licensing fee and pay liquidated damages in accordance with the contract; where it failed to pay the overdue licensing fee and liquidated damages, it shall cease exploitation of the patent or use of the technical secret, return the technical materials, and be liable for breach of contract; where the transferee exploited the patent or used the technical secret beyond the prescribed scope, or allowed the patent to be exploited or the technical secret to be used by a third person without consent by the transferor in breach of the contract, it shall cease the breach and be liable for breach of contract; where the transferee breached any prescribed confidentiality obligation, it shall be liable for breach of contract.

Article 353 Transferor Liable in Case of Infringement; Exception

Where the exploitation of the patent or the use of the technical secret by the transferee in accordance with the contract infringes on the lawful interests of any other person, the liability shall be borne by the transferor, except otherwise agreed by the parties.

Article 354 Sharing of Improvement

The parties may, on the basis of mutual benefit, provide in the technology transfer contract for the method of sharing any subsequent improvement resulting from the exploitation of the patent or use of the technical secret. If such method was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, neither party is entitled to share any subsequent improvement made by the other party.

Article 355 Applicability of Other Laws or Administrative Regulations

Where the relevant laws or administrative regulations provide otherwise in respect of technology import/export contracts or in respect of patent contracts or contracts for patent application, such provisions prevail.

Section Four Technical Consulting Contracts and Technical Service Contracts

Article 356 Definitions of Technical Consulting and Technical Service Contracts

Technical consulting contracts include contracts for provision of feasibility studies, technical forecast, specialized technical investigation, and analysis and evaluation report, etc. in respect of a particular technical project.

A technical service contract means a contract whereby one party solves a particular technical problem for the other party by utilizing its technical knowledge, excluding a contract for construction project or a contract of hired work.

Article 357 Obligations of Client under Technical Consulting Contract

The client under a technical consulting contract shall, in accordance with the contract, describe the problem on which consultancy is sought, provide the technical background information as well as related technical materials and data; and accept the work product from, and pay the remuneration to, the consultant.

Article 358 Obligations of Consultant under Technical Consulting Contract

The consultant under a technical consulting contract shall complete the consulting report or answer the question within the prescribed period; the consulting report submitted shall comply with the requirements set forth in the contract.

Article 359 Remedies for Breach; Consultant Not Liable for Loss

Where the client under a technical consulting contract failed to provide the necessary materials and data in accordance with the contract, thereby impairing the progress and quality of the work, or failed to accept or delayed in accepting the work product, it may not claim refund of the remuneration paid, and shall pay any unpaid remuneration.

Where the consultant under the technical consulting contract failed to provide the consulting report within the prescribed period or the consulting report submitted does not comply with the contract, it shall be liable for breach of contract by way of reducing or foregoing the remuneration, etc.

The client under a technical consulting contract shall bear the loss resulting from any decision made by it based on the complying consulting report and opinion provided by the consultant, except otherwise agreed by the parties.

Article 360 Obligations of Client under Technical Service Contract

The client under a technical service contract shall, in accordance with the contract, provide the working conditions and complete its tasks of cooperation; accept the work product and pay the remuneration.

Article 361 Obligations of Service Provider under Technical Service Contract

The service provider under a technical service contract shall, in accordance with the contract, complete the services, solve the technical problem, warrant the quality of its work, and communicate the knowledge for solving the technical problem.

Article 362 Remedies for Breach

Where the client under a technical service contract failed to perform its contractual obligations, or rendered non-conforming performance, thereby impairing the progress and quality of the work, or failed to accept or delayed in accepting the work product, it may not claim refund of the remuneration paid, and shall pay any unpaid remuneration. Where the service provider under a technical service contract failed to complete services in accordance with the contract, it shall be liable for breach of contract by way of

forgoing the remuneration, etc.

Article 363 Ownership of New Technology in Connection with Technical Consulting/Service Contract

In the course of performing a technical consulting contract or a technical service contract, any new technology developed by the consultant or service provider utilizing the technical materials and working conditions provided by the client belongs to the consultant or service provider. Any new technology developed by the client utilizing the work product provided by the consultant or service provider belongs to the client. However, if the parties agree otherwise in the contract, such provision prevails.

Article 364 Technology Intermediary Service or Technical Training

Where a relevant law or administrative regulation provides otherwise in respect of technology intermediary service contracts or technical training contracts, such provisions prevail.

Chapter Nineteen Safekeeping Contracts

Article 365 Definition of Safekeeping Contract

A safekeeping contract is a contract whereby the depository keeps the deposit delivered by the depositor, and eventually returns it thereto.

Article 366 Safekeeping Fee

The depositor shall pay the safekeeping fee to the depository in accordance with the contract.

Where the safekeeping fee was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the safekeeping is gratuitous.

Article 367 Formation of Safekeeping Contract

A safekeeping contract is formed upon delivery of the deposit, except otherwise agreed by the parties.

Article 368 Deposit Voucher

Upon the depositor's delivery of the deposit to the depository, the depository shall issue a deposit voucher thereto, except otherwise provided by the relevant usage.

Article 369 Place and Manner of Safekeeping

The depository shall keep the deposit with due care.

The parties may prescribe the place and manner of safekeeping. The place and manner of safekeeping may not be changed without authorization, except in an emergency situation or for the purpose of safeguarding the depositor's interests.

Article 370 Depositor's Obligation to Inform

Where the deposit delivered by the depositor has defects or requires special safekeeping measures in light of its nature, the depositor shall inform the depository of the relevant situation. Where the depositor failed to inform, thereby causing damage to the deposit, the depository is not liable for damages; where the depository sustains any loss as a result, the depositor shall be liable for damages, except where the depository was, or should have been, aware of the situation and failed to take remedial measures.

Article 371 Delegation of Safekeeping Prohibited Except with Prior Agreement

The depository may not delegate safekeeping of the deposit to a third person, except otherwise agreed by the parties.

Where the depository delegated safekeeping of the deposit to a third person in violation of the previous paragraph, thereby causing damage to the deposit, the depository shall be liable for damages.

Article 372 Use of Deposit Prohibited Except with Prior Agreement

The depository may not use, or allow to be used, the deposit, except otherwise agreed by the parties.

Article 373 Depository's Obligations in Case of Third Party Claim

Where a third person makes a claim on the deposit, the depository shall perform its obligation of returning the deposit to the depositor, except where an order of preservation or enforcement is carried out in respect of the deposit in accordance with the law.

Where a third person has initiated a suit against the depository or has applied for attachment of the deposit, the depository shall timely notify the depositor.

Article 374 Depository Liable in Case of Damage or Loss; Exception

If the deposit was damaged or lost due to improper safekeeping by the depository during the deposit period, the depository shall be liable for damages, provided that if the safekeeping is gratuitous, and the depository has established that it was without gross negligence, it is not liable for damages.

Article 375 Depositor's Obligation to Declare Valuable Deposit

Where the depositor is to deposit money, securities, or any other valuable item for safekeeping, it shall make a declaration to the depository on such item, which shall be inspected or sealed by the depository. Where the depositor failed to make such declaration, upon damage to or loss of the deposit, the depository may indemnify the depositor to the extent of the value of a regular item.

Article 376 Retrieval of Deposit

The depositor may retrieve the deposit at any time.

Where a deposit period was not prescribed or clearly prescribed, the depository may require the depositor to retrieve the deposit at any time; where a deposit period was prescribed, absent special cause, the depository may not require the depositor to retrieve the deposit before the end of the deposit period.

Article 377 Depository's Obligation to Return Deposit and Fruit

At the end of the deposit period, or if the depositor retrieves the deposit before the end of the deposit period, the depository shall return the original item together with any fruit thereof to the depositor.

Article 378 Safekeeping of Fungible Items

Where the depository keeps money deposit, it may return money of the same type and quantity. Where the depository keeps any other fungible item, it may return any item of the same type, quality and quantity in accordance with the contract.

Article 379 Time of Payment of Safekeeping Fee

Under a safekeeping contract for value, the depositor shall pay to the depository the safekeeping fee at the prescribed time.

Where the time of payment of the safekeeping fee was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the safekeeping fee shall be paid at the same time the deposit is retrieved.

Article 380 Depository's Lien in Case of Non-payment

Where the depositor fails to pay the safekeeping fee and other expenses, the depository is entitled to a possessory lien on the deposit, unless otherwise agreed by the parties.

Chapter twenty Warehousing Contracts

Article 381 Definition of Warehousing Contract

A warehousing contract is a contract whereby the warehouse stores the goods delivered by the depositor, and the depositor pays the warehousing fee.

Article 382 Effectiveness of Warehousing Contract

A warehousing contract becomes effective upon its formation.

Article 383 Storage of Hazardous Material

Where the depositor intends to store any hazardous material which is inflammable, explosive, toxic, corrosive, or radioactive, etc., or any material susceptible to deterioration, it shall describe the nature of the goods and provide the relevant information.

Where the depositor violates the previous paragraph, the warehouse may reject the goods and may also take the appropriate measures to prevent loss at the depositor's expense.

Where the warehouse is to store any hazardous material which is inflammable, explosive, toxic, corrosive, or radioactive, etc., it shall be equipped with the appropriate safekeeping conditions.

Article 384 Inspection by Warehouse; Passing of Responsibility

The warehouse shall, in accordance with the contract, conduct warehouse-in inspection of the goods. Where in the course of such inspection, the warehouse discovers any non-compliance of the goods, it shall timely notify the depositor. After inspection and acceptance by the warehouse, if any non-compliance in respect of the type, quantity or quality of the goods occurs, the warehouse shall be liable for damages.

Article 385 Warehouse Receipt

Upon the depositor's delivery of the goods, the warehouse shall issue thereto a warehouse receipt.

Article 386 Contents of Warehouse Receipt

The warehouse shall sign or seal the warehouse receipt. The warehouse receipt shall set forth the following:

- (i) name and domicile of the depositor;
- (ii) the type, quantity, quality, and packing method of the goods, and the number of packages thereof and the marks thereon;
- (iii) the depletion standard for the goods;
- (iv) the warehousing facility;
- (v) the warehousing period;

- (vi) the warehousing fee;
- (vii) if the goods are insured, the insured amount, term of insurance and the name of the insurer;
- (viii) the preparing and issuing person and place and date of preparation and issuance.

Article 387 Nature and Assignability of Warehouse Receipt

The warehouse receipt is the voucher for retrieving the goods. Where the depositor or holder of the warehouse receipt has endorsed the warehouse receipt and the warehouseer has signed or sealed thereon, the right to retrieve the goods may be assigned.

Article 388 Warehouse Receipt Holder's Right to Inspect

Upon request by the holder of the warehouse receipt, the warehouseer shall allow him to inspect the goods or take samples therefrom.

Article 389 Obligation of Warehouseer to Notify in Case of Damage

Where the warehouseer discovers that the warehoused goods are deteriorating or are otherwise damaged, it shall timely notify the depositor or holder of the warehouse receipt.

Article 390 Warehouseer's Obligations and Rights in Respect of Deteriorating Goods

Where the warehouseer discovers that the warehoused goods are deteriorating or are otherwise damaged, thereby endangering other goods and normal safekeeping, it shall demand disposal of the goods by the depositor or the holder of the warehouse receipt as necessary. In an emergency situation, the warehouseer may dispose of the goods as necessary, provided that thereafter it shall timely notify the depositor or holder of the warehouse receipt of the situation.

Article 391 Warehousing Period

Where the warehousing period was not prescribed or clearly prescribed, the depositor or holder of the warehouse receipt may retrieve the goods at any time, and the warehouseer may require the depositor or holder of the warehouse receipt to retrieve the goods at any time, provided that the other party shall be given the time required for preparation.

Article 392 Retrieval of Goods

At the end of the warehousing period, the depositor or holder of the warehouse receipt shall retrieve the goods by presenting the warehouse receipt to the warehouseer. Where the depositor or holder of the warehouse receipt delays in retrieving the goods, additional warehousing fee shall be charged; where the goods are retrieved before the end of the warehousing period, the warehousing fee shall not be reduced.

Article 393 Placing Goods in Escrow in Case of Failure to Retrieve

At the end of the warehousing period, if the depositor or holder of the warehouse receipt failed to retrieve the goods, the warehouse may demand retrieval within a reasonable period, and if the goods are not retrieved at the end of such period, the warehouse may place the goods in escrow.

Article 394 Warehouse's Liabilities in Case of Damage to Goods

Where the goods were damaged or lost during the warehousing period due to improper safekeeping by the warehouse, it shall be liable for damages.

If the goods deteriorated or were damaged due to their nature, non-conforming packing method, or storage beyond their shelf-life, the warehouse is not liable for damages.

Article 395 Provisions Governing Safekeeping Contracts Applicable

A matter not provided for in this Chapter shall be governed by the relevant provision applicable to safekeeping contracts.

Chapter Twenty One Agency Appointment Contracts

Article 396 Definition of Agency Appointment Contract

An agency appointment contract is a contract whereby the principal and the agent agree that the agent will handle the principal's affairs.

Article 397 Scope of Appointment

The principal may specifically appoint the agent to handle one or more of its affairs, or generally appoint the agent to handle all of its affairs.

Article 398 Principal's Obligation to Prepay Expenses

The principal shall prepay the expenses for handling the entrusted affair. Any expense necessary for handling the entrusted affair advanced by the agent shall be repaid with interest by the principal.

Article 399 Agent's Obligation to Follow Instruction; Deviation from Instruction

The agent shall handle the entrusted affair in accordance with the instruction of the principal. Any required deviation from the principal's instruction is subject to consent by the principal; in an emergency where the agent has difficulty contacting the principal, the agent shall properly handle the entrusted affair, provided that thereafter the agent shall timely notify the principal of the situation.

Article 400 Delegation of Agency Subject to Consent; Exceptions

The agent shall personally handle the entrusted affair. Subject to consent by the principal, the agent may delegate the agency to a third person. If the delegation is approved, the principal may issue instructions concerning the entrusted affair directly to the delegate, and the agent is only responsible for its selection of the delegate or its own instruction thereto. Where the agency is delegated without consent, the agent shall be liable for any act of the delegate, except in an emergency where the agent needs to delegate the agency in order to safeguard the interests of the principal.

Article 401 Agent's Obligation to Inform

Upon request by the principal, the agent shall report on the progress of the entrusted affair. Upon discharge of the agency contract, the agent shall render an account of the entrusted affair.

Article 402 Agent's Act Binding on Principal; Exceptions

Where the agent, acting within the scope of authority granted by the principal, entered into a contract in its own name with a third person who was aware of the agency relationship between the principal and agent, the contract is directly binding upon the principal and such third person, except where there is conclusive evidence establishing that the contract is only binding upon the agent and such third person.

Article 403 Agent's Non-performance toward Principal Due to Act of Third Person; Non-performance toward Third Person Due to Act of Principal

Where the agent entered into a contract in its own name with a third person who was not aware of the agency relationship between the agent and the principal, if the agent failed to perform its obligation toward the principal due to any reason attributable to such third person, the agent shall disclose the third person to the principal, allowing it to exercise the agent's rights against such third person, except where the third person would not have entered into the contract with the agent had it known the identity of the principal.

Where the agent failed to perform its obligation toward the third person due to any reason attributable to the principal, the agent shall disclose the principal to the third person, allowing the third person to select in alternative either the principal or the agent as the other contract party against whom to make a claim, provided that the third person may not subsequently change its selection of the contract party.

Where the principal exercises the rights of the agent against the third person, the third person may avail itself of any defense it has against the agent. Where the third person selects the principal as the other party to the contract, the principal may avail itself of any defense it has against the agent as well as any defense the agent has against the third person.

Article 404 Property Acquired by Agent

Any property acquired by the agent in the course of handling the entrusted affair shall be turned over to the principal.

Article 405 Remuneration to Agent

Upon completion of the entrusted affair by the agent, the principal shall pay the remuneration thereto. Where the agency appointment contract is terminated or the entrusted affair is not capable of being completed due to any reason not attributable to the agent, the principal shall pay to the agent an appropriate amount of remuneration. If the parties have agreed otherwise, such agreement prevails.

Article 406 Liability of Agent; Unauthorized Act

Under an agency appointment contract for value, if the principal sustains any loss due to the fault of the agent, the principal may claim damages. Under a gratuitous agency appointment contract, if the principal sustains any loss due to the agent's intentional misconduct or gross negligence, the principal may claim damages. Where the agent acted beyond the scope of authorization, thereby causing loss to the principal, it shall pay damages.

Article 407 Agent Entitled to Indemnification in Case of Loss

In the course of handling the entrusted affair, if the agent sustains any loss due to a reason not attributable to itself, the agent may seek indemnification from the principal.

Article 408 Additional Appointment by Principal Subject to Consent

Subject to consent by the agent, the principal may, in addition to appointing the agent, also appoint a third person to handle the entrusted affair. If such appointment results in loss to the agent, it may seek indemnification from the principal.

Article 409 Joint and Several Liability of Joint Agents

Where two or more agents jointly handle the entrusted affair, they are jointly and severally liable to the principal.

Article 410 Right to Terminate at Any Time

Either the principal or the agent may terminate the agency appointment contract at any time. Where the other party sustains any loss due to termination of the contract, the terminating party shall indemnify the other party, unless such loss is due to a reason not attributable to the terminating party.

Article 411 Discharge Due to Incapacitation

An agency appointment contract is discharged when either the principal or the agent is deceased or incapacitated or enters into bankruptcy, except where the parties have agreed otherwise, or where discharge is inappropriate in light of the nature of the entrusted affair.

Article 412 Agent's Obligations in Case of Principal's Incapacitation

Where discharge of the agency appointment contract due to the death, incapacitation or bankruptcy of the principal will harm the principal's interests, the agent shall continue to handle the entrusted affair before an heir, legal agent or liquidation team thereof takes over the entrusted affair.

Article 413 Heir's Obligations in Case of Agent's Incapacitation

If the agency appointment contract is discharged as a result of the death, incapacitation or bankruptcy of the agent, the heir, legal agent or liquidation team thereof shall timely notify the principal. Where discharge of the agency contract will harm the principal's interests, before the principal makes any care-taking arrangement, the heir, legal agent or liquidation team of the agent shall take the necessary measures.

Chapter Twenty Two Trading-Trust Contracts

Article 414 Definition of Trading-Trust Contract

A trading-trust contract is a contract whereby the trustee-trader conducts trading activities in its own name for the trustor, and the trustor pays the remuneration.

Article 415 Expenses Borne by Trustee-trader

The expenses incurred by the trustee-trader in the course of handling the entrusted affair shall be borne by the trustee-trader, except otherwise agreed by the parties.

Article 416 Trustee-trader's Obligation to Exercise Due Care

Where the trustee-trader is in possession of the trust item, it shall keep the trust item with due care.

Article 417 Disposal of Defective Trust Item by Trustee-trader

If a trust item was defective, perishable or susceptible to deterioration at the time it was delivered to the trustee-trader, upon consent by the trustor, the trustee-trader may dispose of the item; where the trustee-trader is unable to contact the trustor in time, it may dispose of the trust item in a reasonable manner.

Article 418 Pricing of Trust Item

Where the trustee-trader is to sell the trust item below, or buy the trust item above, the price designated by the trustor, it shall obtain consent from the trustor. If such sale was effected without consent by the trustor, and the trustee-trader made up the deficiency on its own, it is binding on the trustor.

Where the trustee-trader sold the trust item above, or purchased the trust item below, the price designated by the trustor, the remuneration may be increased in accordance with the contract. Where such matter was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the benefit belongs to the trustor.

Where the trustor gives special pricing instruction, the trustee-trader may not make any sale or purchase in contravention thereof.

Article 419 Trustee-trader Acting as Purchaser or Seller

Where the trustee-trader is to sell or purchase a commodity the price of which is fixed by the market, the trustee-trader may act as the purchaser or seller itself, unless the trustor has otherwise manifested its intention.

Where the trustee-trader is in a situation described in the previous paragraph, it may still require payment of remuneration from the trustor.

Article 420 Trustor's Obligation to Take Delivery; Trustee-trader's Remedies in Case of Trustor's Failure to Take Delivery

Once the trustee-trader purchased the trust item in accordance with the contract, the trustor shall timely take delivery. Where after receiving demand from the trustee-trader, the trustor refuses to take delivery without cause, the trustee-trader may place the trust item in escrow in accordance with Article 101 hereof.

Where the trust item fails to be sold or the trustor withdraws it from sale, the trustee-trader may place the trust item in escrow in accordance with Article 101 hereof if the trustor fails to retrieve or dispose of it after receiving such demand from trustee-trader.

Article 421 Trustee-trader's Rights and Obligations as Party to Contract with Third Person

Where the trustee-trader entered into a contract with a third person, it directly enjoys the rights and assumes the obligations thereunder.

Where the third person failed to perform its obligations, thereby causing damage to the trustor, the trustee-trader shall be liable for damages, except otherwise agreed by the trustee-trader and the trustor.

Article 422 Trustee-trader's Right to Remuneration; Possessory Lien in Case of Non-

payment

Where the trustee-trader has completed the entrusted matter or has partially completed the entrusted matter, the trustor shall pay the appropriate remuneration thereto. Where the trustor fails to pay the remuneration within the prescribed period, the trustee-trader is entitled to a possessory lien on the trust item, except otherwise agreed by the parties.

Article 423 Provisions Governing Agency Appointment Contracts Applicable

A matter not provided for in this Chapter shall be governed by the relevant provision applicable to agency appointment contracts.

Chapter Twenty Three Brokerage Contracts

Article 424 Definition of Brokerage Contract

A brokerage contract is a contract whereby the broker presents to the client an opportunity for entering into a contract or provides the client with intermediary services in connection with the conclusion thereof, and the client pays the remuneration.

Article 425 Broker's Obligation to Provide True Information

The broker shall provide true information concerning matters relevant to the conclusion of the proposed contract.

Where the broker intentionally concealed any material fact or provided false information in connection with the conclusion of the proposed contract, thereby harming the client's interests, it may not require payment of any remuneration and shall be liable for damages.

Article 426 Broker Entitled to Remuneration

Once the broker facilitated the formation of the proposed contract, the client shall pay the remuneration in accordance with the brokerage contract. Where remuneration to the broker was not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, it shall be reasonably fixed in light of the amount of labor expended by the broker. Where the broker facilitated the formation of the proposed contract by providing intermediary services in connection therewith, the remuneration paid to the broker shall be equally borne by parties thereto.

Where the broker facilitated the formation of the proposed contract, the brokerage expenses shall be borne by itself.

Article 427 Broker Entitled to Reimbursement in Case of Failure to Conclude Proposed Contract

Where the broker failed to facilitate the formation of the proposed contract, it may not require payment of remuneration, provided that it may require the client to reimburse the necessary brokerage expenses incurred. SUPPLEMENTARY PROVISIONS

Article 428 Effectiveness; Repealing Certain Laws

This Law shall take effect as from October 1, 1999, and the Economic Contract Law of the People's Republic of China, the Foreign-related Economic Contract Law of the People's Republic of China, and the Technology Contract Law of the People's Republic of China shall be repealed simultaneously.