

Contract Law of the People's Republic of China

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Contract Law of the People's Republic of China has been adopted at the Second Session of the Ninth National People's Congress on March 15, 1999, and is hereby promulgated, it will come into force as of October 1, 1999.

President of the People's Republic of China: Jiang Zemin

March 15, 1999

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General Provisions

Chapter 1 General Provisions

Article 1 This Law is enacted in order to protect the lawful rights and interests of the contracting parties, to maintain social and economic order, and to promote the process of socialist modernization.

Article 2 A contract in this Law refers to an agreement among natural persons, legal persons or other organizations as equal parties for the establishment, modification of a relationship involving the civil rights and obligations of such entities.

Agreements concerning personal relationships such as marriage, adoption, guardianship, etc. shall be governed by the provisions in other laws.

Article 3 Contracting parties shall have equal legal status, and no party may impose its will on the other party.

Article 4 The parties have the right to lawfully enter into a contract of their own free will in accordance with the law, and no unit or individual may illegally interfere therewith.

Article 5 The parties shall adhere to the principle of fairness in deciding their respective rights and obligations.

Article 6 The parties shall observe the principle of honesty and good faith in exercising their rights and performing their obligations.

Article 7 In concluding and performing a contract, the parties shall comply with the laws and administrative regulations, respect social ethics, and shall not disrupt the social and economic order or impair the public interests.

Article 8 A lawfully established contract shall be legally binding on the parties thereto, each of whom shall perform its own obligations in accordance with the terms of the contract, and no party shall unilaterally modify or terminate the contract.

The contract established according to law is protected by law.

## Chapter 2 Conclusion of Contracts

Article 9 In entering into a contract, the parties shall have appropriate capacities for civil rights and civil acts.

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

Article 10 The parties may use written, oral or other forms in entering into a contract.

A contract shall be in written form if the laws or administrative regulations so provide. A contract shall be concluded in written form if the parties so agree.

Article 11 "Written form" refers to a form such as a written contractual agreement, letter, electronic data text(including a telegram, telex, fax, electronic data exchange and e-mail)that can tangibly express the contents contained therein.

Article 12 The contents of a contract shall be agreed upon by the parties, and shall generally contain the following clauses:

- (1) titles or names and domiciles of the parties;
- (2) subject matter;
- (3) quantity;
- (4) quality;
- (5) price or remuneration;
- (6) time limit, place and method of performance;
- (7) liability for breach of contract; and
- (8) method to settle disputes.

The parties may conclude a contract by reference to a model text of each kind of contract.

Article 13 The parties shall conclude a contract in the form of an offer and an acceptance.

Article 14 An offer is an expression of an intent to enter into a contract with another person. Such expression of intent shall comply with the following:

(1) its contents shall be specific and definite;

(2) it indicates that the offeror will be bound by the expression of intent in case of acceptance by the offeree.

Article 15 An invitation for offer is an expression of an intent to invite other parties to make offers thereto. Mailed price lists, public notices of auction and tender, prospectuses and commercial advertisements, etc. are invitations for offer.

Where the contents of a commercial advertisement meet the requirements for an offer, it shall be regarded as an offer.

Article 16 An offer becomes effective when it reaches the offeree.

If a contract is concluded through data-telex, and a recipient designates a specific system to receive the data-telex, the time when the data-telex enters such specific system shall be the time of arrival; if no specific system is appointed, the time when the data-telex first enters any of the recipient's systems shall be regarded as the time of arrival.

Article 17 An offer may be withdrawn. The withdrawal notice shall reach the offeree before or at the same time when the offer arrives.

Article 18 An offer may be revoked. The revocation notice shall reach the offeree before it has dispatched a notice of acceptance.

Article 19 An offer may not be revoked, if

(1) the offeror indicates a fixed time for acceptance or otherwise explicitly states that the offer is irrevocable; or

(2) the offeree has reasons to rely on the offer as being irrevocable and has made preparation for performing the contract.

Article 20 An offer shall lose efficacy under any of the following circumstances:

(1) the notice of rejection reaches the offeror;

(2) the offeror revokes the offer in accordance with the law;

(3) the offeree fails to dispatch an acceptance before the expiration of the time limit for acceptance;

(4) the offeree makes substantial changes to the contents of the offer.

Article 21 An acceptance is the expression of an intention to by the offeree to assent to the offer.

Article 22 The acceptance shall be made in the form of a notice, except where acceptance may be made by an act on the basis of customary business practice or as expressed in the offer.

Article 23 An acceptance shall reach the offeror within the time limit prescribed in the offer.

Where no time limit is prescribed in the offer, the acceptance shall reach the offeror in accordance with the following provisions:

(1) if the offer is made in dialogues, the acceptance shall be made immediately unless otherwise agreed upon by the parties;

(2) If the offer is made in forms other than a dialogue, the acceptance shall reach the offeror within a reasonable period of time.

Article 24 Where an offer is made by letter or telegram, the time limit for acceptance shall accrue from the date shown in the letter or from the date on which the telegram is handed in for dispatch. If no such date is shown in the letter, it shall accrue from the postmark date on the envelope.

Where an offer is made by means of instantaneous communication, such as telephone or facsimile, etc. the time limit for acceptance shall accrue from the moment that the offer reaches the offeree.

Article 25 A contract is established when the acceptance becomes effective.

Article 26 An acceptance becomes effective when its notice reaches the offeror. If notice of acceptance is not required, the acceptance shall become effective when an act of acceptance is performed in accordance with transaction practices or as required in the offer.

Where a contract is concluded in the form of date-telex, the time of arrival of an acceptance shall be governed by the provisions of Paragraph 2, Article 16 of this Law.

Article 27 An acceptance may be withdrawn, but a notice of withdrawal shall reach the offeror before or at the same time when the notice of acceptance reaches the offeror.

Article 28 Where an offeree makes an acceptance beyond the time limit for acceptance, the acceptance shall be a new offer except that the offeror promptly informs the offeree of the effectiveness of the said acceptance.

Article 29 If the offeree dispatched the acceptance within the time limit specified for acceptance, and under normal circumstances the acceptance would have reached the offeror in due time, but due to other reasons the acceptance reaches the offeror after the time limit for acceptance has expired, such acceptance shall be effective, unless the offeror notifies the offeree in a timely manner that it does not accept the acceptance due to the failure of the acceptance to arrive within the time limit.

Article 30 The contents of an acceptance shall comply with those of the offer. If the offeree substantially modifies the contents of the offer, it shall constitute a new offer. The modification relating to the subject matter, quality, quantity, price or remuneration, time or place or method of performance, liabilities for breach of contract and method of dispute resolution, etc. shall constitute the substantial modification of an offer.

Article 31 If the acceptance does not substantially modify the contents of the offer, it shall be effective, and the contents of the contract shall be subject to those of the

acceptance, except as rejected promptly by the offeror or indicated in the offer that an acceptance may not modify the offer at all.

Article 32 Where the parties conclude a contract in written form, the contract is established when it is signed or sealed by the parties.

Article 33 Where the parties conclude the contract in the form of letters or data-telex, etc., one party may request to sign a letter of confirmation before the conclusion of the contract. The contract shall be established at the time when the letter of confirmation is signed.

Article 34 The place of effectiveness of an acceptance shall be the place of the establishment of the contract.

If the contract is concluded in the form of data-telex, the main business place of the recipient shall be the place of establishment. If the recipient does not have a main business place, its habitual residence shall be considered to be the place of establishment. Where the parties agree otherwise, such agreement shall apply.

Article 35 Where the parties conclude a contract in written form, the place where both parties sign or affix their seals on the contract shall be the place of establishment.

Article 36 Where a contract is to be concluded in written form as required by relevant laws and administrative regulations or as agreed by the parties, and the parties failed to conclude the contract in written form, but one party has performed the principal obligation and the other party has accepted it, the contract is established.

Article 37 Where a contract is to be concluded in written form, if one party has performed its principal obligation and the other party has accepted it before signing or sealing of the contract, the contract is established.

Article 38 Where the State has issued a mandatory plan or a State purchasing order based on necessity, the relevant legal persons and the other organizations shall conclude a contract between them in accordance with the rights and obligations as stipulated by the relevant laws and administrative regulations.

Article 39 Where standard terms are adopted in concluding a contract, the party supplying the standard terms shall define the rights and obligations between the parties abiding by the principle of fairness, and shall inform the other party to note the exclusion or restriction of its liabilities in a reasonable way, and shall explain the standard terms upon request by the other

party.

Standard terms are clauses that are prepared in advance for general and repeated use by one party, and which are not negotiated with the other party when the contract is concluded.

Article 40 When standard terms are under the circumstances stipulated in Articles 52 and 53 of this Law, or the party which supplies the standard terms exempts itself from its liabilities, increases the liabilities of the other party, and deprives the material rights of the other party, the terms shall be invalid.

Article 41 If a dispute over the understanding of the standard terms occurs, it shall be interpreted in accordance with common understanding. Where there are two or more kinds of interpretation, an interpretation unfavorable to the party supplying the standard terms shall prevail. Where the standard terms are inconsistent with non-standard terms, the latter shall prevail.

Article 42 The party shall be liable for damage if it is under one of the following circumstances in concluding a contract and thus causing losses to the other party:

(1) pretending to conclude a contract, and negotiating in bad faith;

(2) deliberately concealing important facts relating to the conclusion of the contract or providing false information;

(3) performing other acts which violate the principle of good faith.

Article 43 A trade secret the parties learn in concluding a contract shall not be disclosed or improperly used, no matter the contract is established or not. If the party discloses or

improperly uses such trade secret and thus causing loss to the other party, it shall be liable for damages.

### Chapter 3 Validity of Contracts

Article 44 The contract established according to law becomes effective upon its establishment.

With regard to contracts that are subject to approval or registration as stipulated by relevant laws or administrative regulations, the provisions thereof shall be followed.

Article 45 The parties may agree on that the effectiveness of a contract be subject to certain conditions. A contract whose effectiveness is subject to certain conditions shall become effective when such conditions are accomplished. The contract with dissolving conditions shall become invalid when such conditions are satisfied.

If a party improperly prevent the satisfaction of a condition for its own interests, the condition shall be regarded as having been accomplished. If a party improperly facilitates the satisfaction of a condition, such condition shall be regarded as not to have been satisfied.

Article 46 The parties may agree on a conditional time period as to the effectiveness of the contract. A contract subject to an effective time period shall come into force when the period expires. A contract with termination time period shall become invalid when the period expires.

Article 47 A contract concluded by a person with limited civil capacity of conduct shall be effective after being ratified afterwards by the person's statutory agent, but a pure profit-making contract or a contract concluded which is appropriate to the person's age, intelligence or mental health conditions need not be ratified by the person's statutory agent.

The counterpart may urge the statutory agent to ratify the contract within one month. It shall be regarded as a refusal of ratification that the statutory agent does not make any expression. A bona fide counterpart has the right to withdraw it before the contract is ratified. The withdrawal shall be made by means of notice.



Article 48 A contract concluded by an actor who as no power of agency, who oversteps the power of agency, or whose power of agency has expired and yet concludes it on behalf of the principal, shall have no legally binding force on the principal without ratification by the principal, and the actor shall be held liable.

The counterpart may urge the principal to ratify it within one month. It shall be regarded as a refusal of ratification that the principal does not make any expression. A bona fide counterpart has the right to withdraw it before the contract is ratified. The withdrawal shall be made by means of notice.

Article 49 If an actor has no power of agency, oversteps the power of agency, or the power of agency has expired and yet concludes a contract in the principal's name, and the counterpart has reasons to trust that the actor has the power of agency, the act of agency shall be effective.

Article 50 Where a statutory representative or a responsible person of a legal person or other organization oversteps his/her power and concludes a contract, the representative act shall be effective except that the counterpart knows or ought to know that he/she is overstepping his/her powers.

Article 51 Where a person having no right to disposal of property disposes of other persons' properties, and the principal ratifies the act afterwards or the person without power of disposal has obtained the power after concluding a contract, the contract shall be valid.

Article 52 A contract shall be null and void under any of the following circumstances:

(1) a contract is concluded through the use of fraud or coercion by one party to damage the interests of the State;

(2) malicious collusion is conducted to damage the interests of the State, a collective or a third party;

(3) an illegitimate purpose is concealed under the guise of legitimate acts;

(4) damaging the public interests;

(5) violating the compulsory provisions of laws and administrative regulations.

Article 53 The following exception clauses in a contract shall be null and void:

(1) those that cause personal injury to the other party;

(2) those that cause property damages to the other party as result of deliberate intent or gross negligence.

Article 54 A party shall have the right to request the people's court or an arbitration institution to modify or revoke the following contracts:

(1) those concluded as a result of significant misconception;

(2) those that are obviously unfair at the time when concluding the contract.

If a contract is concluded by one party against the other party's true intentions through the use of fraud, coercion, or exploitation of the other party's unfavorable position, the injured party shall have the right to request the people's court or an arbitration institution to modify or revoke it.

Where a party requests for modification, the people's court or the arbitration institution may not revoke the contract.

Article 55 The right to revoke a contract shall extinguish under any of the following circumstances:

(1) a party having the right to revoke the contract fails to exercise the right within one year from the day that it knows or ought to know the revoking causes;

(2) a party having the right to revoke the contract explicitly expresses or conducts an act to waive the right after it knows the revoking causes.

Article 56 A contract that is null and void or revoked shall have no legally binding force ever from the very beginning. If part of a contract is null and void without affecting the validity of the other parts, the other parts shall still be valid.

Article 57 If a contract is null and void, revoked or terminated, it shall not affect the validity of the dispute settlement clause which is independently existing in the contract.

Article 58 The property acquired as a result of a contract shall be returned after the contract is confirmed to be null and void or has been revoked; where the property can not be returned or the return is unnecessary, it shall be reimbursed at its estimated price. The party at fault shall compensate the other party for losses incurred as a result therefrom. If both parties are fault, each party shall respectively be liable.

Article 59 If the parties have maliciously conducted collusion to damage the interests of the State, a collective or a third party, the property thus acquired shall be turned over to the State or returned to the collective or the third party.

#### Chapter 4 Performance of Contracts

Article 60 Each party shall fully perform its own obligations as agreed upon.

The parties shall abide by the principle of good faith, and perform obligations of notification, assistance, and confidentiality, etc. in accordance with the nature and purpose of the contract and the transaction practice.

Article 61 Where, after the contract becomes effective, there is no agreement in the contract between the parties on such contents as quality, price or remuneration, or place of performance etc., or such agreement is ambiguous, the parties may agree upon supplementary terms through consultation; if a supplementary agreement cannot be reached, such terms shall be determined in accordance with the relevant provisions of the contract or the transaction practices.

Article 62 Where certain contents agreed upon by the parties in the contract are ambiguous and cannot be determined in accordance with the provisions in Article 61 of this Law, the following provisions shall be applied:

(1) if quality requirement is not clear, 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;

(2) if price or remuneration is not clear, 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 commissioned by the government or based on government issued pricing guidelines is required by law, such requirement applies;

(3) where the place of performance is not clear, 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 effected at the place of location of the party fulfilling the obligations.

(4) if the time of performance is not clear, 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;

(5) if the method of performance is not clear, performance shall be rendered in a manner which is conducive to realizing the purpose of the contract;

(6) if the responsibility for the expenses of performance is not clear, the party fulfilling the obligations shall bear the expenses.

Article 63 Where the government-fixed price or government-directed price is followed in a contract, if the said price is readjusted within the time limit for delivery as stipulated in the contract, the payment shall be calculated according to the price at the time of delivery. Where a party delays in delivering the subject matter, the original price shall be adopted if the price rises; and the new price shall be adopted if the price falls. Where a party delays in taking delivery of the subject matter or making payment, the new price shall be adopted if the price rises, and the original price shall be adopted if the price falls.

Article 64 Where the parties agree that the obligor shall perform the obligations to a third party, and the obligor fails to perform its obligations to such third party or its performance of the obligations is not in conformity with the agreement, the obligor shall be liable to the obligee for breach of contract.

Article 65 Where the parties agree that a third party performs the obligations to the obligee, and the third party fails to perform the obligations or the performance is not in conformity with the agreement, the obligor shall be liable to the obligee for breach of contract.

Article 66 Where both parties have obligations toward one another and there is no order of priority in respect of the performance of obligations, the parties shall perform the obligations simultaneously. Each party has the right to reject any demand by the other party for performance prior to the performance by the other party. If the performance of the obligations of the party who is to perform first is not in conformity with the agreement, the party who is perform later has the right to reject the other party's demand for corresponding performance.

Article 67 Where both parties have obligations toward each other and there is an order of priority in respect of the performance, and the party who is to perform first fails to perform, the party who is to perform later has the right to reject the other party's demand for performance. If the performance of the obligations of the party who is to perform first is not in conformity with the

agreement, the party who is to perform later has the right to reject the other party's demand for corresponding performance.

Article 68 The party required to perform first may suspend its performance if it has conclusive evidence showing that the other party is under any of the following circumstances:

(1) its business has seriously deteriorated;

(2) it has engaged in transfer of assets or withdrawal of funds for the purpose of evading debts;

(3) it has lost its business creditworthiness;

(4) 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 If a party suspends its performance in accordance with the provisions of Article 68 of this Law, 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 Where the obligee fails to notify the obligor of its separation, merger, or change of the domicile, thereby making it difficult for the obligor to perform its obligations, the obligor may suspend its performance or escrow the subject matter.

Article 71 The obligee may reject the obligor's advance performance of its obligations, except that the advance performance does not harm the obligee's interests.

Any additional expense incurred by the obligee due to the obligor's advance performance of its obligations shall be borne by the obligor.

Article 72 An obligee may reject the obligor's partial performance, except that the partial performance of its obligations does not harm the obligee's interests.

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

Article 73 Where the obligor is remiss in exercising its due creditor's right, thereby harming the obligee's interests, the obligee may petition the People's Court for subrogation in its own name, except that the creditor's right exclusively belongs to the obligor.

The extent to which the subrogation rights can be exercised is limited to the obligee's rights. The expenses necessary for the obligee to exercise such subrogation rights shall be borne by the obligor.

Article 74 Where the obligor waives its creditor's right against a third party that is due or assigns its property without reward, thereby harming the obligee's interests, the obligee may petition the People's Court for cancellation of the obligor's act. Where the obligor assigns its property

at a low price which is manifestly unreasonable, thereby harming the obligee's interests, and the assignee is aware of the situation, the obligee may also petition the People's Court for cancellation of the obligor's act.

The extent to which the right to cancel can be exercised is limited to the rights of the obligee. The expenses necessary for the obligee to exercise the right to cancel shall be borne by the obligor.

Article 75 The right to cancel shall be exercised within one year from the date the obligee knows or should have known of the matter for cancellation. Such right to cancel shall lapse if the obligee fails to exercise such rights within five years from the date of the occurrence of such act.

Article 76 Once a contract becomes effective, a party may not refuse to perform its obligations thereunder due to a change in its name, or its legal representative, the person in charge, or the person handling the contract.

## Chapter 5 Modification and Assignment of Contracts

Article 77 A contract may be modified if the parties reach a consensus through consultation.

If the laws or administrative regulations so provide, approval and registration procedures for such modification shall be gone through in accordance with such provisions.

Article 78 Where an agreement by the parties on the contents of a modification is ambiguous, the contract shall be presumed as not having been modified.

Article 79 The obligee may assign its rights under a contract, in whole or in part, to a third party, except under the following circumstances:

- (1) such rights may not be assigned in light of the nature of the contract;
- (2) such rights may not be assigned according to the agreement between the parties;
- (3) such rights may not be assigned according to the provisions of the laws.

Article 80 Where the obligee assigns its rights, it shall notify the obligor. Such assignment will have no effect on the obligor without notice thereof.

A notice by the obligee to assign its rights shall not be revoked, unless such revocation is consented to by the assignee.

Article 81 Where the obligee assigns its right, the assignee shall acquire the collateral rights related to the principal rights, except that the collateral rights exclusively belong to the obligee.

Article 82 Upon receipt of the notice of assignment of rights, the obligor may assert against the assignee any defenses it has against the assignor.

Article 83 Upon receipt by the obligor of the notice of assignment of rights, the obligor shall have vested rights against the assignor, and if the rights of the obligor vest prior to or at the same time as the assigned rights, the obligor may claim an offset against the assignee.

Article 84 Where the obligor delegates its obligations under a contract in whole or in part to a third party, such delegation shall be subject to the consent of the obligee.

Article 85 Where the obligor delegates its obligation, the new obligor may exercise any defense that the original obligor had against the obligee.



Article 86 Where the obligor delegates its obligation, the new obligor shall assume the incidental obligations related to the main obligations, except that the obligations exclusively belong to the original obligor.

Article 87 Where the laws or administrative regulations stipulate that the assignment of rights or transfer of obligations shall undergo approval or registration procedures, such provisions shall be followed.

Article 88 Upon the consent of the other party, one party may transfer its rights together with its obligations under contract to a third party.

Article 89 Where the rights and obligations are transferred together, the provisions in Articles 79, Articles 81 to 83, and Articles 85 to 87 of this Law shall be applied.

Article 90 Where a party is merged after the contract has been concluded, the legal person or other organization established after the merger shall exercise the rights and obligations thereunder. Unless otherwise agreed upon by the obligor and obligee, the legal persons or other organizations that exist after the division shall jointly enjoy the rights and jointly assume the obligations under the contract.

## Chapter 6 Termination of Contractual Rights and Obligations

Article 91 The rights and obligations under a contract shall be terminated under any of the following circumstances:

- (1) the obligations have been performed as agreed upon;
- (2) the contract has been rescinded;
- (3) the obligations have been offset against each other;

(4) the obligor has escrowed the subject matter accordance with the law;

(5) the obligee has released the obligor of its obligation;

(6) the rights and obligations have vested in one party;

(7) any other circumstances for termination as stipulated by the laws or agreed upon by the parties.

Article 92 After the termination of the rights and obligations under the contract, the parties shall observe the principal of honesty and good faith and perform the obligations of notification, assistance and confidentiality, etc. in accordance with relevant transaction practices.

Article 93 The parties may terminate a contract if they reach a consensus through consultation.

The parties may agree upon conditions under which either party may terminate the contract. Upon satisfaction of the conditions, the party who has the right to terminate may terminate the contract.

Article 94 The parties to a contract may terminate the contract under any of the following circumstances:

(1) it is rendered impossible to achieve the purpose of contract due to an event of force majeure;

(2) prior to the expiration of the period of performance, the other party expressly states, or indicates through its conduct, that it will not perform its main obligation;

(3) the other party delayed performance of its main obligation after such performance has been demand, and fails to perform within a reasonable period;

(4) the other party delays performance of its obligations, or breaches the contract in some other manner, rendering it impossible to achieve the purpose of the contract;

(5) other circumstance as provided by law.

Article 95 Where the laws stipulates or the parties agreed upon the time limit to exercise the right to terminate the contract, and no party exercises it when the time limit expires, the said right shall be extinguished.

Where neither the law stipulates nor the parties make an agreement upon the time limit to exercise the right to terminate the contract, and no party exercise it within a reasonable time period after being urged, the said right shall be extinguished.

Article 96 A party demanding termination of a contract in accordance with the provisions of Paragraph 2 of Article 93 and Article 94 of this Law shall notify the other party. The contract shall be terminated upon the receipt of the notice by the other party. If the other party objects to such termination, it may petition the People's Court or an arbitration institution to adjudicate the validity of the termination of the contract.

Where the laws and administrative regulations so provide, the approval and registration procedures for the termination of the contract shall be gone through in accordance with such laws and regulations.

Article 97 After the termination of a contract, performance shall cease if the contract has not been performed; if the contract has been performed, a party may, in accordance with the circumstances of performance or the nature of the contract, demand the other party to restore such party to its original state or adopt other remedial measures, and such party shall have the right to demand compensation for damages.

Article 98 The termination of rights and obligations under a contact shall not affect the validity of clauses that related to the final settlement of accounts and winding-up.

Article 99 Where the parties are liable to one another for obligations that are due, and if the type and nature of the subject matter of such obligations are the same, any party may offset its own obligation against the obligation of the other party, except unless such offset is not allowed according to the laws and regulations or cannot be made given the nature of the contract.

The party who claims such offset shall notify the other party. The notice shall become effective when it reaches the other party. The offset shall not be subject to any condition or time limit.

Article 100 Where the parties have obligations towards one another, and the type and nature of such obligations are different, the obligations may also be offset upon consensus between the parties after consultation.

Article 101 The obligor may escrow the subject matter under any of the following circumstances which render performance of the obligations difficult:

(1) the obligee refuses to accept them without justified reasons;

(2) the whereabouts of the obligee are unknown;

(3) the obligee is deceased and the successor has not been determined, or the obligee has lost civil capacity and a guardian has not been appointed;

(4) other circumstance as provided for in the laws.

Where the subject matter is not fit for escrow, or the cost of escrow is excessively high, the obligor may auction or sell the subject matter according to law, and escrow the proceeds therefrom.

Article 102 Unless the whereabouts of the obligee are unknown, the obligee shall notify the obligee, or the successor or guardian of the obligor immediately after the subject matter has been placed in escrow.

Article 103 Once the subject matter has been placed in escrow, the risk of damage to, destruction or loss of the subject matter shall be borne by the obligee. The obligee shall be

entitled to any fruits of the subject matter during the escrow period. Escrow expenses shall be borne by the obligee.

Article 104 The obligee may claim the subject matter in escrow at any time, except that if the obligee has any due obligations toward the obligor, prior to the obligee's performance of its obligations or the obligee's provision of security for its performance, the escrow institution shall, at the request of the obligor, refuse the obligee's claim of the escrowed subject matter.

The right of the obligee to reclaim the subject matter in escrow shall lapse if it is not exercised within five years from the date the subject matter is placed in escrow, and the escrowed subject matter shall revert to the national treasury after the deduction of the escrow costs.

Article 105 Where an obligee releases the obligor of its own obligations, in whole or in part, the rights and obligations under the contract shall terminate in whole or in part.

Article 106 If the rights and obligations under a contract vest in one party, such rights and obligations thereunder shall terminate, unless they involve the interests of a third party.

## Chapter 7 Liabilities for Breach of Contracts

Article 107 If a party fails to perform its obligations under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract such as to continue to perform its obligations, to take remedial measures, or to compensate for losses.

Article 108 Where one party express explicitly or indicates by its conduct that it will not perform its obligations under a contract, the other party may demand it to bear the liability for the breach of contract before the expiry of the performance period.

Article 109 If a party fails to pay the price or remuneration, the other party may request it to make the payment.

Article 110 Where a party fails to perform the non-monetary obligations or its performance of non-monetary obligations fails to satisfy the terms of the contract, the other party may request it to perform it except under any of the following circumstances:

(1) it is unable to be performed in law or in fact;

(2) the subject matter of the obligation is unfit for compulsory performance or the performance expenses are excessively high;

(3) the obligee does not require performance within a reasonable time.

Article 111 Where the quality fails to satisfy the agreement, the breach of contract damages shall be borne in the manner as agreed upon by the parties. Where there is no agreement in the contract on the liability for breach of contract or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 61 of this Law, the damaged party may, in light of the nature of the subject matter and the degree of loss, reasonably choose to request the other party to bear the liabilities for the breach of contract such as repairing, substituting, reworking, returning the goods, or reducing the price or remuneration.

Article 112 Where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement, and the other party still suffers from other damages after the performance of the obligations or adoption of remedial measures, such party shall compensate the other party for such damages.

Article 113 Where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement and cause losses to the other party, the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, provided not exceeding the probable losses

caused by the breach of contract which has been foreseen or ought to be foreseen when the party in breach concludes the contract.

The business operator who commits default activities in providing to the consumer any goods or services shall be liable for paying compensation for damages in accordance

with the Law of the People's Republic of China on Protection of Consumer Rights and Interests.

Article 114 The parties may agree that if one party breaches the contract, it shall pay a certain sum of liquidated damages to the other party in light of the circumstances of the breach, and may also agree on a method for the calculation of the amount of compensation for the damages incurred as a result of the breach.

Where the amount of liquidated damages agreed upon is lower than the damages incurred, a party may petition the People's Court or an arbitration institution to make an increase; where the amount of liquidated damages agreed upon are significantly higher than the damages incurred, a party may petition the People's Court or an arbitration institution to make an appropriate reduction.

Where the parties agree upon breach of contract damages in respect to the delay in performance, the party in breach shall perform the obligations after paying the breach of contract damages.

Article 115 The parties may agree that a party pay a deposit to the other party as a guaranty for the obligation in accordance with the Security Law of the People's Republic of China. Upon the obligor has performed its obligation, the deposit shall be offset against the price or refunded to the obligor. If the party paying the deposit fails to perform its obligations under the contract, such party has no right to demand for the return of the deposit; where the party accepting the deposit fails to perform its obligations under the contract, such party shall refund twice the value of the deposit.

Article 116 If the parties agree on both liquidated damages and a deposit, and one party is in breach, the other party may choose to apply either the provisions for liquidated damages or that for the deposit.

Article 117 A party who is 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 occurs after the party's delay in performance, it is not exempted from such liability.

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

Article 118 If a party is unable to perform a contract due to an event of force majeure, it shall timely notify the other party so as to mitigate the losses that may be caused to the other party, and shall provide evidence of such event of force majeure within a reasonable period.

Article 119 Where a party breached the contract, the other party shall take the appropriate measures to prevent the losses from increasing; where the other party's failure to take appropriate measures results in additional losses, it cannot demand compensation for the additional losses.

Any reasonable expense incurred by the other party in preventing additional losses shall be borne by the party in breach.

Article 120 If both parties breach a contract, each party shall bear its own respective liabilities.

Article 121 Where a party's breach is attributable to a third party, it shall nevertheless be liable to the other party for breach. Any dispute between the party and such third party shall be resolved in accordance with the law or the agreement between the parties.

Article 122 Where the breach of contract by one party infringes upon the other party's personal or property rights, the aggrieved party is entitled to choose to claim the assumption by the violating and infringing party of liabilities for breach of contract according to this Law, or to claim the assumption by the violating and infringing party of liabilities for infringement according to other laws.

## Chapter 8 Other Provisions

Article 123 Where other laws provide otherwise in respect of a contract, such provisions shall prevail.

Article 124 Where there are no explicitly provisions in the Specific Provisions of this Law or in any other law concerning a certain contract, the provisions in the General Provisions of this Law shall be applied, and reference may be made to the provisions in the Specific Provisions of this Law or in any other law that most closely relate to such contract.



Article 125 If any disputes arise between the parties over the understanding of any clause of the contract, the true meaning thereof shall be determined according to the words and sentences used in the contract, the relevant provisions in the contract, the purpose of the contract, the transaction practices and the principle of good faith.

Where a contract is concluded in two or more languages and it is agreed 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 Parties to a foreign-related contract may select the applicable law for resolution of a contractual dispute, except as otherwise provided by law. Where parties to the foreign-related contract fails to select the applicable law, the contract shall be governed by the law of the country with the closest connection thereto.

For a Chinese-foreign equity joint venture contract, Chinese-foreign contractual joint venture contract, or a contract for Chinese-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 shall be applied.

Article 127 Within the scope of their respective duties, the administrative department of industry and commerce and other relevant departments shall, in accordance with the relevant laws and administrative regulations, be responsible for monitoring and dealing with any illegal acts which, by taking advantage of contracts, harm the interests of the State or the interests of the

public and society; where such an act constitutes a crime, criminal liability shall be investigated in accordance with the law.

Article 128 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 the judgments, arbitration awards or mediation agreements which have taken legal effect; if a party refuses to perform, the other party may request the People's Court for enforcement.

Article 129 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, calculating from the date on which the party knows or ought to know the infringement on its rights. 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 9 Sales Contracts

Article 130 A sales contract is a contract whereby the seller transfers the ownership of a subject matter to the buyer, and the buyer pays the price for it.

Article 131 In addition to the terms set forth in Article 12 of this Law, a sales contract may also

contain such clauses as package manner, inspection standards and method, method of settlement and clearance, language adopted in the contract and its authenticity.

Article 132 The subject matter to be sold shall be owned by the seller or of that the seller shall have the right to dispose.

Where the transfer of a subject matter is prohibited or restricted by laws or administrative regulation, such provision shall be applied.

Article 133 The ownership of a subject matter shall be transferred upon the delivery of the object, except as otherwise stipulated by law or agreed upon by the parties.

Article 134 The parties to a sales contract may agree that the ownership shall belong to the seller if the buyer fails to pay the price or perform other obligations.

Article 135 The seller shall perform the obligations of delivering to the buyer the subject matter or handing over the documents for the buyer to take possession of the subject matter and of transferring the ownership thereto.

Article 136 In addition to the document for taking possession, the seller shall deliver to the buyer the relevant documents and materials in accordance with the agreement or transaction practices.

Article 137 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 belong to the buyer, except as otherwise provided by law or agreed upon by the parties.

Article 138 The seller shall deliver the subject matter by the time limit agreed upon. Where a time period for delivery is agreed upon, the seller may deliver at any time within the said time period.

Article 139 Where the time limit for delivery of the subject matter is not agreed upon between the parties or the agreement is not clear, the provisions of Article 61 and Item 4 of Article 62 shall be applied.

Article 140 Where a subject matter has been possessed by the buyer prior to the conclusion of the contract, the delivery time shall be the time when the contract becomes effective.

Article 141 The seller shall deliver the subject matter at the agreed place.

Where there is no agreement between the parties as to the place to deliver the subject matter or such agreement is not clear, nor can it be determined according to the provisions of Article 61 of this Law, the following provisions shall be applied:

(1) if the subject matter needs carriage, the seller shall deliver the subject matter to the first carrier so as to hand it over to the buyer;

(2) if the subject matter does not need carriage, and the seller and buyer know the place of the subject matter when concluding the contract, the seller shall deliver the subject matter at such place; if the place is unknown, the subject matter shall be delivered at the business place of the seller when concluding the contract.

Article 142 The risk of damage to or loss of a subject matter shall be borne by the seller prior to the delivery of the subject matter and by the buyer after delivery, except as otherwise stipulated by law or agreed upon by the parties.

Article 143 Where a subject matter cannot be delivered at the agreed time limit due to any reasons attributable to the buyer, the buyer shall bear the risk of damage to or loss of the subject matter as of the date it breaches the agreement.

Article 144 Where the seller sells a subject matter delivered to a carrier for carriage and is in transit, unless otherwise agreed upon by the parties, the risk of damage to or missing of the subject matter shall be borne by the buyer as of the time of establishment of the contract.

Article 145 Where there is no agreement between the parties as to the place of delivery or such agreement is not clearly, and the subject matter needs carriage according to the provisions of Item 1 of Paragraph 2 of Article 141 of this Law, the risk of damage to or missing of the subject matter shall be borne by the buyer after the seller has delivered the subject matter to the first carrier.

Article 146 Where the seller has placed the subject matter at the place of delivery in accordance with the agreement or in accordance with the provisions of Item 2 of Paragraph 2 of Article 141 of this Law, while the buyer fails to take delivery in breach of the agreement, the risk of damage to or missing of the subject matter shall be borne by the buyer as of the date of breach of the agreement.

Article 147 The failure of the seller to deliver the documents and materials relating to the subject matter as agreed upon shall not affect the passing of the risk of damage to or missing of the subject matter.

Article 148 Where the quality of the subject matter does not conform to the quality requirements, making it impossible to achieve the purpose of the contract, the buyer may

refuse to accept the subject matter or may terminate the contract. If the buyer refuses to accept the subject matter or terminate the contract, the risk of damage to or missing of the subject matter shall be borne by the seller.

Article 149 Where the risk of damage to or missing of the subject matter is borne by the buyer, the buyer's right to demand the seller to bear liability for breach of contract because the seller's performance of its obligations is not in conformity with the agreement shall not be affected.

Article 150 Unless otherwise provided by law, the seller shall have the obligation to warrant that no third party shall exercise against the buyer any rights with respect to the delivered subject matter.

Article 151 Where the buyer knows or ought to know, at the time of conclusion of the contract, that a third party has rights on the subject matter to be sold, the seller does not assume the obligation prescribed in Article 150 of this Law.

Article 152 Where the buyer has conclusive evidence to demonstrate that a third party may claim rights on the subject matter, it may suspend to pay the corresponding price, except where the seller provides a appropriate guaranty.

Article 153 The seller shall deliver the subject matter in compliance with the agreed quality requirements. Where the seller gives the quality specifications for the subject matter, the subject matter delivered shall comply with the quality requirements set forth therein.

Article 154 Where the quality requirements for the subject matter is not agreed between parties or such agreement is not clear, nor can it be determined according to the provisions of Article 61 of this Law, the provisions of Item 1 of Article 62 of this Law shall be applied.

Article 155 If the subject matter delivered by the seller fails to comply with the quality requirements, the buyer may demand the seller to bear liability for breach of contract in accordance with Article 111 of this Law.

Article 156 The seller shall deliver the subject matter packed in the agreed manner. Where there is no agreement on package manner in the contract or the agreement is not clear,

nor can it be determined according to the provisions of Article 61 of this Law, the subject matter shall be packed in a general manner, and if no general manner, a package manner enough to protect the subject matter shall be adopted.

Article 157 Upon receipt of the subject matter, the buyer shall inspect it within the agreed inspection period. Where no inspection period is agreed, the buyer shall timely inspect the subject matter.

Article 158 Where the parties have agreed upon an inspection period, 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 is agreed, 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 knows or ought to know the non-compliance of the subject matter, the buyer is not subject to the time limits for notification prescribed in the preceding two paragraphs.

Article 159 The buyer shall pay the price in the agreed amount. Where the price is not agreed or the agreement is not clear, the provisions of Article 61 and Item 2 of Article 62 shall be applied.

Article 160 The buyer shall pay the price at the agreed place. Where the place of payment is not agreed or the agreement is not clear, nor can it be determined according to the provisions of Article 61 of this Law, 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 The buyer shall pay the price at the agreed time. Where the time for payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the buyer shall make payment at the same time it receives the subject matter or the document for

taking delivery thereof.

Article 162 Where the seller delivers the subject matter in a quantity greater than that agreed 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 The fruits of the subject matter belong to the seller if accrued before delivery, and to the buyer if accrued after delivery.

Article 164 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 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 Where the seller is to deliver the subject matter in installments, if the seller fails to deliver one installment of the subject matter or the delivery fails to satisfy the terms of the contract so that the said installment cannot realize the contract purpose, the buyer may terminate the portion of the contract in respect thereof.

If the seller fails to deliver one installment of the subject matter or the delivery fails to satisfy the terms of the contract so that the delivery of the subsequent installments of subject matter can not realize the contract purpose, 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 In a sale by installment payment, where the buyer fails 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 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 In a sale by sample, if the buyer is 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 In a sale by trial, the parties may agree the trial period. Where a trial period is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, it shall be determined by the seller.

Article 171 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 demonstrate its intent to purchase or reject the subject matter.

Article 172 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 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 If there are provisions in the law for other non-gratuitous contracts, such provisions shall apply; in the absence of such provisions, reference shall be made to the relevant provision on sales contract.

Article 175 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 on sales contracts.

#### Chapter 10 Contracts for Supply of Power, Water, Gas, Or Heat

Article 176 A power supply contract is a contract whereby the power supplier supplies power to the power customer, and the power consumer pay an electricity fee.

Article 177 The contents of a power supply contract include 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 fees, and the responsibility for maintenance of the power supply and use facilities, etc..

Article 178 The place of performance of a power supply contract shall be the place agreed upon by the parties, and if there is no agreement or the agreement is not clear, the place of performance shall be the boundary where ownership of the power supply facilities is divided.

Article 179 The power supplier shall supply power in a safe manner in accordance with the standards for power supply stipulated by the State and with the terms of the contract. Where the power supplier fails to supply power in a safe manner in accordance with the standards for power supply stipulated by the State and with the terms of the contract, thereby causing losses to the power customer, it shall be liable for damages.

Article 180 Where the power supplier needs to suspend the power supply due to reasons such as planned maintenance or provisional inspection and repair of the power supply facilities, legally restriction on power, or illegal use of power by the power customer, etc., it shall notify the power customer in advance in accordance with the relevant provisions of the State. Where the power supplier suspends power supply without notifying the power customer in advance, thereby

causing losses to the power customer, it shall be liable for damages.

Article 181 Where the power supply is suspended due to a natural disaster or other causes, the power supplier shall make prompt repairs in accordance with the relevant provisions of the State. Where the power supplier fails to make prompt repair, thereby causing loss to the power customer, it shall be liable for damages.

Article 182 The power customer shall timely pay the electricity fees in accordance with the relevant provisions of the State and with the terms of the contract. Where the power customer delays in paying the electricity fees, it shall pay breach of contract damages in accordance with the contract. Where the power customer fails to pay the electricity fees and breach of contract damages within a reasonable time limit 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 The power customer shall use power in a safe manner in accordance with the relevant provisions of the State and with the terms of the contract. Where the power customer fails to use power in a safe manner in accordance with the relevant provisions of the State and with the terms of the contract, thereby causing losses to the power supplier, it shall be liable for damages.

Article 184 A contract for the supply of water, gas or heat shall be governed by reference to the relevant provisions on power supply contracts.

## Chapter 11 Gift Contracts

Article 185 A gift contract is a contract whereby the donor conveys his property to the donee gratuitously and the donee expresses his acceptance of the gift.

Article 186 Prior to the transfer of rights to the gift property, the donor may revoke the gift.

The provisions of the preceding paragraph does not apply to any gift contract the nature of which serves the public interests or fulfills a moral obligation, such as disaster relief, poverty relief, etc., or any gift contract which has been notarized.

Article 187 Where conveyance of the gifted property is subject to such procedures as registration according to law, the relevant procedures shall be carried out.

Article 188 In the case of a gift contract the nature of which serves the 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 Where the gifted property is damaged or lost due to any intentional misconduct or gross negligence of the donor, he shall be liable for damages.

Article 190 A gift may be conditioned on an obligation.

Where the gift is conditioned on an obligation, the donee shall perform his obligations in accordance with the contract.

Article 191 The donor is not liable for any defect in the gifted property. Where the gift is conditioned on an obligation, and the gifted property is defective, the donor has the same warranty obligations as a seller to the extent of the prescribed obligations.

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

Article 192 Where the donee is in any of the following circumstances, the donor may revoke the gift:

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

The donor shall exercise its revocation right within one year after he knows, or ought to know, the cause for revocation.

Article 193 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 knows, or ought to know, the cause for revocation.

Article 194 Upon revocation of the gift, the person with the revocation right may claim restitution of the gifted property from the donee.

Article 195 If the donor's economic situation is deteriorated significantly, thereby seriously impacting on his business operation or family life, he may no longer perform the gift obligations.

## Chapter 12 Contracts for Loan of Money

Article 196 A contract for loan of money is a contract whereby the borrower borrows a sum of money from the lender, and repays the borrowed money with interest thereon when it becomes due.

Article 197 A contract for loan of money shall be in writing, except where the loan is between natural persons who have agreed otherwise.

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

Article 198 In entering into a contract for loan of money, the lender may require the borrower to provide a guaranty. The guaranty shall conform to the provisions of the Security Law of the People's Republic of China.

Article 199 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 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 Where the lender fails to make the loan amount available on the agreed date and in the agreed amount, thereby causing losses to the borrower, it shall pay damages.

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

Article 202 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 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 The interest rate on the loan provided by a financial institution engaged in lending operation shall be determined between the minimum and maximum rates fixed by the People's Bank of China.

Article 205 The borrower shall pay the interest at the agreed time. Where the time of interest payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, 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 The borrower shall repay the principal at the agreed time. Where the time of repayment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the borrower may repay at any time; and the lender may demand repayment from the borrower within a reasonable time limit.

Article 207 Where the borrower fails to repay the loan at the agreed time, it shall pay delayed repayment interest in accordance with the contract or the relevant provisions of the State.

Article 208 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 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 A contract for loan of money between natural persons becomes effective at the time the lender makes the loan amount available.

Article 211 Under a contract for loan of money between natural persons, if payment of interest is not agreed or the agreement is not clear, 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 provisions of the State concerning limit on loan interest rate.

## Chapter 13 Leasing Contracts

Article 212 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 The contents of a leasing contract include 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 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 Where the lease term is six months or longer, the lease shall be in writing. If the parties fail to adopt a writing form, the lease is deemed a non-term lease.

Article 216 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 agreed purpose.

Article 217 The lessee shall use the lease item in the agreed manner. Where the manner of use of the lease item is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the lease item shall be used in a manner consistent with its nature.

Article 218 Where the lessee uses the lease item in the agreed 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 Where the lessee fails to use the lease item in the agreed 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 The lessor shall perform the obligations of maintenance and repair of the lease item, except otherwise agreed by the parties.

Article 221 Where the lease item needs maintenance or repair, the lessee may require the lessor to perform maintenance or repair within a reasonable time limit.

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

Article 223 Subject to consent of the lessor, the lessee may make improvement on or addition to the lease item.

If the lessee makes improvement on or addition to the lease item without consent of the lessor, the lessor may require the lessee to restore the lease item to its original condition or claim compensation for the losses.

Article 224 Subject to consent of the lessor, the lessee may sublease the lease item to a third party. Where the lessee subleases the lease item, the leasing contract between the lessee and the lessor remains valid, and if the third party causes damage to the lease item, the lessee shall compensate for the losses.

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

Article 225 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 The lessee shall pay the rent at the agreed time. Where the time of payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, 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 Where the lessee fails to pay or delays in paying the rent without any reason, the lessor may require the lessee to pay the rent within a reasonable time limit. If the lessee fails to pay the rent at the end of such time limit, the lessor may terminate the contract.

Article 228 If due to any claim by a third party, 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 party, the lessee shall timely notify the lessor.

Article 229 Any change of ownership to the lease item does not affect the validity of the leasing contract.



Article 230 Where the lessor is to sell a dwelling unit under a lease, it shall give the lessee a notice within a reasonable time limit before the sale, and the lessee has the right of first refusal under the same conditions.

Article 231 Where the lease item is 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 can not be achieved due to damage to or loss of the lease item in part or in whole, the lessee may terminate the contract.

Article 232 Where the term of a lease is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, 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 Where the lease item endangers the safety or health of the lessee, the lessee may terminate the contract at any time even if the lessee knows the lease item does not meet the quality requirements when concluding the contract.

Article 234 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 is alive may continue leasing it on the terms of the original leasing contract.

Article 235 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 agreed manner or in a manner consistent with its nature.

Article 236 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 14 Financial Leasing Contracts

Article 237 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 The contents of a financial leasing contract include 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 concluded in writing.

Article 239 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 The lessor, the seller and the lessee may agree that any claim arising from the seller's failure in the 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 Without the consent of 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 The lessor shall be entitled to the ownership of the lease item. In case the lessee goes bankrupt, the lease item is not part of its bankruptcy assets.

Article 243 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 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 relies on the skills of the lessor in selecting the lease item or the lessor interferes with the selection thereof.

Article 245 The lessor shall give warranty in respect of the lessee's possession and use of the lease item.

Article 246 If in the possession of the lessee, the lease item causes personal injury or property damage to a third party, the lessor is not liable.

Article 247 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 The lessee shall pay the rent in accordance with the contract. Where the lessee fails to pay the rent within a reasonable time limit after receiving the demand for payment from the lessor, the lessor may require payment of the full rent; or it may terminate the contract and take back the lease item.

Article 249 Where the parties agree that the lease item shall belong to the lessee at the expiry of the lease term, the lessee has paid the majority of the rent but is unable to pay the remaining rent, and the lessor terminates the contract for this reason and takes back the lease item, if the value of the lease item taken back exceeds the rent and other expenses which the lessee owes to the lessor, the lessee may request the lessor to return a certain part.

Article 250 The lessor and the lessee may agree on the ownership of the lease item at the expiry of the lease term. Where ownership of the lease item is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the ownership of the lease item shall belong to the lessor.

## Chapter 15 Contracts for Work

Article 251 A contract for work is a contract whereby the contractor shall, in light of the requirements of the ordering party, complete certain work and deliver the results therefrom, and the ordering party pays the remuneration therefor.

Work includes processing, ordering, repairing, duplicating, testing, inspecting, etc..

Article 252 The contents of a contract for work shall contain such clauses as the subject matter, quantity, quality, remuneration, method of the work, supply of materials, term of performance, standards and method of inspection.

Article 253 The contractor shall use its own equipment, skills and labor to complete the main part of the work, except as otherwise agreed upon by the parties.

Where the contractor assigns the contracted work to a third party for completion, the contractor shall be responsible to the ordering party in respect of the work results completed by the ordering party. Where the assignment is not approved by the ordering party, the ordering party may terminate the contract.

Article 254 The contractor may assign some ancillary work contracted to a third party for completion.

Where the contractor assigns some ancillary work to a third party for completion, the contractor shall be responsible to the ordering party for the work result completed by a third party.

Article 255 Where the contractor is to supply the materials, the contractor shall select the materials in accordance with the contract and shall make such materials available for inspection by the ordering party.

Article 256 Where the ordering party is to supply the materials, it shall supply the materials in accordance with the contract. The contractor shall timely inspect the materials supplied by the ordering party, and if it discovers that they do not conform to the agreement in the contract, it shall timely notify the ordering party to replace them or supply what is lacking or take other remedial measures.

The contractor may not replace the materials supplied by the ordering party without authorization, and may not replace any components which do not need to be repaired.

Article 257 Where the contractor discovers that the drawings or technical requirements provided by the ordering party are unreasonable, it shall timely notify the ordering party. Where any losses are caused to the contractor due to the indolent reply of the ordering party and other reasons, the ordering party shall be liable for making compensation.

Article 258 Where the ordering party changes its requirements for the contracted work while the work is under way, thereby causing losses to the contractor, the ordering party shall be liable for making compensation.

Article 259 Where the performance of the contracted work requires assistance of the ordering party, the ordering party shall have the obligation to provide assistance. Where the contracted work is unable to be completed due to the ordering party's failure in fulfilling its obligation of assistance, the contractor may urge the ordering party to perform its obligation within a

reasonable time limit and may extend the term of its performance; where the ordering party fails to perform such obligation within the time limit, the contractor may terminate the contract.

Article 260 In the period of working, the contractor shall accept the necessary supervision over and inspection of the work by the ordering party. The ordering party may not obstruct the normal work of the contractor with the supervision and inspection.

Article 261 Upon the completion of the contracted work, the contractor shall deliver the work results to the ordering party and shall submit necessary technical materials and the relevant quality certificate. The ordering party shall conduct acceptance inspection of the work results.

Article 262 Where the work results delivered by the contractor fail to meet the quality requirements, the ordering party may request the contractor to bear the liabilities for the breach of contract by way of repairing, remaking, reducing remuneration, or making compensation.

Article 263 The ordering party shall pay the remuneration at the agreed time limit. Where the time limit of payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the ordering party shall pay it at the time when the contractor delivers the work results; where the work results are partially delivered, the ordering party shall make payment accordingly.

Article 264 Where the ordering party fails to pay the remuneration or cost for the materials, etc. to the contractor, the contractor is entitled to lien upon the work results, except as otherwise agreed upon by the parties.

Article 265 The contractor shall keep the materials supplied by the ordering party and the completed work results with due care, and shall be liable for damages in case of any damage or losses due to improper care.

Article 266 The contractor shall keep the relevant information confidential as required by the ordering party, and may not retain any replica or technical material without permission of the ordering party.

Article 267 Joint contractors are jointly and severally liable to the ordering party, except as otherwise agreed upon by the parties.

Article 268 The ordering party may terminate the contract at any time, but it shall bear the liability for making compensation for losses, if the contractor suffers losses therefrom.

#### Chapter 16 Contracts for Construction Projects

Article 269 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 A contract for construction project shall be in written form.

Article 271 Tendering for a construction project shall be conducted in an open, fair and impartial manner in accordance with the relevant laws.

Article 272 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 party. The third party 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 party. The contractor may not assign in whole to any third party the contracted construction project, or divide the whole contracted construction project into several parts and separately assign each part to a third party 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 A matter not provided for in this Chapter shall be governed by the relevant provision governing contracts of hired works.

## Chapter 17 Transportation Contracts

### Section One General Provisions

Article 288 A transportation contract is a contract whereby the carrier carries passengers or cargoes from the starting place of carriage to the agreed destination, and the passenger, consignor or consignee pays for the ticket-fare or freight.

Article 289 A carrier engaged in public transportation may not refuse the normal and reasonable carriage request of a passenger or consignor.

Article 290 The carrier shall safely carry the passengers or cargoes to the agreed destination within the agreed time or within a reasonable time.

Article 291 The carrier shall carry the passengers or cargoes to the agreed destination via the agreed route or the customary carriage route.

Article 292 A passenger, a consignor or a consignee shall pay the ticket-fare or freight. Where the carrier fails to carry the passengers or the cargoes via the agreed or customary carriage route, thereby increasing the ticket-fare or freight, the passenger, consignor or consignee may refuse to pay any increased portion thereof.

## Section Two Passenger Transportation contracts

Article 293 A passenger transportation contract is established upon the carrier's delivery of the passenger ticket to the passenger, except as otherwise agreed upon by the parties or there are other transaction practices.

Article 294 The passenger shall board the means of transportation with a valid passenger ticket. If the passenger boards without a ticket, exceeds the distance paid for, takes a higher class or higher berth than booked, or boards with an invalid ticket, he shall make up the payment for an appropriate ticket, and the carrier may charge an additional payment in accordance with the relevant provisions. Where the passenger fails to pay the ticket-fare, the carrier may refuse to carry.

Article 295 Where the passenger is unable to board the means of transportation at the time stated on the passenger ticket due to any reason attributable to himself, he shall undergo the formalities for ticket cancellation and refund or for ticket modification within the agreed period. Where the passenger fails to do so within the time period, the carrier may refuse to refund the ticket-fare, and no longer bear the obligation of carriage.

Article 296 In the course of carriage, the passenger's carry-on luggage shall be within the agreed limit of quantity. Where the luggage exceeds the agreed limit of quantity, the additional luggage shall be checked in.

Article 297 The passenger may not bring with him or pack in the luggage such dangerous articles as are flammable, explosive, toxic, corrosive, or radioactive as well as those that might endanger the safety of life and property on board the means of transportation or other contraband articles.

Where the passenger violates the provisions of the preceding paragraph, the carrier may unload, destroy or turn over to the relevant authority the contraband articles. Where the passenger insists on carrying in person or placing in his luggage the contraband articles, the carrier shall refuse to carry.

Article 298 The carrier shall timely inform the passenger of any major causes hindering the normal carriage and the matters which shall be noted for purpose of safety carriage.

Article 299 The carrier shall carry the passenger according to the time and the carriage schedule stated on the passenger ticket. Where the carrier delays in carriage, it shall, upon request by the passenger, either arrange the passenger to take other flights or numbers or refund the ticket-fare.

Article 300 Where the carrier unilaterally changes the means of transportation, thereby lowering the standards of service, it shall, upon request by the passenger, refund the ticket-fare or lower the price of the ticket; where the service standards are enhanced, no additional ticket-fare

shall be charged.

Article 301 In the course of carriage, the carrier shall give its best efforts to assist the passenger who is seriously ill, or who is giving birth to a child or whose life is at risk.

Article 302 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 is attributable to the passenger's own health, or the carrier proves that such injury or death is caused by the passenger's intentional misconduct or gross negligence.

The provisions in the preceding paragraph apply to a passenger who is exempted from buying a ticket or holds a preferential ticket pursuant to the relevant provisions, or who is permitted by the carrier to be on board without a ticket.

Article 303 Where an article that the passenger takes with him on board is damaged or destroyed during the period of carriage, the carrier shall be liable for the damage if it has committed faults.

Where the passenger's check-in luggage is damaged or lost, the relevant provisions on the carriage of cargoes shall be applied.

### Section Three Cargo Transportation contracts

Article 304 In undergoing the formalities for cargoes, the consignor shall precisely indicate to carrier the name of the consignee or the consignee by order, the name, nature weight, amount and the place for taking delivery of the cargoes, and other information necessary for cargo carriage.

Where the carrier suffers from damage due to untrue declaration or omission of important information by the consignor, the consignor shall be liable for damages.

Article 305 Where carriage of the cargo is subject to such procedures as examination and approval or inspection, the consignor shall submit to the carrier the documents of fulfillment of the relevant procedure.

Article 306 The consignor shall pack the cargo in the agreed manner. Where the packing manner is not agreed or the agreement is not clear, the provisions of Article 156 of this Law shall be applied.

Where the consignor violates the provisions of the preceding paragraph, the carrier may refuse to carry.

Article 307 In consigning any dangerous articles which are inflammable, explosive, toxic, corrosive, or radioactive, the consignor shall, in accordance with the provisions of the

State on the carriage of dangerous articles, properly pack the dangerous articles and affix thereon signs and labels

for dangerous articles, and shall submit the written papers relating to the number and measures of precaution to the carrier

If the consignor violates the provisions of the preceding paragraph, the carrier may refuse to carry, and may also take corresponding measures to avoid losses, expenses thus caused shall be borne by the consignor .

Article 308 Prior to carrier's delivery of the cargoes to the consignee, the consignor may request the carrier to suspend the carriage, return the cargoes, change the destination or deliver the cargoes to another consignee, but it shall compensate the carrier for any losses thus caused.

Article 309 Upon arrival of the cargoes, if the carrier has the knowledge of the consignee, it shall timely notify the consignee and the consignee shall timely take delivery. Where the consignee takes delivery exceeding the time limit, it shall pay such expenses as storage of the goods, etc.

Article 310 Upon taking delivery of the cargoes, the consignee shall inspect the cargoes at the agreed time. Where the time for inspection is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the consignee shall inspect the cargo within a reasonable time limit. The consignee's failure to raise any objection on the quantity of, or any damage to, the cargoes within the agreed time limit or within a reasonable time limit is deemed prima facie evidence of delivery by the carrier in compliance with the description in the transportation documents.

Article 311 The carrier is liable for damages in case of damage to or loss of the cargoes in the course of carriage, provided that it is not liable for damages if it proves that such damage to or loss of the cargoes is caused by force majeure, the intrinsic characteristics of the cargoes, reasonable depletion, or the fault of the consignor or consignee.

Article 312 Where the parties agree on the amount of damages in case of damage to or loss of the cargoes, the damages payable is the agreed amount; if the amount of damages is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, it shall be calculated on the basis of the prevailing market price at the destination when the cargoes are or ought to be delivered. Where a law or administrative regulation provides otherwise in respect of the measures for the calculation

of damages and of the ceiling of the amount of damages, these provisions shall be applied.

Article 313 Where two or more carriers jointly carry the cargoes using the same means of transportation, the carrier contracting with the consignor shall be responsible for the whole course of carriage. Where the losses occurred at a particular segment, the carrier contracting with the consignor and the carrier for such segment are jointly and severally liable.

Article 314 Where the cargoes are lost in the course of carriage due to force majeure, if the freight has not been collected, the carrier may not request the payment thereof; if the freight has been collected, the consignor may request the refund of the freight.

Article 315 Where the consignor or consignee fails to pay the freight, storage fees and other carriage expenses, the carrier is entitled to lien on the relevant carried cargoes, except as otherwise agreed upon by the parties.

Article 316 Where the consignee is not clear or refuses to take delivery of the cargoes without justified reasons, the carrier may place the cargo in escrow according to the provisions of Article 101 of this Law.

#### Section Four Multi-modal Transportation contract

Article 317 A multi-modal carriage operator is responsible for performing, or arranging for performance of, the multi-modal transportation contract, and it enjoys the rights and assumes the obligations of a carrier throughout the course of carriage.

Article 318 The multi-modal carriage operator and the segment carriers may enter into agreements on 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 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 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 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 is damaged or lost cannot be determined, the liability for damages shall be borne in accordance with the provisions of this Chapter.

## Chapter 18 Technology Contracts

### Section One General Provisions

Article 322 A technology contract is a contract the parties conclude for establishing their rights and obligations in respect of the development or transfer of technology, or in respect of technical consulting or service.

Article 323 The 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 The contents of a technology contract shall be agreed upon by the parties, and shall contain the following clauses in general:

- (1) project name;
- (2) contents, scope and requirement of the subject matter;
- (3) the plan, schedule, period, place, territory and method of performance;
- (4) confidentiality of technical information and materials;
- (5) allocation of responsibilities for risks;
- (6) ownership of the technology and allocation of benefits accrued therefrom;
- (7) standard applicable to and method of acceptance test;

(8) price, remuneration or licensing fee and the method of payment;

(9) liquidated damages or method for calculation of damages;

(10) method of dispute resolution;

(11) 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 or innovation, the patent applicant and the patentee, the date of application, the application number, patent number and the term of the patent.

Article 325 The method for payment of the price, remuneration or licensing fee under a technology contract shall be agreed upon by the parties, who may agree upon lump-sum payment based on one-time calculation or installment payment based on one-time calculation, and may also agree upon royalty payment or royalty payment plus advance payment of initial fee.

Where a royalty payment method is agreed upon, 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 agreed upon by the parties. The royalty rate may be fixed or subject to annual increase or decrease.

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



Article 326 Where the right to use and the right to transfer job-related 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 job-related 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 job-related technology. Where the legal person or organization is to enter into a technology contract for the transfer of the job-related technology, the individual who accomplished this technological achievement shall have the priority to be the transferee under the same conditions.

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

Article 328 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 A technology contract which illegally monopolizes technology, impairs technological advancement or infringes on the technology of a third party is invalid.

## Section Two Technology Development Contract

Article 330 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 written form.

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

Article 331 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 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 technology developed.

Article 333 Where the commissioning party breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

Article 334 Where the developer breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

Article 335 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 Where a party to a cooperative development contract breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

Article 337 Where the technology which is the subject matter of a technology development contract is made public by a third party, thereby making the performance of the technology development contract meaningless, the parties may terminate the contract.

Article 338 If, in the course of implementing a technology development contract, the development is failed in whole or in part due to any insurmountable technical difficulty, allocation of the responsibility for such risk shall be agreed upon by the parties. Where the

allocation of responsibility for such risk is not agreed upon or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, 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 preceding paragraph, it shall timely notify the other party and take the appropriate measures to mitigate loss; where the party fails to timely notify the other party and take the appropriate measures, thereby enlarging the losses, it shall be liable

for the enlarged losses.

Article 339 Unless otherwise agreed upon by the parties, the right to apply for patent on the invention or 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 or innovation resulting from the commissioned development, the commissioning party shall have the right to priority in acquiring such right under the same conditions.

Article 340 Unless otherwise agreed upon by the parties, the right to apply for patent on the invention or 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 shall have the right to priority in acquiring such right under the same conditions.

Where a party in the cooperative development s 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 or 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 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 agreed upon by the parties. Where such matters are not

agreed or the agreement is not clear, nor can they be determined in accordance Article 61 of this Law, 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 party before it delivers the technology to the commissioning party.

### Section Three Technology Transfer Contracts

Article 342 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 written form.

Article 343 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 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 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 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 party except as provided for in the contract; and shall pay the licensing fee in accordance with the contract.

Article 347 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 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 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 The transferee under a technology transfer contract shall, in conformity with the scope and the time period as agreed upon in the contract, abide by its confidentiality obligations in respect of the non-public and secret portion of the technology provided by the transferor.

Article 351 Where the transferor fails to transfer technology in accordance with the contract, it shall refund the licensing fee in part or in whole, and shall be liable for the breach of contract; where the transferor exploits the patent or uses the technical secret beyond the agreed scope, or unilaterally allows the patent to be exploited or the technical secret to be used by a third

party in breach of the contract, it shall cease the breach and be liable for the breach of contract; where the transferor breaches any agreed confidentiality obligation, it shall be liable for the breach of contract.

Article 352 Where the transferee fails to pay the agreed licensing fee, it shall pay the overdue licensing fee and pay breach of contract damages in accordance with the contract; where it fails to pay the overdue licensing fee and breach of contract damages, it shall cease exploitation of the patent or use of the technical secret, return the technical materials, and be liable for the breach of contract; where the transferee exploits the patent or uses the technical secret beyond the agreed scope, or allows the patent to be exploited or the technical secret to be used by a third party without consent of the transferor in breach of the contract, it shall cease the breach and be liable for the breach of contract; where the transferee breaches any agreed confidentiality obligation, it shall be liable for the breach of contract.

Article 353 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 as otherwise agreed upon by the parties.

Article 354 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 is not agreed or the agreement is not

clear, nor can it be determined in accordance with Article 61 of this Law, neither party is entitled to share any subsequent improvement made by the other party.

Article 355 Where the relevant laws or administrative regulations provide otherwise in respect of technology import or export contracts or in respect of patent contracts or contracts for patent application, such provisions shall prevail.

#### Section Four Technical Consulting Contracts and Technical Service Contracts

Article 356 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 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 The consultant under a technical consulting contract shall complete the consulting report or answer the question within the agreed period; the consulting report submitted shall comply with the requirements set forth in the contract.

Article 359 Where the client under a technical consulting contract fails to provide the necessary materials and data in accordance with the contract, thereby impairing the progress and quality of the work, or fails to accept or delays in accepting the work result, it may not claim refund of the remuneration paid, and shall pay any unpaid remuneration.

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

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

Article 360 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 results and pay the remuneration.

Article 361 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 Where the client under a technical service contract fails to perform its contractual obligations, or the performance is not in conformity with the contract, thereby impairing the progress and quality of the work, or fails to accept or delays in accepting the work results, it may not claim refund of the remuneration paid, and shall pay any unpaid remuneration.

Where the service provider under a technical service contract fails to complete services in accordance with the contract, it shall be liable for the breach of contract by way of forgoing the remuneration, etc.

Article 363 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 results provided by the

consultant or service provider belongs to the client. However, if the parties agree otherwise in the contract, such provisions shall prevail.

Article 364 Where a relevant law or administrative regulation provides otherwise in respect of technology intermediary service contracts or technical training contracts, such provisions shall prevail.

## Chapter 19 Storage Contracts

Article 365 A storage contract is a contract whereby the depository keeps the deposit delivered by the depositor, and eventually returns it thereto.

Article 366 The depositor shall pay the storage fee to the depository in accordance with the contract.

Where the storage fee is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the storage shall be for free.

Article 367 A storage contract is established upon delivery of the deposit, except as otherwise agreed upon by the parties.

Article 368 Upon the depositor's delivery of the deposit to the depository, the depository shall issue a deposit voucher thereto, except as otherwise practised in transaction.

Article 369 The depository shall keep the deposit with due care.

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

Article 370 Where the deposit delivered by the depositor has defects or requires special storage measures in light of its nature, the depositor shall inform the depository of the relevant situation. Where the depositor fails 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 is, or ought to be, aware of the situation and fails to take remedial measures.



Article 371 The depository may not delegate storage of the deposit to a third party, except as otherwise agreed upon by the parties.

Where the depository delegated storage of the deposit to a third party in violation of the provisions of the preceding paragraph, thereby causing damage to the deposit, the depository shall be liable for damages.

Article 372 The depository may not use, or allow the use of, the deposit, except as otherwise agreed upon by the parties.

Article 373 Where a third party 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 party brings a lawsuit against the depository or applies for attachment of the deposit, the depository shall timely notify the depositor.

Article 374 If the deposit is damaged or lost due to improper storage by the depository during the deposit period, the depository shall be liable for damages, provided that if the storage is provided for free, and the depository proves that it has no gross negligence, it shall be not liable for damages.

Article 375 Where the depositor is to deposit money, securities, or any other valuable item for storage, it shall make a declaration to the depository on such item, which shall be inspected or sealed by the depository. Where the depositor fails to make such declaration and the article is damaged, destroyed or lost afterwards, the depository may compensate for it as it is an ordinary article.

Article 376 The depositor may retrieve the deposit at any time.

Where a deposit period is not agreed or the agreement is not clear, the depository may require the depositor to retrieve the deposit at any time; where a deposit period is agreed, without special reason, the depository may not require the depositor to retrieve the deposit before the expiry of the deposit period.

Article 377 At the expiry of the deposit period, or if the depositor retrieves the deposit before the expiry of the deposit period, the depository shall return the original item together with any fruit thereof to the depositor.

Article 378 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 Under a storage contract for value, the depositor shall pay to the depository the storage fee at the agreed time.

Where the time of payment of the storage fee is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the storage fee shall be paid at the same time the deposit is retrieved.

Article 380 Where the depositor fails to pay the storage fee and other expenses, the depository is entitled to lien on the deposit, unless as otherwise agreed upon by the parties.

## Chapter 20 Warehousing Contracts

Article 381A warehousing contract is a contract whereby the safekeeping party stores the goods delivered by the depositor, and the depositor pays the warehousing fee.

Article 382 A warehousing contract becomes effective upon its formation.

Article 383 Where the depositor intends to store any dangerous article which is inflammable, explosive, toxic, corrosive, or radioactive, etc., or any material susceptible to deterioration, it shall indicate the nature of the goods and provide the relevant information.

Where the depositor violates the provisions of the preceding paragraph, the safekeeping party may reject the goods and may also take the appropriate measures to avoid losses, the cost consequently incurred shall be borne by the depositor.

Where the safekeeping party is to store any dangerous article that is inflammable, explosive, toxic, corrosive, or radioactive, etc., it shall be equipped with the appropriate safekeeping conditions.

Article 384 The safekeeping party shall, in accordance with the contract, conduct warehouse-in inspection of the goods. Where in the course of such inspection, the safekeeping party discovers that the goods are not in conformity with the terms of the contract, it shall timely notify the depositor.

After inspection and acceptance by the safekeeping party, if it is discovered that the category, quantity or quality of the warehousing goods are not in conformity with the terms of the contract, the safekeeping party shall be liable for damages.

Article 385 Upon the depositor's delivery of the goods, the safekeeping party shall issue a warehouse receipt.

Article 386 The safekeeping party shall sign or affix a seal on the warehouse receipt. The warehouse receipt shall contain the following items:

(1) name and domicile of the depositor;

(2) category, quantity, quality, and package, number of pieces and marks of the warehousing goods;

(3) standards of spoilage of the warehousing goods;

(4) place of storage;

(5) time period of storage;

(6) warehousing fee;

(7) if the goods have been insured, the insured amount, term of insurance and the name of the insurer;

(8) name of the person issuing the warehouse receipt, the place and the date of issuance.

Article 387 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 safekeeping party has signed or sealed thereon, the right to retrieve the goods may be assigned.

Article 388 Upon request of the depositor or the holder of the warehouse receipt, the safekeeping party shall allow the person to inspect the goods or take samples therefrom.

Article 389 Where the safekeeping party 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 Where the safekeeping party discovers that the warehoused goods are deteriorating or are otherwise damaged, thereby endangering the safety and normal safekeeping of other warehoused goods, it shall demand disposal of the goods by the depositor or the holder of the warehouse receipt as necessary. In an emergency situation, the safekeeping party may dispose of the goods as necessary, but shall timely notify the depositor or holder of the warehouse receipt of the situation.

Article 391 Where the warehousing period is not agreed or the agreement is not clear, the depositor or holder of the warehouse receipt may retrieve the goods at any time, and the safekeeping party 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 At the expiry of the warehousing period, the depositor or holder of the warehouse receipt shall retrieve the goods by presenting the warehouse receipt to the safekeeping party. Where the depositor or holder of the warehouse receipt fails to claim the goods, additional warehousing fee

shall be charged; where the goods are retrieved before the expiry the warehousing period, the warehousing fee shall not be reduced.

Article 393 At the expiry of the warehousing period, if the depositor or holder of the warehouse receipt fails to retrieve the goods, the safekeeping party may demand retrieval within a reasonable period, and if the goods are not retrieved at the expiry of such period, the safekeeping party may place the goods in escrow.

Article 394 Where the goods are damaged or lost during the warehousing period due to improper safekeeping by the safekeeping party, it shall be liable for damages. If the goods are deteriorated or damaged due to unconformity of the nature of the warehoused goods or of the packing with the terms of the contract, or the fact that the goods exceed the valid storage period, the safekeeping party is not liable for damages.

Article 395 Matters not provided for in this Chapter shall be governed by the relevant provision on storage contracts.

## Chapter 21 Commission Contracts

Article 396 A commission contract is a contract whereby the principal and the agent agree that the agent will handle the principal's affairs.

Article 397 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 The principal shall prepay the expenses for handling the commissioned affair. Any expense necessary for handling the commissioned affair advanced by the agent shall be repaid with interest by the principal.

Article 399 The agent shall handle the commissioned 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 in contacting the principal, the agent shall properly handle the commissioned affair, provided that thereafter the agent shall timely notify the principal of the situation.

Article 400 The agent shall personally handle the commissioned affair. Subject to consent by the principal, the agent may delegate the agency to a third party. If the delegation is approved, the principal may issue instructions concerning the commissioned 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 Upon request by the principal, the agent shall report on the progress of the commissioned affair. Upon discharge of the commission contract, the agent shall render an account of the commissioned affair.

Article 402 Where the agent, acting within the scope of authority granted by the principal, enter into a contract in its own name with a third party who is aware of the agency relationship between the principal and agent, the contract is directly binding upon the principal and such third party, except where there is conclusive evidence establishing that the contract is only binding upon the agent and such third party.

Article 403 Where the agent enter into a contract in its own name with a third party who is not aware of the agency relationship between the agent and the principal, if the agent fails to perform its obligation toward the principal due to any reason attributable to such third party, the agent shall disclose the third party to the principal, allowing it to exercise the agent's rights against such third party, except where the third party will not enter into the contract with the agent if he knows the identity of the principal at the time of entering into the contract.

Where the agent fails to perform its obligation toward the third party due to any reason attributable to the principal, the agent shall disclose the principal to the third party, allowing the third party 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 party may not subsequently change its selection of the contract party.

Where the principal exercises the rights of the agent against the third party, the third party may avail itself of any defense it has against the agent. Where the third party 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 party.

Article 404 Any property acquired by the agent in the course of handling the commissioned affair shall be turned over to the principal.

Article 405 Upon completion of the commissioned affair by the agent, the principal shall pay the remuneration thereto. Where the agency appointment contract is terminated or the commissioned 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 agrees

otherwise, such agreement shall prevail.

Article 406 Under a commission 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 acts beyond the scope of authorization, thereby causing loss to the principal, it shall pay damages.

Article 407 In the course of handling the commissioned 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 Subject to consent by the agent, the principal may, in addition to appointing the agent, also appoint a third party to handle the commissioned affair. If such appointment results in loss to the agent, it may seek indemnification from the principal.

Article 409 Where two or more agents jointly handle the commissioned affair, they are jointly and severally liable to the principal.

Article 410 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 A commission contract is discharged when either the principal or the agent is deceased or incapacitated or enters into bankruptcy, except where the parties agree otherwise, or where discharge is inappropriate in light of the nature of the commissioned affair.

Article 412 Where discharge of the commission contract due to the death, incapacitation or bankruptcy of the principal will harm the principal's interests, the agent shall continue to handle the commissioned affair before an heir, legal agent or liquidation team thereof takes over the commissioned affair.

Article 413 If the commission 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 22 Contracts of Commission Agency

Article 414 A contract of commission agency is a contract whereby the commission agent conducts trading activities in its own name for the principal, and the principal pays the remuneration.

Article 415 The expenses incurred by the commission agent in the course of handling the commissioned affair shall be borne by the commission agent, except as otherwise agreed upon by the parties.

Article 416 Where the commission agent is in possession of the entrusted item, it shall keep the entrusted item with due care.

Article 417 If an entrusted item is defective, perishable or susceptible to deterioration at the time it was delivered to the commission agent, upon consent by the principal, the commission agent may dispose of the item; where the trustee-trader is unable to contact the principal in time, it may dispose of the entrusted item in a reasonable manner.

Article 418 Where the commission agent is to sell the entrusted item below, or buy the entrusted item above, the price designated by the principal, it shall obtain consent from



the principal. If such sale is effected without consent by the principal, and the commission agent makes up the deficiency on its own, it is binding on the principal.

Where the commission agent sells the entrusted item above, or purchases the entrusted item below, the price designated by the principal, the remuneration may be increased in accordance with the contract. Where such matter is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the benefit belongs to the principal.

Where the principal gives special pricing instruction, the commission agent may not make any sale or purchase in contravention thereof.

Article 419 Where the commission agent is to sell or purchase a commodity the price of which is fixed by the market, the commission agent may act as the purchaser or seller itself, unless the principal expresses otherwise.

Where the commission agent is under the situation prescribed in the preceding paragraph, it may still require payment of remuneration from the principal.

Article 420 Once the commission agent purchases the entrusted item in accordance with the contract, the principal shall timely take delivery. Where after receiving demand from the commission agent, the principal refuses to take delivery without cause, the commission agent may place the entrusted item in escrow in accordance with Article 101 of this Law.

Where the entrusted item fails to be sold or the principal withdraws it from sale, the commission agent may place the entrusted item in escrow in accordance with Article 101 of this Law if the principal fails to retrieve or dispose of it after receiving such demand from commission agent.

Article 421 Where the commission agent enters into a contract with a third party, it directly enjoys the rights and assumes the obligations thereunder.

Where the third party fails to perform its obligations, thereby causing damage to the principal, the commission agent shall be liable for damages, except as otherwise agreed upon by the commission agent and the principal.

Article 422 Where the commission agent has completed the entrusted matter or has partially completed the entrusted matter, the principal shall pay the appropriate remuneration thereto. Where the principal fails to pay the remuneration within the prescribed period, the commission agent is entitled to lien on the entrusted item, except as otherwise agreed upon by the parties.

Article 423 Matters not prescribed in this Chapter shall be governed by the relevant provision on commission contracts.

## Chapter 23 Intermediation contracts

Article 424 A intermediation 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 The broker shall provide true information concerning matters relevant to the conclusion of the proposed contract.

Where the broker intentionally conceals 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 Once the broker facilitates the formation of the proposed contract, the client shall pay the remuneration in accordance with the intermediation contract. Where remuneration to the broker is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61

of this Law, it shall be reasonably fixed in light of the amount of labor expended by the broker. Where the broker facilitates 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 facilitates the formation of the proposed contract, the brokerage expenses shall be borne by itself.

Article 427 Where the broker fails 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 This Law shall take effect as of 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.

中华人民共和国主席令

(第十五号)

《中华人民共和国合同法》已由中华人民共和国第九届全国人民代表大会第二次会议于1999年3月15日通过，现予公布，自1999年10月1日起施行。

中华人民共和国主席 江泽民

1999年3月15日

### 中华人民共和国合同法

(1999年3月15日第九届全国人民代表大会第二次会议通过)

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总则

第一章 一般规定

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

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

婚姻、收养、监护等有关身份关系的协议，适用其他法律的规定。

第三条 【平等原则】合同当事人的法律地位平等，一方不得将自己的意志强加给另一方。

第四条 【合同自由原则】当事人依法享有自愿订立合同的权利，任何单位和个人不得非法干预。

第五条 【公平原则】当事人应当遵循公平原则确定各方的权利和义务。

第六条 【诚实信用原则】当事人行使权利、履行义务应当遵循诚实信用原则。

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

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

依法成立的合同，受法律保护。

第二章 合同的订立

第九条 【订立合同的能力】当事人订立合同，应当具有相应的民事行为能力。

当事人依法可以委托代理人订立合同。

第十条 【合同的形式】当事人订立合同，有书面形式、口头形式和其他形式。

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

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

第十二条 【合同内容】合同的内容由当事人约定，一般包括以下条款：

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

当事人可以参照各类合同的示范文本订立合同。

第十三条 【订立合同方式】当事人订立合同，采取要约、承诺方式。

第十四条 【要约】要约是希望和他人订立合同的意思表示，该意思表示应当符合下列规定：

- （一）内容具体确定；
- （二）表明经要约人承诺，要约人即受该意思表示约束。

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

商业广告的内容符合要约规定的，视为要约。

第十六条 【要约的生效】要约到达受要约人时生效。

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

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

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

第十九条 【要约不得撤销的情形】有下列情形之一的，要约不得撤销：

- （一）要约人确定了承诺期限或者以其他形式明示要约不可撤销；

(二) 受要约人有理由认为要约是不可撤销的, 并已经为履行合同作了准备工作。

第二十条 【要约的失效】 有下列情形之一的, 要约失效:

- (一) 拒绝要约的通知到达要约人;
- (二) 要约人依法撤销要约;
- (三) 承诺期限届满, 受要约人未作出承诺;
- (四) 受要约人对要约的内容作出实质性变更。

第二十一条 【承诺的定义】 承诺是受要约人同意要约的意思表示。

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

第二十三条 【承诺的期限】 承诺应当在要约确定的期限内到达要约人。

要约没有确定承诺期限的, 承诺应当依照下列规定到达:

- (一) 要约以对话方式作出的, 应当即时作出承诺, 但当事人另有约定的除外;
- (二) 要约以非对话方式作出的, 承诺应当在合理期限内到达。

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

第二十五条 【合同成立时间】 承诺生效时合同成立。

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

采用数据电文形式订立合同的, 承诺到达的时间适用本法第十六条第二款的规定。

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

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

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

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

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

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

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

第三十四条 【合同成立地点】承诺生效的地点为合同成立的地点。

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

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

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

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

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

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

格式条款是当事人为了重复使用而预先拟定，并在订立合同时未与对方协商的条款。

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

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

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

- （一）假借订立合同，恶意进行磋商；
- （二）故意隐瞒与订立合同有关的重要事实或者提供虚假情况；
- （三）有其他违背诚实信用原则的行为。

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

### 第三章 合同的效力



第四十四条 【合同的生效】依法成立的合同，自成立时生效。

法律、行政法规规定应当办理批准、登记等手续生效的，依照其规定。

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

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

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

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

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

第四十八条 【无权代理人订立的合同】行为人没有代理权、超越代理权或者代理权终止后以被代理人名义订立的合同，未经被代理人追认，对被代理人不发生效力，由行为人承担责任。

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

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

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

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

第五十二条 【合同无效的法定情形】有下列情形之一的，合同无效：

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

第五十三条 【合同免责条款的无效】合同中的下列免责条款无效：

- (一) 造成对方人身伤害的；
- (二) 因故意或者重大过失造成对方财产损失的。

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

- （一）因重大误解订立的；
- （二）在订立合同时显失公平的。

一方以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下订立的合同，受损害方有权请求人民法院或者仲裁机构变更或者撤销。

当事人请求变更的，人民法院或者仲裁机构不得撤销。

第五十五条 【撤销权的消灭】有下列情形之一的，撤销权消灭：

- （一）具有撤销权的当事人自知道或者应当知道撤销事由之日起一年内没有行使撤销权；
- （二）具有撤销权的当事人知道撤销事由后明确表示或者以自己的行为放弃撤销权。

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

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

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

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

#### 第四章 合同的履行

第六十条 【严格履行与诚实信用】当事人应当按照约定全面履行自己的义务。

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

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

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

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

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

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

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

(五) 履行方式不明确的, 按照有利于实现合同目的的方式履行。

(六) 履行费用的负担不明确的, 由履行义务一方负担。

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

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

**第六十五条 【第三人不履行合同的责任承担】** 当事人约定由第三人向债权人履行债务, 第三人不履行债务或者履行债务不符合约定, 债务人应当向债权人承担违约责任。

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

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

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

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

当事人没有确切证据中止履行的, 应当承担违约责任。

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

**第七十条 【因债权人原因致债务履行困难的处理】** 债权人分立、合并或者变更住所没有通知债务人, 致使履行债务发生困难的, 债务人可以中止履行或者将标的物提存。

**第七十一条 【债务的提前履行】** 债权人可以拒绝债务人提前履行债务, 但提前履行不损害债权人利益的除外。

债务人提前履行债务给债权人增加的费用, 由债务人负担。

第七十二条 【债务的部分履行】债权人可以拒绝债务人部分履行债务，但部分履行不损害债权人利益的除外。

债务人部分履行债务给债权人增加的费用，由债务人负担。

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

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

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

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

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

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

## 第五章 合同的变更和转让

第七十七条 【合同变更条件】当事人协商一致，可以变更合同。

法律、行政法规规定变更合同应当办理批准、登记等手续的，依照其规定。

第七十八条 【合同变更内容不明的处理】当事人对合同变更的内容约定不明确的，推定为未变更。

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

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

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

债权人转让权利的通知不得撤销，但经受让人同意的除外。

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

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

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

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

第八十五条 【承担人的抗辩】债务人转移义务的，新债务人可以主张原债务人对债权人的抗辩。

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

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

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

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

第九十条 【新当事人的概括承受】当事人订立合同后合并的，由合并后的法人或者其他组织行使合同权利，履行合同义务。当事人订立合同后分立的，除债权人和债务人另有约定的以外，由分立的法人或者其他组织对合同的权利和义务享有连带债权，承担连带债务。

## 第六章 合同的权利义务终止

第九十一条 【合同消灭的原因】有下列情形之一的，合同的权利义务终止：

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

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

第九十三条 【合同约定解除】当事人协商一致，可以解除合同。

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

第九十四条 【合同的法定解除】有下列情形之一的，当事人可以解除合同：

- （一）因不可抗力致使不能实现合同目的；

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

(三) 当事人一方迟延履行主要债务, 经催告后在合理期限内仍未履行;

(四) 当事人一方迟延履行债务或者有其他违约行为致使不能实现合同目的;

(五) 法律规定的其他情形。

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

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

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

法律、行政法规规定解除合同应当办理批准、登记等手续的, 依照其规定。

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

**第九十八条 【结算、清理条款效力】** 合同的权利义务终止, 不影响合同中结算和清理条款的效力。

**第九十九条 【债务的抵销及行使】** 当事人互负到期债务, 该债务的标的物种类、品质相同的, 任何一方可以将自己的债务与对方的债务抵销, 但依照法律规定或者按照合同性质不得抵销的除外。

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

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

**第一百零一条 【提存的要件】** 有下列情形之一的, 难以履行债务的, 债务人可以将标的物提存:

(一) 债权人无正当理由拒绝受领;

(二) 债权人下落不明;

(三) 债权人死亡未确定继承人或者丧失民事行为能力未确定监护人;

(四) 法律规定的其他情形。

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

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

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

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

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

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

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

## 第七章 违约责任

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

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

第一百零九条 【金钱债务的违约责任】当事人一方未支付价款或者报酬的，对方可以要求其支付价款或者报酬。

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

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

第一百一十一条 【瑕疵履行】质量不符合约定的，应当按照当事人的约定承担违约责任。对违约责任没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，受损害方根据标的的性质以及损失的大小，可以合理选择要求对方承担修理、更换、重作、退货、减少价款或者报酬等违约责任。

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

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

经营者对消费者提供商品或者服务有欺诈行为的，依照《中华人民共和国消费者权益保护法》的规定承担损害赔偿责任。

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

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

当事人就迟延履行约定违约金的，违约方支付违约金后，还应当履行债务。

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

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

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

本法所称不可抗力，是指不能预见、不能避免并不能克服的客观情况。

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

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

当事人因防止损失扩大而支出的合理费用，由违约方承担。

第一百二十条 【双方违约的责任】当事人双方都违反合同的，应当各自承担相应的责任。

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

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

## 第八章 其他规定

第一百二十三条 【其他规定的适用】其他法律对合同另有规定的，依照其规定。

第一百二十四条 【无名合同】本法分则或者其他法律没有明文规定的合同，适用本法总则的规定，并可以参照本法分则或者其他法律最相类似的规定。



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

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

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

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

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

第一百二十八条 【合同争议的解决】当事人可以通过和解或者调解解决合同争议。

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

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

## 分则

### 第九章 买卖合同

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

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

第一百三十二条 【标的物】出卖的标的物，应当属于出卖人所有或者出卖人有权处分。法律、行政法规禁止或者限制转让的标的物，依照其规定。

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

第一百三十四条 【标的物所有权转移的约定】当事人可以在买卖合同中约定买受人未履行支付价款或者其他义务的，标的物的所有权属于出卖人。

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

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

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

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

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

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

第一百四十一条 【交付的地点】出卖人应当按照约定的地点交付标的物。

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

（一）标的物需要运输的，出卖人应当将标的物交付给第一承运人以运交给买受人；

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

出卖人解除合同的，可以向买受人要求支付该标的物的使用费。

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

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

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

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

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

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

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

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

## 第十章 供用电、水、气、热力合同

第一百七十六条 【定义】供用电合同是供电人向用电人供电，用电人支付电费的合同。

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

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

第一百七十九条 【安全供电义务及责任】供电人应当按照国家规定的供电质量标准和约定安全供电。供电人未按照国家规定的供电质量标准和约定安全供电，造成用电人损失的，应当承担损害赔偿责任。

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

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

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

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

第一百八十四条 【供用水、气、热力合同】供用水、供用气、供用热力合同，参照供用电合同的有关规定。

## 第十一章 赠与合同

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

第一百八十六条 【赠与合同的任意撤销与限制】赠与人在赠与财产的权利转移之前可以撤销赠与。

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

第一百八十七条 【赠与的登记等手续】赠与的财产依法需要办理登记等手续的，应当办理有关手续。

第一百八十八条 【受赠人的交付请求权】具有救灾、扶贫等社会公益、道德义务性质的赠与合同或者经过公证的赠与合同，赠与人不交付赠与的财产的，受赠人可以要求交付。

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

第一百九十条 【附义务赠与】赠与可以附义务。

赠与附义务的，受赠人应当按照约定履行义务。

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

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

第一百九十二条 【赠与的法定撤销】受赠人有下列情形之一的，赠与人可以撤销赠与：

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

赠与人的撤销权，自知道或者应当知道撤销原因之日起一年内行使。

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

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

第一百九十四条 【赠与财产的返还】撤销权人撤销赠与的，可以向受赠人要求返还赠与的财产。

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

## 第十二章 借款合同

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

第一百九十七条 【合同形式及主要条款】借款合同采用书面形式，但自然人之间借款另有约定的除外。

借款合同的内容包括借款种类、币种、用途、数额、利率、期限和还款方式等条款。

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

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

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

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

借款人未按照约定的日期、数额收取借款的，应当按照约定的日期、数额支付利息。

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

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

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

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

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

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

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

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

第二百一十条 【自然人间借款合同的生效时间】自然人之间的借款合同，自贷款人提供借款时生效。

第二百一十一条 【自然人间借款合同的利率】自然人之间的借款合同对支付利息没有约定或者约定不明确的，视为不支付利息。自然人之间的借款合同约定支付利息的，借款的利率不得违反国家有关限制借款利率的规定。

### 第十三章 租赁合同

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

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

第二百一十四条 【租赁期限】租赁期限不得超过二十年。超过二十年的，超过部分无效。

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

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

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

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

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

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

第二百二十条 【租赁物的维修】出租人应当履行租赁物的维修义务，但当事人另有约定的除外。

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

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

第二百二十三条 【租赁物的改善】承租人经出租人同意，可以对租赁物进行改善或者增设他物。

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

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

承租人未经出租人同意转租的，出租人可以解除合同。

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

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



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

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

第三人主张权利的，承租人应当及时通知出租人。

第二百二十九条 【所有权变动后的合同效力】租赁物在租赁期间发生所有权变动的，不影响租赁合同的效力。

第二百三十条 【优先购买权】出租人出卖租赁房屋的，应当在出卖之前的合理期限内通知承租人，承租人享有以同等条件优先购买的权利。

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

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

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

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

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

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

#### 第十四章 融资租赁合同

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

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

融资租赁合同应当采用书面形式。

第二百三十九条 【租赁物的购买】出租人根据承租人对出卖人、租赁物的选择订立的买卖合同，出卖人应当按照约定向承租人交付标的物，承租人享有与受领标的物有关的买受人的权利。

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

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

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

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

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

第二百四十五条 【租赁物的占有和使用】出租人应当保证承租人对租赁物的占有和使用。

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

第二百四十七条 【租赁物的保管、使用、维修】承租人应当妥善保管、使用租赁物。  
承租人应当履行占有租赁物期间的维修义务。

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

第二百四十九条 【租赁物价值的部分返还权】当事人约定租赁期间届满租赁物归承租人所有，承租人已经支付大部分租金，但无力支付剩余租金，出租人因此解除合同收回租赁物的，收回的租赁物的价值超过承租人欠付的租金以及其他费用的，承租人可以要求部分返还。

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

## 第十五章 承揽合同

第二百五十一条 【定义】承揽合同是承揽人按照定作人的要求完成工作，交付工作成果，定作人给付报酬的合同。

承揽包括加工、定作、修理、复制、测试、检验等工作。

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

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

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

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

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

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

承揽人不得擅自更换定作人提供的材料,不得更换不需要修理的零部件。

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

**第二百五十八条 【中途变更工作要求的责任】**定作人中途变更承揽工作的要求,造成承揽人损失的,应当赔偿损失。

**第二百五十九条 【定作人的协助义务】**承揽工作需要定作人协助的,定作人有协助的义务。

定作人不履行协助义务致使承揽工作不能完成的,承揽人可以催告定作人在合理期限内履行义务,并可以顺延履行期限;定作人逾期不履行的,承揽人可以解除合同。

**第二百六十条 【承揽人接受监督检查的义务】**承揽人在工作期间,应当接受定作人必要的监督检查。定作人不得因监督检查妨碍承揽人的正常工作。

**第二百六十一条 【验收质量保证】**承揽人完成工作的,应当向定作人交付工作成果,并提交必要的技术资料及有关质量证明。定作人应当验收该工作成果。

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

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

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

**第二百六十五条 【材料的保管】**承揽人应当妥善保管定作人提供的材料以及完成的工作成果,因保管不善造成毁损、灭失的,应当承担赔偿责任。

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

**第二百六十七条 【共同承揽】**共同承揽人对定作人承担连带责任,但当事人另有约定的除外。

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

## 第十六章 建设工程合同

第二百六十九条 【定义】建设工程合同是承包人进行工程建设，发包人支付价款的合同。

建设工程合同包括工程勘察、设计、施工合同。

第二百七十条 【合同形式】建设工程合同应当采用书面形式。

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

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

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

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

第二百七十三条 【重大建设工程合同的订立】国家重大建设工程合同，应当按照国家规定的程序和国家批准的投资计划、可行性研究报告等文件订立。

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

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

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

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

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

第二百七十九条 【竣工验收】建设工程竣工后，发包人应当根据施工图纸及说明书、国家颁发的施工验收规范和质量检验标准及时进行验收。验收合格的，发包人应当按照约定支付价款，并接收该建设工程。

建设工程竣工验收合格后，方可交付使用；未经验收或者验收不合格的，不得交付使用。

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

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

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

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

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

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

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

第二百八十七条 【适用承揽合同的规定】本章没有规定的，适用承揽合同的有关规定。

## 第十七章 运输合同

### 第一节 一般规定

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

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

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

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

第二百九十二条 【旅客、托运人或收货人基本义务】旅客、托运人或者收货人应当支付票款或者运输费用。承运人未按照约定路线或者通常路线运输增加票款或者运输费用的，旅客、托运人或者收货人可以拒绝支付增加部分的票款或者运输费用。

## 第二节 客运合同

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

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

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

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

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

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

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

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

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

第三百零一条 【对旅客的救助义务】承运人在运输过程中，应当尽力救助患有急病、分娩、遇险的旅客。

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

前款规定适用于按照规定免票、持优待票或者经承运人许可搭乘的无票旅客。

第三百零三条 【对行李的赔偿责任】在运输过程中旅客自带物品毁损、灭失，承运人有过错的，应当承担损害赔偿责任。

旅客托运的行李毁损、灭失的，适用货物运输的有关规定。

## 第三节 货运合同

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

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

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

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

托运人违反前款规定的，承运人可以拒绝运输。

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

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

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

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

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

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

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

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

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

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

第三百一十六条 【货物的提存】收货人不明或者收货人无正当理由拒绝受领货物的，依照本法第一百零一条的规定，承运人可以提存货物。

#### 第四节 多式联运合同

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

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

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

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

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

### 第十八章 技术合同

#### 第一节 一般规定

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

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

第三百二十四条 【技术合同的主要条款】技术合同的内容由当事人约定，一般包括以下条款：

- (一) 项目名称；
- (二) 标的的内容、范围和要求；
- (三) 履行的计划、进度、期限、地点、地域和方式；
- (四) 技术情报和资料的保密；



- (五) 风险责任的承担;
- (六) 技术成果的归属和收益的分成办法;
- (七) 验收标准和方法;
- (八) 价款、报酬或者使用费及其支付方式;
- (九) 违约金或者损失赔偿的计算方法;
- (十) 解决争议的方法;
- (十一) 名词和术语的解释。

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

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

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

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

约定提成支付的，当事人应当在合同中约定查阅有关会计帐目的办法。

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

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

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

**第三百二十八条 【技术成果的精神权属】**完成技术成果的个人有在有关技术成果文件上写明自己是技术成果完成者的权利和取得荣誉证书、奖励的权利。

**第三百二十九条 【技术合同的无效】**非法垄断技术、妨碍技术进步或者侵害他人技术成果的技术合同无效。

## 第二节 技术开发合同

第三百三十条 【定义及合同形式】技术开发合同是指当事人之间就新技术、新产品、新工艺或者新材料及其系统的研究开发所订立的合同。

技术开发合同包括委托开发合同和合作开发合同。

技术开发合同应当采用书面形式。

当事人之间就具有产业应用价值的科技成果实施转化订立的合同，参照技术开发合同的规定。

第三百三十一条 【委托人义务】委托开发合同的委托人应当按照约定支付研究开发经费和报酬；提供技术资料、原始数据；完成协作事项；接受研究开发成果。

第三百三十二条 【受托人义务】委托开发合同的研究开发人应当按照约定制定和实施研究开发计划；合理使用研究开发经费；按期完成研究开发工作，交付研究开发成果，提供有关的技术资料和必要的技术指导，帮助委托人掌握研究开发成果。

第三百三十三条 【委托人的违约责任】委托人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

第三百三十四条 【受托人的违约责任】研究开发人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

第三百三十五条 【合作开发各方的主要义务】合作开发合同的当事人应当按照约定进行投资，包括以技术进行投资；分工参与研究开发工作；协作配合研究开发工作。

第三百三十六条 【合作开发各方的违约责任】合作开发合同的当事人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

第三百三十七条 【合同的解除】因作为技术开发合同标的的技术已经由他人公开，致使技术开发合同的履行没有意义的，当事人可以解除合同。

第三百三十八条 【风险负担及通知义务】在技术开发合同履行过程中，因出现无法克服的技术困难，致使研究开发失败或者部分失败的，该风险责任由当事人约定。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，风险责任由当事人合理分担。

当事人一方发现前款规定的可能致使研究开发失败或者部分失败的情形时，应当及时通知另一方并采取适当措施减少损失。没有及时通知并采取适当措施，致使损失扩大的，应当就扩大的损失承担责任。

第三百三十九条 【技术成果的归属】委托开发完成的发明创造，除当事人另有约定的以外，申请专利的权利属于研究开发人。研究开发人取得专利权的，委托人可以免费实施该专利。

研究开发人转让专利申请权的，委托人享有以同等条件优先受让的权利。

第三百四十条 【合作开发技术成果的归属】合作开发完成的发明创造，除当事人另有约定的以外，申请专利的权利属于合作开发的当事人共有。当事人一方转让其共有的专利申请权的，其他各方享有以同等条件优先受让的权利。

合作开发的当事人一方声明放弃其共有的专利申请权的，可以由另一方单独申请或者由其他各方共同申请。申请人取得专利权的，放弃专利申请权的一方可以免费实施该专利。

合作开发的当事人一方不同意申请专利的，另一方或者其他各方不得申请专利。

第三百四十一条 【技术秘密成果的归属与分享】委托开发或者合作开发完成的技术秘密成果的使用权、转让权以及利益的分配办法，由当事人约定。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，当事人均有使用和转让的权利，但委托开发的研究开发人不得在向委托人交付研究开发成果之前，将研究开发成果转让给第三人。

### 第三节 技术转让合同

第三百四十二条 【内容及形式】技术转让合同包括专利权转让、专利申请权转让、技术秘密转让、专利实施许可合同。

技术转让合同应当采用书面形式。

第三百四十三条 【技术转让范围的约定】技术转让合同可以约定让与人和受让人实施专利或者使用技术秘密的范围，但不得限制技术竞争和技术发展。

第三百四十四条 【专利实施许可合同的限制】专利实施许可合同只在该专利权的存续期间内有效。专利权有效期限届满或者专利权被宣布无效的，专利权人不得就该专利与他人订立专利实施许可合同。

第三百四十五条 【专利实施许可合同让与人主要义务】专利实施许可合同的让与人应当按照约定许可受让人实施专利，交付实施专利有关的技术资料，提供必要的技术指导。

第三百四十六条 【专利实施许可合同受让人主要义务】专利实施许可合同的受让人应当按照约定实施专利，不得许可约定以外的第三人实施该专利；并按照约定支付使用费。

第三百四十七条 【技术秘密转让合同让与人的义务】技术秘密转让合同的让与人应当按照约定提供技术资料，进行技术指导，保证技术的实用性、可靠性，承担保密义务。

第三百四十八条 【技术秘密转让合同的受让人义务】技术秘密转让合同的受让人应当按照约定使用技术，支付使用费，承担保密义务。

第三百四十九条 【技术转让合同让与人基本义务】技术转让合同的让与人应当保证自己是所提供的技术的合法拥有者，并保证所提供的技术完整、无误、有效，能够达到约定的目标。

第三百五十条 【技术转让合同受让人技术保密义务】技术转让合同的受让人应当按照约定的范围和期限，对让与人提供的技术中尚未公开的秘密部分，承担保密义务。

第三百五十一条 【让与人违约责任】让与人未按照约定转让技术的，应当返还部分或者全部使用费，并应当承担违约责任；实施专利或者使用技术秘密超越约定的范围的，违反约定擅自许可第三人实施该项专利或者使用该项技术秘密的，应当停止违约行为，承担违约责任；违反约定的保密义务的，应当承担违约责任。

第三百五十二条 【受让人违约责任】受让人未按照约定支付使用费的，应当补交使用费并按照约定支付违约金；不补交使用费或者支付违约金的，应当停止实施专利或者使用技术秘密，交还技术资料，承担违约责任；实施专利或者使用技术秘密超越约定的范围的，未经让与人同意擅自许可第三人实施该专利或者使用该技术秘密的，应当停止违约行为，承担违约责任；违反约定的保密义务的，应当承担违约责任。

第三百五十三条 【技术合同让与人侵权责任】受让人按照约定实施专利、使用技术秘密侵害他人合法权益的，由让与人承担责任，但当事人另有约定的除外。

第三百五十四条 【后续技术成果的归属与分享】当事人可以按照互利的原则，在技术转让合同中约定实施专利、使用技术秘密后续改进的技术成果的分享办法。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，一方后续改进的技术成果，其他各方无权分享。

第三百五十五条 【技术进出口合同的法律适用】法律、行政法规对技术进出口合同或者专利、专利申请合同另有规定的，依照其规定。

#### 第四节 技术咨询合同和技术服务合同

第三百五十六条 【内容】技术咨询合同包括就特定技术项目提供可行性论证、技术预测、专题技术调查、分析评价报告等合同。

技术服务合同是指当事人一方以技术知识为另一方解决特定技术问题所订立的合同，不包括建设工程合同和承揽合同。

第三百五十七条 【技术咨询合同委托人主要义务】技术咨询合同的委托人应当按照约定阐明咨询的问题，提供技术背景材料及有关技术资料、数据；接受受托人的工作成果，支付报酬。

第三百五十八条 【技术咨询合同受托人主要义务】技术咨询合同的受托人应当按照约定的期限完成咨询报告或者解答问题；提出的咨询报告应当达到约定的要求。

第三百五十九条 【委托人与受托人的违约责任】技术咨询合同的委托人未按照约定提供必要的资料和数据，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。

技术咨询合同的受托人未按期提出咨询报告或者提出的咨询报告不符合约定的，应当承担减收或者免收报酬等违约责任。

技术咨询合同的委托人按照受托人符合约定要求的咨询报告和意见作出决策所造成的损失，由委托人承担，但当事人另有约定的除外。

第三百六十条 【技术服务合同委托人义务】技术服务合同的委托人应当按照约定提供工作条件，完成配合事项；接受工作成果并支付报酬。

第三百六十一条 【技术服务合同受托人义务】技术服务合同的受托人应当按照约定完成服务项目，解决技术问题，保证工作质量，并传授解决技术问题的知识。

第三百六十二条 【技术服务合同双方当事人的违约责任】技术服务合同的委托人不履行合同义务或者履行合同义务不符合约定，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。

技术服务合同的受托人未按照合同约定完成服务工作的，应当承担免收报酬等违约责任。

第三百六十三条 【**新创技术成果的归属和分享**】在技术咨询合同、技术服务合同履行过程中，受托人利用委托人提供的技术资料和工作条件完成的新的技术成果，属于受托人。委托人利用受托人的工作成果完成的新的技术成果，属于委托人。当事人另有约定的，按照其约定。

第三百六十四条 【**技术培训合同、技术中介合同的法律适用**】法律、行政法规对技术中介合同、技术培训合同另有规定的，依照其规定。

## 第十九章 保管合同

第三百六十五条 【**定义**】保管合同是保管人保管寄存人交付的保管物，并返还该物的合同。

第三百六十六条 【**保管费的支付**】寄存人应当按照约定向保管人支付保管费。

当事人对保管费没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，保管是无偿的。

第三百六十七条 【**保管合同的成立**】保管合同自保管物交付时成立，但当事人另有约定的除外。

第三百六十八条 【**保管凭证**】寄存人向保管人交付保管物的，保管人应当给付保管凭证，但另有交易习惯的除外。

第三百六十九条 【**保管行为的要求**】保管人应当妥善保管保管物。

当事人可以约定保管场所或者方法。除紧急情况或者为了维护寄存人利益的以外，不得擅自改变保管场所或者方法。

第三百七十条 【**保管物有瑕疵或需特殊保管时寄存人的义务**】寄存人交付的保管物有瑕疵或者按照保管物的性质需要采取特殊保管措施的，寄存人应当将有关情况告知保管人。寄存人未告知，致使保管物受损失的，保管人不承担损害赔偿责任；保管人因此受损失的，除保管人知道或者应当知道并且未采取补救措施的以外，寄存人应当承担损害赔偿责任。

第三百七十一条 【**第三人代为保管**】保管人不得将保管物转交第三人保管，但当事人另有约定的除外。

保管人违反前款规定，将保管物转交第三人保管，对保管物造成损失的，应当承担损害赔偿责任。

第三百七十二条 【**保管人不得使用保管物的义务**】保管人不得使用或者许可第三人使用保管物，但当事人另有约定的除外。

第三百七十三条 【**第三人主张权利的返还**】第三人对保管物主张权利的，除依法对保管物采取保全或者执行的以外，保管人应当履行向寄存人返还保管物的义务。

第三人对保管人提起诉讼或者对保管物申请扣押的，保管人应当及时通知寄存人。

第三百七十四条 【保管物的毁损灭失与保管人责任】保管期间，因保管人保管不善造成保管物毁损、灭失的，保管人应当承担损害赔偿责任，但保管是无偿的，保管人证明自己没有重大过失的，不承担损害赔偿责任。

第三百七十五条 【寄存人的告示义务】寄存人寄存货币、有价证券或者其他贵重物品的，应当向保管人声明，由保管人验收或者封存。寄存人未声明的，该物品毁损、灭失后，保管人可以按照一般物品予以赔偿。

第三百七十六条 【保管物领取】寄存人可以随时领取保管物。

当事人对保管期间没有约定或者约定不明确的，保管人可以随时要求寄存人领取保管物；约定保管期间的，保管人无特别事由，不得要求寄存人提前领取保管物。

第三百七十七条 【保管物的返还】保管期间届满或者寄存人提前领取保管物的，保管人应当将原物及其孳息归还寄存人。

第三百七十八条 【货币等的返还】保管人保管货币的，可以返还相同种类、数量的货币。保管其他可替代物的，可以按照约定返还相同种类、品质、数量的物品。

第三百七十九条 【保管费支付期限】有偿的保管合同，寄存人应当按照约定的期限向保管人支付保管费。

当事人对支付期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当在领取保管物的同时支付。

第三百八十条 【保管人的留置权】寄存人未按照约定支付保管费以及其他费用的，保管人对保管物享有留置权，但当事人另有约定的除外。

## 第二十章 仓储合同

第三百八十一条 【定义】仓储合同是保管人储存存货人交付的仓储物，存货人支付仓储费的合同。

第三百八十二条 【仓储合同生效时间】仓储合同自成立时生效。

第三百八十三条 【危险物品的储存】储存易燃、易爆、有毒、有腐蚀性、有放射性等危险物品或者易变质物品，存货人应当说明该物品的性质，提供有关资料。

存货人违反前款规定的，保管人可以拒收仓储物，也可以采取相应措施以避免损失的发生，因此产生的费用由存货人承担。

保管人储存易燃、易爆、有毒、有腐蚀性、有放射性等危险物品的，应当具备相应的保管条件。

第三百八十四条 【仓储物的验收】保管人应当按照约定对入库仓储物进行验收。保管人验收时发现入库仓储物与约定不符合的，应当及时通知存货人。保管人验收后，发生仓储物的品种、数量、质量不符合约定的，保管人应当承担损害赔偿责任。

第三百八十五条 【仓单】存货人交付仓储物的，保管人应当给付仓单。

第三百八十六条 【仓单应载事项】保管人应当在仓单上签字或者盖章。仓单包括下列事项：

- (一) 存货人的名称或者姓名和住所；
- (二) 仓储物的品种、数量、质量、包装、件数和标记；
- (三) 仓储物的损耗标准；
- (四) 储存场所；
- (五) 储存期间；
- (六) 仓储费；
- (七) 仓储物已经办理保险的，其保险金额、期间以及保险人的名称；
- (八) 填发人、填发地和填发日期。

第三百八十七条 【仓单的背书及其效力】仓单是提取仓储物的凭证。存货人或者仓单持有人在仓单上背书并经保管人签字或者盖章的，可以转让提取仓储物的权利。

第三百八十八条 【检查权】保管人根据存货人或者仓单持有人的要求，应当同意其检查仓储物或者提取样品。

第三百八十九条 【保管人的通知义务】保管人对入库仓储物发现有变质或者其他损坏的，应当及时通知存货人或者仓单持有人。

第三百九十条 【保管人的催告义务】保管人对入库仓储物发现有变质或者其他损坏，危及其他仓储物的安全和正常保管的，应当催告存货人或者仓单持有人作出必要的处置。因情况紧急，保管人可以作出必要的处置，但事后应当将该情况及时通知存货人或者仓单持有人。

第三百九十一条 【仓储物提取时间】当事人对储存期间没有约定或者约定不明确的，存货人或者仓单持有人可以随时提取仓储物，保管人也可以随时要求存货人或者仓单持有人提取仓储物，但应当给予必要的准备时间。

第三百九十二条 【仓单持有人提取仓储物】储存期间届满，存货人或者仓单持有人应当凭仓单提取仓储物。存货人或者仓单持有人逾期提取的，应当加收仓储费；提前提取的，不减收仓储费。

第三百九十三条 【保管人的提存权】储存期间届满，存货人或者仓单持有人不提取仓储物的，保管人可以催告其在合理期限内提取，逾期不提取的，保管人可以提存仓储物。

第三百九十四条 【保管人违约责任】储存期间，因保管人保管不善造成仓储物毁损、灭失的，保管人应当承担损害赔偿责任。

因仓储物的性质、包装不符合约定或者超过有效储存期造成仓储物变质、损坏的，保管人不承担损害赔偿责任。

第三百九十五条 【仓储合同的法律适用】本章没有规定的，适用保管合同的有关规定。

## 第二十一章 委托合同

第三百九十六条 【定义】委托合同是委托人和受托人约定，由受托人处理委托人事务的合同。

第三百九十七条 【委托范围】委托人可以特别委托受托人处理一项或者数项事务，也可以概括委托受托人处理一切事务。

第三百九十八条 【委托费用】委托人应当预付处理委托事务的费用。受托人为处理委托事务垫付的必要费用，委托人应当偿还该费用及其利息。

第三百九十九条 【受托人服从指示的义务】受托人应当按照委托人的指示处理委托事务。需要变更委托人指示的，应当经委托人同意；因情况紧急，难以和委托人取得联系的，受托人应当妥善处理委托事务，但事后应当将该情况及时报告委托人。

第四百条 【亲自处理及转委托】受托人应当亲自处理委托事务。经委托人同意，受托人可以转委托。转委托经同意的，委托人可以就委托事务直接指示转委托的第三人，受托人仅就第三人的选任及其对第三人的指示承担责任。转委托未经同意的，受托人应当对转委托的第三人的行为承担责任，但在紧急情况下受托人为维护委托人的利益需要转委托的除外。

第四百零一条 【受托人的报告义务】受托人应当按照委托人的要求，报告委托事务的处理情况。委托合同终止时，受托人应当报告委托事务的结果。

第四百零二条 【委托人的介入权】受托人以自己的名义，在委托人的授权范围内与第三人订立的合同，第三人在订立合同时知道受托人与委托人之间的代理关系的，该合同直接约束委托人和第三人，但有确切证据证明该合同只约束受托人和第三人的除外。

第四百零三条 【委托人对第三人的权利及第三人选择相对人的权利】受托人以自己的名义与第三人订立合同时，第三人不知道受托人与委托人之间的代理关系的，受托人因第三人的原因对委托人不履行义务，受托人应当向委托人披露第三人，委托人因此可以行使受托人对第三人的权利，但第三人与受托人订立合同时如果知道该委托人就不会订立合同的除外。

受托人因委托人的原因对第三人不履行义务，受托人应当向第三人披露委托人，第三人因此可以选择受托人或者委托人作为相对人主张其权利，但第三人不得变更选定的相对人。

委托人行使受托人对第三人的权利的，第三人可以向委托人主张其对受托人的抗辩。第三人选定委托人作为其相对人的，委托人可以向第三人主张其对受托人的抗辩以及受托人对第三人的抗辩。

第四百零四条 【受托人交付财产义务】受托人处理委托事务取得的财产，应当转交给委托人。

第四百零五条 【委托人支付报酬的义务】受托人完成委托事务的，委托人应当向其支付报酬。因不可归责于受托人的事由，委托合同解除或者委托事务不能完成的，委托人应当向受托人支付相应的报酬。当事人另有约定的，按照其约定。

第四百零六条 【受托人的损害赔偿责任】有偿的委托合同，因受托人的过错给委托人造成损失的，委托人可以要求赔偿损失。无偿的委托合同，因受托人的故意或者重大过失给委托人造成损失的，委托人可以要求赔偿损失。



受托人超越权限给委托人造成损失的，应当赔偿损失。

第四百零七条 【委托人的赔偿责任】受托人处理委托事务时，因不可归责于自己的事由受到损失的，可以向委托人要求赔偿损失。

第四百零八条 【另行委托】委托人经受托人同意，可以在受托人之外委托第三人处理委托事务。因此给受托人造成损失的，受托人可以向委托人要求赔偿损失。

第四百零九条 【受托人的连带责任】两个以上的受托人共同处理委托事务的，对委托人承担连带责任。

第四百一十条 【任意解除权】委托人或者受托人可以随时解除委托合同。因解除合同给对方造成损失的，除不可归责于该当事人的事由以外，应当赔偿损失。

第四百一十一条 【委托合同的终止】委托人或者受托人死亡、丧失民事行为能力或者破产的，委托合同终止，但当事人另有约定或者根据委托事务的性质不宜终止的除外。

第四百一十二条 【委托人的后合同义务】因委托人死亡、丧失民事行为能力或者破产，致使委托合同终止将损害委托人利益的，在委托人的继承人、法定代理人或者清算组织承受委托事务之前，受托人应当继续处理委托事务。

第四百一十三条 【受托人死亡后其继承人等的义务】因受托人死亡、丧失民事行为能力或者破产，致使委托合同终止的，受托人的继承人、法定代理人或者清算组织应当及时通知委托人。因委托合同终止将损害委托人利益的，在委托人作出善后处理之前，受托人的继承人、法定代理人或者清算组织应当采取必要措施。

## 第二十二章 行纪合同

第四百一十四条 【定义】行纪合同是行纪人以自己的名义为委托人从事贸易活动，委托人支付报酬的合同。

第四百一十五条 【处理委托事务的费用承担】行纪人处理委托事务支出的费用，由行纪人负担，但当事人另有约定的除外。

第四百一十六条 【行纪人对委托物的保管义务】行纪人占有委托物的，应当妥善保管委托物。

第四百一十七条 【委托物的处理】委托物交付给行纪人时有瑕疵或者容易腐烂、变质的，经委托人同意，行纪人可以处分该物；和委托人不能及时取得联系的，行纪人可以合理处分。

第四百一十八条 【未按指示进行行纪活动的后果】行纪人低于委托人指定的价格卖出或者高于委托人指定的价格买入的，应当经委托人同意。未经委托人同意，行纪人补偿其差额的，该买卖对委托人发生效力。

行纪人高于委托人指定的价格卖出或者低于委托人指定的价格买入的，可以按照约定增加报酬。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，该利益属于委托人。

委托人对价格有特别指示的，行纪人不得违背该指示卖出或者买入。

第四百一十九条 【行纪人的介入权】行纪人卖出或者买入具有市场定价的商品，除委托人有相反的意思表示的以外，行纪人自己可以作为买受人或者出卖人。

行纪人有前款规定情形的，仍然可以要求委托人支付报酬。

第四百二十条 【委托物的处置】行纪人按照约定买入委托物，委托人应当及时受领。经行纪人催告，委托人无正当理由拒绝受领的，行纪人依照本法第一百零一条的规定可以提存委托物。

委托物不能卖出或者委托人撤回出卖，经行纪人催告，委托人不取回或者不处分该物的，行纪人依照本法第一百零一条的规定可以提存委托物。

第四百二十一条 【行纪人与第三人的关系】行纪人与第三人订立合同的，行纪人对该合同直接享有权利、承担义务。

第三人不履行义务致使委托人受到损害的，行纪人应当承担损害赔偿责任，但行纪人与委托人另有约定的除外。

第四百二十二条 【行纪人的报酬请求权及留置权】行纪人完成或者部分完成委托事务的，委托人应当向其支付相应的报酬。委托人逾期不支付报酬的，行纪人对委托物享有留置权，但当事人另有约定的除外。

第四百二十三条 【对委托合同的适用】本章没有规定的，适用委托合同的有关规定。

## 第二十三章 居间合同

第四百二十四条 【定义】居间合同是居间人向委托人报告订立合同的机会或者提供订立合同的媒介服务，委托人支付报酬的合同。

第四百二十五条 【居间人如实报告义务】居间人应当就有关订立合同的事项向委托人如实报告。

居间人故意隐瞒与订立合同有关的重要事实或者提供虚假情况，损害委托人利益的，不得要求支付报酬并应当承担损害赔偿责任。

第四百二十六条 【居间人的报酬请求权】居间人促成合同成立后，委托人应当按照约定支付报酬。对居间人的报酬没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，根据居间人的劳务合理确定。因居间人提供订立合同的媒介服务而促成合同成立的，由该合同的当事人平均负担居间人的报酬。

居间人促成合同成立的，居间活动的费用，由居间人负担。

第四百二十七条 【未促成合同成立的处理】居间人未促成合同成立的，不得要求支付报酬，但可以要求委托人支付从事居间活动支出的必要费用。

## 附则

第四百二十八条 【生效日期及废止条款】本法自1999年10月1日起施行，《中华人民共和国合同法》、《中华人民共和国合同法》、《中华人民共和国合同法》同时废止。