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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on a Common European Sales Law**

{SEC(2011) 1165 final}

{SEC(2011) 1166 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- Grounds for and objectives of the proposal

Differences in contract law between Member States hinder traders and consumers who want to engage in cross-border trade within the internal market. The obstacles which stem from these differences dissuade traders, small and medium-sized enterprises (SME) in particular, from entering cross border trade or expanding to new Member States' markets. Consumers are hindered from accessing products offered by traders in other Member States.

Currently, only one in ten of Union traders, involved in the sale of goods, exports within the Union and the majority of those who do only export to a small number of Member States. Contract law related barriers are one of the major factors contributing to this situation. Surveys<sup>1</sup> show that out of the range of obstacles to cross-border trade including tax regulations, administrative requirements, difficulties in delivery, language and culture, traders ranked contract-law-related obstacles among the top barriers to cross-border trade.

The need for traders to adapt to the different national contract laws that may apply in cross-border dealings makes cross-border trade more complex and costly compared to domestic trade, both for business-to-consumer and for business-to-business transactions.

Additional transaction costs compared to domestic trade usually occur for traders in cross-border situations. They include the difficulty in finding out about the provisions of an applicable foreign contract law, obtaining legal advice, negotiating the applicable law in business-to-business transactions and adapting contracts to the requirements of the consumer's law in business-to-consumer transactions.

In cross-border transactions between a business and a consumer, contract law related transaction costs and legal obstacles stemming from differences between different national mandatory consumer protection rules have a significant impact. Pursuant to Article 6 of Regulation 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I),<sup>2</sup> whenever a business directs its activities to consumers in another Member State, it has to comply with the contract law of that Member State. In cases where another applicable law has been chosen by the parties and where the mandatory consumer protection provisions of the Member State of the consumer provide a higher level of protection, these mandatory rules of the consumer's law need to be respected. Traders therefore need to find out in advance whether the law of the Member State of the consumer's habitual residence provides a higher level of protection and ensure that their contract is in compliance with its requirements. The existing harmonisation of consumer law at Union level has led to a certain approximation in some areas but the differences between Member States' laws remain substantial. In e-commerce transactions, traders incur further contract law related costs which stem from the need to adapt the business's website to the legal requirements of each Member State where they direct their activity.

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<sup>1</sup> Eurobarometers 320 on European contract law in business-to-business transactions of 2011, p. 15 and Eurobarometer 321 on European contract law in consumer transactions of 2011, p. 19.

<sup>2</sup> OJ L 177, 4.7.2008, p. 6.

In cross-border transactions between traders, parties are not subject to the same restrictions on the applicable law. However, the economic impact of negotiating and applying a foreign law is also high. The costs resulting from dealings with various national laws are burdensome particularly for SME. In their relations with larger companies, SME generally have to agree to apply the law of their business partner and bear the costs of finding out about the content of the foreign law applicable to the contract and of complying with it. In contracts between SME, the need to negotiate the applicable law is a significant obstacle to cross-border trade. For both types of contracts (business-to-business and business-to-consumer) for SME, these additional transaction costs may even be disproportionate to the value of the transaction.

These additional transaction costs grow proportionately to the number of Member States into which a trader exports. Indeed, the more countries they export to, the greater the importance traders attach to differences in contract law as a barrier to trade. SME are particularly disadvantaged: the smaller a company's turnover, the greater the share of transaction costs.

Traders are also exposed to increased legal complexity in cross-border trade, compared to domestic trade, as they often have to deal with multiple national contract laws with differing characteristics.

Dealing with foreign laws adds complexity to cross-border transactions. Traders ranked the difficulty in finding out the provisions of a foreign contract law first among the obstacles to business-to-consumer transactions and third for business-to-business transactions.<sup>3</sup> Legal complexity is higher when trading with a country whose legal system is fundamentally different while it has been demonstrated empirically that bilateral trade between countries which have a legal system based on a common origin is much higher than trade between two countries without this commonality.<sup>4</sup>

Thus, differences in contract law and the additional transaction costs and complexity that they generate in cross-border transactions dissuade a considerable number of traders, in particular SME, from expanding into markets of other Member States. These differences also have the effect of limiting competition in the internal market. The value of the trade foregone each year between Member States due to differences in contract law alone amounts to tens of billions of Euros.

The missed opportunities for cross-border trade also have a negative impact upon European consumers. Less cross-border trade, results in fewer imports and less competitiveness between traders. This can lead to a more limited choice of products at a higher price in the consumer's market.

While cross-border shopping could bring substantial economic advantages of more and better offers, the majority of European consumers shop only domestically. One of the important reasons for this situation is that, because of the differences of national laws consumers are often uncertain about their rights in cross-border situations. For example, one of their main

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<sup>3</sup> Eurobarometer 320 on European contract law in business-to-business transactions of 2011, p. 15 and Eurobarometer 321 on European contract law in consumer transactions of 2011, p. 19.

<sup>4</sup> A. Turrini and T. Van Ypersele, *Traders, courts and the border effect puzzle*, Regional Science and Urban Economics, 40, 2010, p. 82: "Analysing international trade across OECD countries we show that controlling for countries specific factors, distance, the presence of common border and common language [...], similar legal systems have a significant impact on trade [...]. If two countries share common origins for their legal system, on average they exhibit trade flows 40% larger."

concerns is what remedies they have when a product purchased from another Member State is not in conformity with the contract. Many consumers are therefore discouraged to purchase outside their domestic market. They miss out on opportunities in the internal market, since better offers in terms of quality and price can often be found in another Member State.

E-commerce facilitates the search for offers as well as the comparison of prices and other conditions irrespective of where a trader is established. However, when consumers try to place orders with a business from another Member State, they are often faced with the business practice of refusal to sell which is often due to differences in contract law.

The overall **objective** of the proposal is to improve the establishment and the functioning of the internal market by facilitating the expansion of cross-border trade for business and cross-border purchases for consumers. This objective can be achieved by making available a self-standing uniform set of contract law rules including provisions to protect consumers, the Common European Sales Law, which is to be considered as a second contract law regime within the national law of each Member State.

Traders should be able to apply the Common European Sales Law in all their cross-border dealings within the European Union instead of having to adapt to different national contract laws, provided that the other party to the contract agrees. It should cover the full life cycle of a contract and thus comprise most of the areas which are relevant when concluding cross-border contracts. As a result, the need for traders to find out about the national laws of other Member States would be limited to only some, much less important, matters which are not covered by the Common European Sales Law. In business-to-consumer transactions there would be no further need to identify the mandatory consumer protection provisions in the consumer's law, since the Common European Sales Law would contain fully harmonised consumer protection rules providing for a high standard of protection throughout the whole of the European Union. In cross-border transactions between traders, negotiations about the applicable law could run more smoothly, as the contracting parties would have the opportunity to agree on the use of the Common European Sales Law – equally accessible to both of them – to govern their contractual relationship.

As a direct consequence, traders could save on the additional contract law related transaction costs and could operate in a less complex legal environment for cross-border trade on the basis of a single set of rules across the European Union. Thus, traders would be able to take better advantage of the internal market by expanding their trade across borders and, consequently, competition in the internal market would increase. Consumers would benefit from better access to offers from across the European Union at lower prices and would face fewer refusals of sales. They would also enjoy more certainty about their rights when shopping cross-border on the basis of a single set of mandatory rules which offer a high level of consumer protection.

### **General context**

With its Communication of 2001,<sup>5</sup> the Commission launched a process of extensive public consultation on the fragmented legal framework in the area of contract law and its hindering effects on cross-border trade. In July 2010, the Commission launched a public consultation by publishing a 'Green Paper on policy options for progress towards a European contract law for

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<sup>5</sup> COM (2001) 398, 11.7.2001.

consumers and businesses'<sup>6</sup> (Green Paper), which set out different policy options on how to strengthen the internal market by making progress in the area of European contract law.

In response to the Green Paper, the European Parliament issued a Resolution on 8 June 2011 in which it expressed its strong support for an instrument which would improve the establishment and the functioning of the internal market and bring benefits to traders, consumers and Member States' judicial systems.

The Commission Communication 'Europe 2020'<sup>7</sup> recognises the need to make it easier and less costly for traders and consumers to conclude contracts with partners in other Member States, notably by making progress towards an optional European contract law. The Digital Agenda for Europe<sup>8</sup> envisages an optional instrument in European contract law to overcome the fragmentation of contract law and boost consumer confidence in e-commerce.

- Existing provisions in the area of the proposal

There are significant differences between the contract laws in the Member States. The Union initially started to regulate in the field of contract law by means of minimum harmonisation Directives adopted in the field of consumer protection law. The minimum harmonisation approach meant that Member States had the possibility to maintain or introduce stricter mandatory requirements than those provided for in the *acquis*. In practice, this approach has led to divergent solutions in the Member States even in areas which were harmonised at Union level. In contrast, the recently adopted Consumer Rights Directive fully harmonises the areas of pre-contractual information to be given to consumers, the consumer's right of withdrawal in distance and off-premises contracts, as well as certain aspects of delivery of goods and passing of risk.

In respect of relations between traders, the Union has regulated the area of combating late payments by setting up rules on minimum interest rates. At international level, the Vienna Convention on International Sales of Goods (the Vienna Convention) applies by default whenever the parties have not chosen to apply another law. The Vienna Convention regulates certain aspects in contracts of sales of goods but leaves important matters outside its scope, such as defects in consent, unfair contract terms and prescription. Further limitations to its applicability arise as not all Member States have signed the Vienna Convention<sup>9</sup> and there is no mechanism which could ensure its uniform interpretation.

Some Union legislation is relevant for both business-to-consumer and business-to-business relations. The E-commerce Directive<sup>10</sup> contains rules on the validity of contracts concluded by electronic means and on certain pre-contractual requirements.

In the field of private international law, the Union has adopted instruments on choice of law, in particular Regulation (EC) No 593/2008 of the European Parliament and of the Council of

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<sup>6</sup> COM (2010) 348 final, 1.7.2010.

<sup>7</sup> The Single Market Act, COM (2011) 206 final, 13.4.2011, p. 19, and the Annual Growth Survey, Annex 1, progress report on Europe 2020, COM (2011) 11 - A1/2, 12.1.2010, p. 5, also mention the initiative on European contract law.

<sup>8</sup> COM (2010) 245 final, 26.8.2010, p. 13.

<sup>9</sup> Exceptions are the UK, Ireland, Portugal and Malta.

<sup>10</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ L 178, 17.7.2000, p. 1-16.

17 June 2008 on the law applicable to contractual obligations (Rome I)<sup>11</sup>, and, in relation to pre-contractual information duties, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)<sup>12</sup>. The first of those instruments sets out rules for determining the applicable law in the area of contractual obligations and the second in the field of non-contractual obligations, including those which arise from pre-contractual statements.

The Rome I Regulation and Rome II Regulation will continue to apply and will be unaffected by the proposal. It will still be necessary to determine the applicable law for cross-border contracts. This will be done by the normal operation of the Rome I Regulation. It can be determined by the parties themselves (Article 3 of the Rome I Regulation) and, if they do not do so, this will be done on the basis of the default rules in Article 4 of the Rome I Regulation. As regards consumer contracts, under the conditions of Article 6(1) of the Rome I Regulation, if the parties have not chosen the applicable law, that law is the law of the habitual residence of the consumer.

The Common European Sales Law will be a second contract law regime within the national law of each Member State. Where the parties have agreed to use the Common European Sales Law, its rules will be the only national rules applicable for matters falling within its scope. Where a matter falls within the scope of the Common European Sales Law, there is thus no scope for the application of any other national rules. This agreement to use the Common European Sales Law is a choice between two different sets of sales law within the same national law and does therefore not amount to, and must not be confused with, the previous choice of the applicable law within the meaning of private international law rules.

Since the Common European Sales Law will not cover every aspect of a contract (e.g. illegality of contracts, representation) the existing rules of the Member State's civil law that is applicable to the contract will still regulate such residual questions.

Under the normal operation of the Rome I Regulation there are however restrictions to the choice of law for business-to-consumer transactions. If the parties choose in business-to-consumer transactions the law of another Member State than the consumer's law, such a choice may under the conditions of Article 6(1) of the Rome I Regulation not deprive the consumer of the protection of the mandatory provisions of the law of his habitual residence (Article 6 (2) of the Rome I Regulation). The latter provision however can have no practical importance if the parties have chosen within the applicable national law the Common European Sales Law. The reason is that the provisions of the Common European Sales Law of the country's law chosen are identical with the provisions of the Common European Sales Law of the consumer's country. Therefore the level of the mandatory consumer protection laws of the consumer's country is not higher and the consumer is not deprived of the protection of the law of his habitual residence.

- Consistency with the other policies and objectives of the Union

This proposal is consistent with the objective of attaining a high level of consumer protection as it contains mandatory rules of consumer protection from which the parties cannot derogate

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<sup>11</sup> OJ L 177, 4.7.2008, p. 6.

<sup>12</sup> OJ L 199, 31.7.2007, p. 40.

to the detriment of the consumer. Furthermore, the level of protection of these mandatory provisions is equal or higher than the current *acquis*.

The proposal is also consistent with the Union policy of helping SME benefit more from the opportunities offered by the internal market. The Common European Sales Law can be chosen in contracts between traders where at least one of them is an SME, drawing upon the Commission Recommendation 2003/361<sup>13</sup> concerning the definition of micro, small and medium-sized enterprises while taking into account future developments.

Finally, the proposal is consistent with the international trade policy of the Union, in that it does not discriminate against parties from third countries who could also choose to apply the Common European Sales Law as long as one party to the contract is established in a Member State.

This proposal is without prejudice to future Commission initiatives concerning the liability for infringements of the Treaty on the functioning of the European Union, for example relating to the competition rules.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

- Consultation of interested parties

With the publication of the Green Paper, the Commission launched an extensive public consultation which closed on 31 January 2011. In response to the Green Paper consultation, the Commission received 320 replies from all categories of stakeholders from across the Union. Many respondents saw value in Option 1 (publication of the results of the Expert Group) and Option 2 (a toolbox for the Union legislator). Option 4 (an optional instrument of European contract law) received support either independently or in combination with a toolbox from several Member States as well as other stakeholders; provided that it fulfilled certain conditions, such as a high level of consumer protection, and clarity and user-friendliness of the provisions. One of the main concerns in the stakeholders' responses to the Green Paper was the lack of clarity in relation to the substantive content of a possible European contract law instrument. The Commission addressed this concern by giving stakeholders the opportunity to comment on the Feasibility Study developed by the Expert Group on a European contract law.

The Green Paper responses also expressed preferences for the material scope of the instrument. As a result, the proposal focuses on contracts for the sale of goods.

By a Decision of 26 April 2010,<sup>14</sup> the Commission set up the Expert Group on European contract law. This Group was tasked with developing a Feasibility Study on a possible future European contract law instrument covering the main aspects which arose in practice in cross-border transactions.

A key stakeholder group (businesses and consumer associations, representatives of the banking and insurance sectors and of the legal professions of lawyers and notaries) was set up in September 2010 with the purpose of giving practical input to the Expert Group on the user-

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<sup>13</sup> OJ L 124, 20.5.2003, p. 36.

<sup>14</sup> OJ L 105, 27.4.2010, p. 109.

friendliness of the rules developed for the Feasibility Study. The Feasibility Study was published on 3 May 2011 and an informal consultation was open until 1 July 2011.

- **Impact Assessment**

The Impact Assessment (IA) analysed the seven policy options set out in the Green Paper; the IA Report contains the full description and analysis of these options.

These options were: the baseline scenario (no policy change), a toolbox for the legislator, a Recommendation on a Common European Sales Law, a Regulation setting up an optional Common European Sales Law, a Directive (full or minimum harmonisation) on a mandatory Common European Sales Law, a Regulation establishing a European contract law and a Regulation establishing a European Civil Code.

On a comparative analysis of the impacts of these options, the IA Report arrived at the conclusion that the options of an optional uniform contract law regime, a full harmonisation Directive and a Regulation establishing a mandatory uniform contract law regime would meet the policy objectives. While the latter two would considerably reduce transaction costs for traders and offer a less complex legal environment for those wishing to trade cross-border, these options would however also create a considerable burden for traders as those who only traded domestically would also need to adapt to a new legislative framework. The costs attached to familiarise themselves with such a new mandatory law would be particularly significant when compared to an optional uniform contract law regime, because they would impact upon all traders. An optional uniform contract law regime would on the other hand only create one-off costs for those traders wishing to use it for their cross-border trade. The establishment of an optional uniform contract law regime was therefore reasoned to be the most proportionate action as it would reduce transaction costs experienced by traders exporting to several Member States and give consumers more product choice at a lower price. It would also, at the same time increase the level of consumer protection offered to consumers who shopped across a border thereby creating confidence as they would experience the same set of rights across the Union.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

The Proposal provides for the establishment of a Common European Sales Law. It harmonises the national contract laws of the Member States not by requiring amendments to the pre-existing national contract law, but by creating within each Member State's national law a second contract law regime for contracts covered by its scope that is identical throughout the European Union and will exist alongside the pre-existing rules of national contract law. The Common European Sales Law will apply on a voluntary basis, upon an express agreement of the parties, to a cross-border contract.

- **Legal basis**

This proposal is based on Article 114 Treaty on the Functioning of the European Union (TFEU).



The proposal provides for a single uniform set of fully harmonised contract law rules including consumer protection rules in the form of a Common European Sales Law which is to be considered as a second contract law regime within the national law of each Member State available in cross-border transactions upon a valid agreement by the parties. This agreement does not amount to, and must not be confused with, a choice of the applicable law within the meaning of private international law rules. Instead, this choice is made within a national law which is applicable according to the private international law rules.

This solution has as its objective the establishment and the functioning of the internal market. It would remove obstacles to the exercise of fundamental freedoms which result from differences between national laws, in particular from the additional transaction costs and perceived legal complexity experienced by traders when concluding cross-border transactions and the lack of confidence in their rights experienced by consumers when purchasing from another EU country - all of which have a direct effect on the establishment and functioning of the internal market and limit competition.

In accordance with Article 114 (3) TFEU, the Common European Sales Law would guarantee a high level of consumer protection by setting up its own set of mandatory rules which maintain or improve the level of protection that consumers enjoy under the existing EU consumer law.

- Subsidiarity principle

The proposal complies with the subsidiarity principle as set out in Article 5 of the Treaty on European Union (TEU).

The objective of the proposal – i.e. to contribute to the proper functioning of the internal market by making available a voluntary uniform set of contract law rules – has a clear cross-border dimension and cannot be sufficiently achieved by the Member States in the framework of their national systems.

As long as differences of national contract laws continue to create significant additional transaction costs for cross-border transactions, the objective of completing the internal market by facilitating the expansion of cross-border trade for traders and cross-border purchases for consumers cannot be fully achieved.

By adopting un-coordinated measures at the national level, Member States will not be able to remove the additional transaction costs and legal complexity stemming from differences in national contract laws that traders experience in cross-border trade in the EU. Consumers will continue to experience reduced choice and limited access to products from other Member States. They will also lack the confidence which comes from knowledge of their rights.

The objective of the proposal could therefore be better achieved by action at Union level, in accordance with the principle of subsidiarity. The Union is best placed to address the problems of legal fragmentation by a measure taken in the field of contract law which approximates the rules applicable to cross-border transactions. Furthermore, as market trends evolve and prompt Member States to take action independently, for example in regulating the emerging digital content market, regulatory divergences leading to increased transaction costs and gaps in the protection of consumers are likely to grow.

- Proportionality principle

The proposal complies with the principle of proportionality as set out in Article 5 TEU.

The scope of the proposal is confined to the aspects which pose real problems in cross-border transactions and does not extend to aspects which are best addressed by national laws. In respect of the material scope, the proposal contains provisions regulating the rights and obligations of the parties during the life-cycle of the contract, but it does not touch for example, upon the rules on representation which are less likely to become litigious. In terms of territorial scope, the proposal covers cross-border situations where the problems of additional transactions costs and legal complexity arise. Finally, the personal scope of the proposal is limited to transactions where the internal market problems are mainly found, i.e. business-to-business relations where at least one of the parties is an SME and business-to-consumer relations. Contracts concluded between private individuals and contracts between traders none of which is an SME are not included, as there is no demonstrable need for action for these types of cross-border contracts. The Regulation leaves Member States two options: to decide to make the Common European Sales Law also available to parties for use in an entirely domestic setting and to contracts concluded between traders neither of which is an SME.

The proposal is a proportionate action, when compared to other possible solutions analysed, because of the optional and voluntary nature of the Common European Sales Law. This means that its application is dependent upon an agreement by the parties to a contract whenever it is jointly considered beneficial for a particular cross-border transaction. The fact that the Common European Sales Law represents an optional set of rules applying only in cross-border cases means also that it can lower barriers to cross-border trade without interfering with deeply embedded national legal systems and traditions. The Common European Sales Law will be an optional regime in addition to pre-existing contract law rules without replacing them. Thus the legislative measure will only go as far as necessary to create further opportunities for traders and consumers in the single market.

- Choice of instruments

The instrument chosen for this initiative is a Regulation on an optional Common European Sales Law.

A non-binding instrument such as a toolbox for the EU legislator or a Recommendation addressed to Member States would not achieve the objective to improve the establishment and functioning of the internal market. A Directive or a Regulation replacing national laws with a non-optional European contract law would go too far as it would require domestic traders who do not want to sell across borders to bear costs which are not outweighed by the cost savings that only occur when cross-border transactions take place. In addition, a Directive setting up minimum standards of a non-optional European contract law would not be appropriate since it would not achieve the level of legal certainty and the necessary degree of uniformity to decrease the transaction costs.

#### **4. BUDGETARY IMPLICATION**

After the adoption of the proposal, the Commission will set up a database for the exchange of information concerning final judgments referring to the Common European Sales Law or any other provision of the Regulation, as well as relevant judgements of the Court of Justice of the European Union. The costs associated with this data-base are likely to grow as more final

judgments become available. At the same time, the Commission will organise training sessions for legal practitioners using the Common European Sales Law<sup>15</sup>. These costs are likely to decrease with time, as knowledge about how the Common European Sales Law works spreads.

## 5. ADDITIONAL INFORMATION

- Simplification

The proposal for an optional second contract law regime has the advantage that, without replacing the national contract laws in the Member States, it allows parties to use one single set of contract law rules across the EU. This self-standing, uniform set of rules has the potential of offering parties a solution to the most prevalent problems which could arise in cross-border situations in relation to contract law. Therefore, for traders this option would eliminate the need for research of different national laws. To help consumers understand their rights in the Common European Sales Law, a standard information notice would be presented to them which would inform them about their rights.

Finally, the proposal has the potential of ensuring the future coherence of the EU legislation in other policy areas where contract law becomes relevant.

- Review clause

The proposal provides for a review of the application of the Common European Sales Law or any other provision of the Regulation 5 years after its date of application, taking into account, amongst others, the need to extend further the scope in relation to business-to-business contracts, market and technological developments in respect of digital content and future developments of the Union *acquis*. For this purpose, the Commission will submit a report, if necessary accompanied by proposals to amend the Regulation, to the European Parliament, the Council and the European Economic and Social Committee.

- European Economic Area

The proposed Regulation concerns an EEA matter and should therefore extend to the EEA.

- Explanation of the proposal

The proposal consists of three main parts: a Regulation, Annex I to the Regulation containing the contract law rules (the Common European Sales Law) and Annex II containing a Standard Information Notice.

### A. The Regulation

*Article 1* sets out the objective and subject matter of the Regulation.

*Article 2* contains a list of definitions for terms used in the Regulation. While some definitions already exist in the relevant *acquis*, others are concepts defined here for the first time.

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<sup>15</sup> Commission Communication on Building Trust in EU-wide Justice: a New Dimension to European Judicial Training, COM (2011) 551 final, 13.9.2011.

*Article 3* explains the optional nature of the contract law rules in cross-border contracts for sale of goods, supply of digital content and provision of related services.

*Article 4* sets out the territorial scope of the Regulation which is limited to cross-border contracts.

*Article 5* states the material scope of contracts for sale of goods and supply of digital content and related services, such as installation and repair.

*Article 6* excludes mixed-purposes contracts and instalment sales from the scope of application.

*Article 7* describes the personal scope of application which extends to business-to-consumer and those business-to-business contracts where at least one party is an SME.

*Article 8* explains that the choice for the Common European Sales Law requires an agreement of the parties to that effect. In contracts between a business and a consumer, the choice of the Common European Sales Law is valid only if the consumer's consent is given by an explicit statement separate from the statement indicating the agreement to conclude a contract.

*Article 9* contains several information requirements about the Common European Sales Law in contracts between a trader and a consumer. In particular the consumer shall receive the information notice in Annex II.

*Article 10* requires Member States to ensure that there are sanctions in place for breaches by the traders of the duty to comply with the special requirements established by Articles 8 and 9.

*Article 11* explains that as a consequence of the valid choice of the Common European Sales Law this is the only applicable law for the matters addressed in its rules and that consequently other national rules do not apply for matters falling within its scope. The choice of the Common European Sales Law operates retroactively to cover compliance with and remedies for failure to comply with the pre-contractual information duties.

*Article 12* clarifies that the Regulation is without prejudice to the information requirements of Directive 2006/123/EC on services in the internal market<sup>16</sup>.

*Article 13* presents the possibility for Member States to enact legislation which makes the Common European Sales Law available to parties for use in an entirely domestic setting and for contracts between traders, neither of which is an SME.

*Article 14* requires Member States to notify final judgments of their courts which give an interpretation of the provisions of the Common European Sales Law or any other provision of the Regulation. The Commission will set up a database of such judgments.

*Article 15* contains a review clause.

*Article 16* provides that the Regulation will enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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<sup>16</sup> OJ L 376, 27.12.2006, p. 36.

## B. Annex I

Annex I contains the text of the Common European Sales Law.

*Part I 'Introductory provisions'* sets out the general principles of contract law which all parties need to observe in their dealings, such as good faith and fair dealing. The principle of freedom of contract also assures parties that, unless rules are explicitly designated as mandatory, for example rules of consumer protection, they can deviate from the rules of the Common European Sales Law.

*Part II 'Making a binding contract'* contains provisions on the parties' right to receive essential pre-contractual information and rules on how agreements are concluded between two parties. This part also contains specific provisions which give consumers a right to withdraw from distance and off-premises contracts. Finally it includes provisions on avoidance of contracts resulting from mistake, fraud, threat or unfair exploitation.

*Part III 'Assessing what is in the contract'* makes general provisions for how contract terms need to be interpreted in case of doubt. It also contains rules on the content and effects of contracts as well as which contract terms may be unfair and are therefore invalid.

*Part IV 'Obligations and remedies of the parties to a sales contract'* looks closely at the rules specific to sales contracts and contracts for the supply of digital content which contain the obligations of the seller and of the buyer. This part also contains rules on the remedies for non-performance of buyers and sellers.

*Part V 'Obligations and remedies of the parties to a related services contract'* concerns cases where a seller provides, in close connection to a contract of sale of goods or supply of digital content, certain services such as installation, repair or maintenance. This part explains what specific rules apply in such a situation, in particular what the parties' rights and obligations under such contracts are.

*Part VI 'Damages and interest'* contains supplementary common rules on damages for loss and on interest to be paid for late payment.

*Part VII 'Restitution'* explains the rules which apply on what must be returned when a contract is avoided or terminated.

*Part VIII 'Prescription'* regulates the effects of the lapse of time on the exercise of rights under a contract.

*Appendix 1* contains the Model instruction on withdrawal that must be provided by the trader to the consumer before a distance or an off-premises contract is concluded, while *Appendix 2* provides for a Model withdrawal form.

## C. Annex II

Annex II comprises the Standard Information Notice on the Common European Sales Law that must be provided by the trader to the consumer before an agreement to use of the Common European Sales Law is made.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on a Common European Sales Law**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>17</sup>,

Having regard to the opinion of the Committee of the Regions<sup>18</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) There are still considerable bottlenecks to cross-border economic activity that prevent the internal market from exploiting its full potential for growth and job creation. Currently, only one in ten traders in the Union exports goods within the Union and the majority of those who do, only export to a small number of Member States. From the range of obstacles to cross-border trade including tax regulations, administrative requirements, difficulties in delivery, language and culture, traders consider the difficulty in finding out the provisions of a foreign contract law among the top barriers in business-to-consumer transactions and in business-to-business transactions. This also leads to disadvantages for consumers due to limited access to goods. Different national contract laws therefore deter the exercise of fundamental freedoms, such as the freedom to provide goods and services, and represent a barrier to the functioning and continuing establishment of the internal market. They also have the effect of limiting competition, particularly in the markets of smaller Member States.
- (2) Contracts are the indispensable legal tool for every economic transaction. However, the need for traders to identify or negotiate the applicable law, to find out about the provisions of a foreign applicable law often involving translation, to obtain legal advice to make themselves familiar with its requirements and to adapt their contracts to different national laws that may apply in cross-border dealings makes cross-border

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<sup>17</sup> OJ C , , p. .

<sup>18</sup> OJ C , , p. .

trade more complex and costly compared to domestic trade. Contract-law-related barriers are thus a major contributing factor in dissuading a considerable number of export-oriented traders from entering cross-border trade or expanding their operations into more Member States. Their deterrent effect is particularly strong for small and medium-sized enterprises (SME) for which the costs of entering multiple foreign markets are often particularly high in relation to their turnover. As a consequence, traders miss out on cost savings they could achieve if it were possible to market goods and services on the basis of one uniform contract law for all their cross-border transactions and, in the online environment, one single web-site.

- (3) Contract law related transaction costs which have been shown to be of considerable proportions and legal obstacles stemming from the differences between national mandatory consumer protection rules have a direct effect on the functioning of the internal market in relation to business-to-consumer transactions. Pursuant to Article 6 of Regulation 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Regulation (EC) No 593/2008),<sup>19</sup> whenever a trader directs its activities to consumers in another Member State the consumer protection provisions of the Member State of the consumer's habitual residence that provide a higher level of protection and cannot be derogated from by agreement by virtue of that law will apply, even where another applicable law has been chosen by the parties. Therefore, traders need to find out in advance whether the consumer's law provides higher protection and ensure that their contract is in compliance with its requirements. In addition, in e-commerce, web-site adaptations which need to reflect mandatory requirements of applicable foreign consumer contract laws entail further costs. The existing harmonisation of consumer law at Union level has led to a certain approximation in some areas. However the differences between Member States' laws remain substantial; existing harmonisation leaves Member States a broad range of options on how to comply with the requirements of Union legislation and where to set the level of consumer protection.
- (4) The contract-law-related barriers which prevent traders from fully exploiting the potential of the internal market also work to the detriment of consumers. Less cross-border trade results in fewer imports and less competition. Consumers may be disadvantaged by a limited choice of goods at higher prices both because fewer foreign traders offer their products and services directly to them and also indirectly as a result of restricted cross-border business-to-business trade at the wholesale level. While cross-border shopping could bring substantial economic advantages in terms of more and better offers, many consumers are also reluctant to engage in cross-border shopping, because of the uncertainty about their rights. Some of the main consumer concerns are related to contract law, for instance whether they would enjoy adequate protection in the event of purchasing defective products. As a consequence, a substantial number of consumers prefer to shop domestically even if this means they have less choice or pay higher prices.
- (5) In addition, those consumers who want to benefit from price differences between Member States by purchasing from a trader from another Member State are often hindered due to a trader's refusal to sell. While e-commerce has greatly facilitated the search for offers as well as the comparison of prices and other conditions irrespective

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<sup>19</sup> OJ L 177, 4.7.2008, p. 6.

of where a trader is established, orders by consumers from abroad are very frequently refused by traders which refrain from entering into cross-border transactions.

- (6) Differences in national contract laws therefore constitute barriers which prevent consumers and traders from reaping the benefits of the internal market. Those contract-law-related barriers would be significantly reduced if contracts could be based on a single uniform set of contract law rules irrespective of where parties are established. Such a uniform set of contract law rules should cover the full life cycle of a contract and thus comprise the areas which are the most important when concluding contracts. It should also include fully harmonised provisions to protect consumers.
- (7) The differences between national contract laws and their effect on cross-border trade also serve to limit competition. With a low level of cross-border trade, there is less competition, and thus less incentive for traders to become more innovative and to improve the quality of their products or to reduce prices. Particularly in smaller Member States with a limited number of domestic competitors, the decision of foreign traders to refrain from entering these markets due to costs and complexity may limit competition, resulting in an appreciable impact on choice and price levels for available products. In addition, the barriers to cross-border trade may jeopardise competition between SME and larger companies. In view of the significant impact of the transaction costs in relation to turnover, an SME is much more likely to refrain from entering a foreign market than a larger competitor.
- (8) To overcome these contract-law-related barriers, parties should have the possibility to agree that their contracts should be governed by a single uniform set of contract law rules with the same meaning and interpretation in all Member States, a Common Sales Law. The Common European Sales Law should represent an additional option increasing the choice available to parties and open to use whenever jointly considered to be helpful in order to facilitate cross-border trade and reduce transaction and opportunity costs as well as other contract-law-related obstacles to cross-border trade. It should become the basis of a contractual relationship only where parties jointly decide to use it.
- (9) This Regulation establishes a Common European Sales Law. It harmonises the contract laws of the Member States not by requiring amendments to the pre-existing national contract law, but by creating within each Member State's national law a second contract law regime for contracts within its scope. This second regime should be identical throughout the Union and exist alongside the pre-existing rules of national contract law. The Common European Sales Law should apply on a voluntary basis, upon an express agreement of the parties, to a cross-border contract.
- (10) The agreement to use the Common European Sales Law should be a choice exercised within the scope of the respective national law which is applicable pursuant to Regulation (EC) No 593/2008 or, in relation to pre-contractual information duties, pursuant to Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Regulation (EC) No 864/2007)<sup>20</sup>, or any other relevant conflict of law rule. The agreement to use the Common European Sales Law should therefore not amount to,

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<sup>20</sup> OJ L 199, 31.7.2007, p. 40.



and not be confused with, a choice of the applicable law within the meaning of the conflict-of-law rules and should be without prejudice to them. This Regulation will therefore not affect any of the existing conflict of law rules.

- (11) The Common European Sales Law should comprise of a complete set of fully harmonised mandatory consumer protection rules. In line with Article 114(3) of the Treaty, those rules should guarantee a high level of consumer protection with a view to enhancing consumer confidence in the Common European Sales Law and thus provide consumers with an incentive to enter into cross-border contracts on that basis. The rules should maintain or improve the level of protection that consumers enjoy under Union consumer law.
- (12) Since the Common European Sales Law contains a complete set of fully harmonised mandatory consumer protection rules, there will be no disparities between the laws of the Member States in this area, where the parties have chosen to use the Common European Sales Law. Consequently, Article 6(2) Regulation (EC) No 593/2008, which is predicated on the existence of differing levels of consumer protection in the Member States, has no practical importance for the issues covered by the Common European Sales Law.
- (13) The Common European Sales Law should be available for cross-border contracts, because it is in that context that the disparities between national laws lead to complexity and additional costs and dissuade parties from entering into contractual relationships. The cross-border nature of a contract should be assessed on the basis of the habitual residence of the parties in business-to-business contracts. In a business-to-consumer contract the cross-border requirement should be met where either the general address indicated by the consumer, the delivery address for the goods or the billing address indicated by the consumer are located in a Member State, but outside the State where the trader has its habitual residence.
- (14) The use of the Common European Sales Law should not be limited to cross-border situations involving only Member States, but should also be available to facilitate trade between Member States and third countries. Where consumers from third countries are involved, the agreement to use the Common European Sales Law, which would imply the choice of a foreign law for them, should be subject to the applicable conflict-of-law rules.
- (15) Traders engaging in purely domestic as well as in cross-border trade transactions may also find it useful to make use of a single uniform contract for all their transactions. Therefore Member States should be free to decide to make the Common European Sales Law available to parties for use in an entirely domestic setting.
- (16) The Common European Sales Law should be available in particular for the sale of movable goods, including the manufacture or production of such goods, as this is the economically single most important contract type which could present a particular potential for growth in cross-border trade, especially in e-commerce.
- (17) In order to reflect the increasing importance of the digital economy, the scope of the Common European Sales Law should also cover contracts for the supply of digital content. The transfer of digital content for storage, processing or access, and repeated use, such as a music download, has been growing rapidly and holds a great potential

for further growth but is still surrounded by a considerable degree of legal diversity and uncertainty. The Common European Sales Law should therefore cover the supply of digital content irrespective of whether or not that content is supplied on a tangible medium.

- (18) Digital content is often supplied not in exchange for a price but in combination with separate paid goods or services, involving a non-monetary consideration such as giving access to personal data or free of charge in the context of a marketing strategy based on the expectation that the consumer will purchase additional or more sophisticated digital content products at a later stage. In view of this specific market structure and of the fact that defects of the digital content provided may harm the economic interests of consumers irrespective of the conditions under which it has been provided, the availability of the Common European Sales Law should not depend on whether a price is paid for the specific digital content in question.
- (19) With a view to maximising the added value of the Common European Sales Law its material scope should also include certain services provided by the seller that are directly and closely related to specific goods or digital content supplied on the basis of the Common European Sales Law, and in practice often combined in the same or a linked contract at the same time, most notably repair, maintenance or installation of the goods or the digital content.
- (20) The Common European Sales Law should not cover any related contracts by which the buyer acquires goods or is supplied with a service, from a third party. This would not be appropriate because the third party is not part of the agreement between the contracting parties to use the rules of the Common European Sales Law. A related contract with a third party should be governed by the respective national law which is applicable according pursuant to Regulations (EC) No 593/2008 and (EC) No 864/2007 or any other relevant conflict of law rule.
- (21) In order to tackle the existing internal market and competition problems in a targeted and proportionate fashion, the personal scope of the Common European Sales Law should focus on parties who are currently dissuaded from doing business abroad by the divergence of national contract laws with the consequence of a significant adverse impact on cross-border trade. It should therefore cover all business-to consumer transactions and contracts between traders where at least one of the parties is an SME drawing upon Commission Recommendation 2003/361 of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.<sup>21</sup> This should, however, be without prejudice to the possibility for Member States to enact legislation which makes the Common European Sales Law available for contracts between traders, neither of which is an SME. **In any case, in business-to-business transactions, traders enjoy full freedom of contract and are encouraged to draw inspiration from the Common European Sales Law in the drafting of their contractual terms.**
- (22) The agreement of the parties to a contract is indispensable for the application of the Common European Sales Law. That agreement should be subject to strict requirements in business-to-consumer transactions. Since, in practice, it will usually be the trader who proposes the use of the Common European Sales Law, consumers

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<sup>21</sup> OJ L 124, 20.5.2003, p. 36.

must be fully aware of the fact that they are agreeing to the use of rules which are different from those of their pre-existing national law. Therefore, the consumer's consent to use the Common European Sales Law should be admissible only in the form of an explicit statement separate from the statement indicating the agreement to the conclusion of the contract. It should therefore not be possible to offer the use of the Common European Sales Law as a term of the contract to be concluded, particularly as an element of the trader's standard terms and conditions. The trader should provide the consumer with a confirmation of the agreement to use the Common European Sales Law on a durable medium.

- (23) In addition to being a conscious choice, the consent of a consumer to the use of the Common European Sales Law should be an informed choice. The trader should therefore not only draw the consumer's attention to the intended use of the Common European Sales Law but should also provide information on its nature and its salient features. In order to facilitate this task for traders, thereby avoiding unnecessary administrative burdens, and to ensure consistency in the level and the quality of the information communicated to consumers, traders should supply consumers with the standard information notice provided for in this Regulation and thus readily available in all official languages in the Union. Where it is not possible to supply the consumer with the information notice, for example in the context of a telephone call, or where the trader has failed to provide the information notice, the agreement to use the Common European Sales Law should not be binding on the consumer until the consumer has received the information notice together with the confirmation of the agreement and has subsequently expressed consent.
- (24) In order to avoid a selective application of certain elements of the Common European Sales Law, which could disturb the balance between the rights and obligations of the parties and adversely affect the level of consumer protection, the choice should cover the Common European Sales Law as a whole and not only certain parts of it.
- (25) Where the United Nations Convention on Contracts for the International Sale of Goods would otherwise apply to the contract in question, the choice of the Common European Sales Law should imply an agreement of the contractual parties to exclude that Convention.
- (26) The rules of the Common European Sales Law should cover the matters of contract law that are of practical relevance during the life cycle of the types of contracts falling within the material and personal scope, particularly those entered into online. Apart from the rights and obligations of the parties and the remedies for non-performance, the Common European Sales Law should therefore govern pre-contractual information duties, the conclusion of a contract including formal requirements, the right of withdrawal and its consequences, avoidance of the contract resulting from a mistake, fraud, threats or unfair exploitation and the consequences of such avoidance, interpretation, the contents and effects of a contract, the assessment and consequences of unfairness of contract terms, restitution after avoidance and termination and the prescription and preclusion of rights. It should settle the sanctions available in case of the breach of all the obligations and duties arising under its application.
- (27) All the matters of a contractual or non-contractual nature that are not addressed in the Common European Sales Law are governed by the pre-existing rules of the national law outside the Common European Sales Law that is applicable under Regulations

(EC) No 593/2008 and (EC) No 864/2007 or any other relevant conflict of law rule. These issues include legal personality, the invalidity of a contract arising from lack of capacity, illegality or immorality, the determination of the language of the contract, matters of non-discrimination, representation, plurality of debtors and creditors, change of parties including assignment, set-off and merger, property law including the transfer of ownership, intellectual property law and the law of torts. Furthermore, the issue of whether concurrent contractual and non-contractual liability claims can be pursued together falls outside the scope of the Common European Sales Law.

- (28) The Common European Sales Law should not govern any matters outside the remit of contract law. This Regulation should be without prejudice to the Union or national law in relation to any such matters. For example, information duties which are imposed for the protection of health and safety or environmental reasons should remain outside the scope of the Common European Sales Law. This Regulation should further be without prejudice to the information requirements of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market<sup>22</sup>.
- (29) Once there is a valid agreement to use the Common European Sales Law, only the Common European Sales Law should govern the matters falling within its scope. The rules of the Common European Sales Law should be interpreted autonomously in accordance with the well-established principles on the interpretation of Union legislation. Questions concerning matters falling within the scope of the Common European Sales Law which are not expressly settled by it should be resolved only by interpretation of its rules without recourse to any other law. The rules of the Common European Sales Law should be interpreted on the basis of the underlying principles and objectives and all its provisions.
- (30) Freedom of contract should be the guiding principle underlying the Common European Sales Law. Party autonomy should be restricted only where and to the extent that this is indispensable, in particular for reasons of consumer protection. Where such a necessity exists, the mandatory nature of the rules in question should be clearly indicated.
- (31) The principle of good faith and fair dealing should provide guidance on the way parties have to cooperate. As some rules constitute specific manifestations of the general principle of good faith and fair dealing, they should take precedent over the general principle. The general principle should therefore not be used as a tool to amend the specific rights and obligations of parties as set out in the specific rules. The concrete requirements resulting from the principle of good faith and fair dealing should depend, amongst others, on the relative level of expertise of the parties and should therefore be different in business-to-consumer transactions and in business-to-business transactions. In transactions between traders, good commercial practice in the specific situation concerned should be a relevant factor in this context.
- (32) The Common European Sales Law should aim at the preservation of a valid contract whenever possible and appropriate in view of the legitimate interests of the parties.

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<sup>22</sup> OJ L 376, 27.12.2006, p. 36.

- (33) The Common European Sales Law should identify well-balanced solutions taking account the legitimate interests of the parties in designating and exercising the remedies available in the case of non-performance of the contract. In business-to-consumer contracts the system of remedies should reflect the fact that the non-conformity of goods, digital content or services falls within the trader's sphere of responsibility.
- (34) In order to enhance legal certainty by making the case-law of the Court of Justice of the European Union and of national courts on the interpretation of the Common European Sales Law or any other provision of this Regulation accessible to the public, the Commission should create a database comprising the final relevant decisions. With a view to making that task possible, the Member States should ensure that such national judgments are quickly communicated to the Commission.
- (35) It is also appropriate to review the functioning of the Common European Sales Law or any other provision of this Regulation after five years of operation. The review should take into account, amongst other things, the need to extend further the scope in relation to business-to-business contracts, market and technological developments in respect of digital content and future developments of the Union acquis.
- (36) Since the objective of this Regulation, namely to contribute to the proper functioning of the internal market by making available a uniform set of contract law rules that can be used for cross-border transactions throughout the Union, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (37) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and specifically Articles 16, 38 and 47 thereof,

HAVE ADOPTED THIS REGULATION:

*Article 1*  
***Objective and subject matter***

1. The purpose of this Regulation is to improve the conditions for the establishment and the functioning of the internal market by making available a uniform set of contract law rules as set out in Annex I ('the Common European Sales Law'). These rules can be used for cross-border transactions for the sale of goods, for the supply of digital content and for related services where the parties to a contract agree to do so.
2. This Regulation enables traders to rely on a common set of rules and use the same contract terms for all their cross-border transactions thereby reducing unnecessary costs while providing a high degree of legal certainty.

3. In relation to contracts between traders and consumers, this Regulation comprises a comprehensive set of consumer protection rules to ensure a high level of consumer protection, to enhance consumer confidence in the internal market and encourage consumers to shop across borders.

*Article 2*  
***Definitions***

For the purpose of this Regulation, the following definitions shall apply:

- (a) ‘contract’ means an agreement intended to give rise to obligations or other legal effects;
- (b) ‘good faith and fair dealing’ means a standard of conduct characterised by honesty, openness and consideration for the interests of the other party to the transaction or relationship in question;
- (c) ‘loss’ means economic loss and non-economic loss in the form of pain and suffering, excluding other forms of non-economic loss such as impairment of the quality of life and loss of enjoyment;
- (d) ‘standard contract terms’ means contract terms which have been drafted in advance for several transactions involving different parties, and which have not been individually negotiated by the parties within the meaning of Article 7 of the Common European Sales Law;
- (e) ‘trader’ means any natural or legal person who is acting for purposes relating to that person’s trade, business, craft, or profession;
- (f) ‘consumer’ means any natural person who is acting for purposes which are outside that person’s trade, business, craft, or profession;
- (g) ‘damages’ means a sum of money to which a person may be entitled as compensation for loss, injury or damage;
- (h) ‘goods’ means any tangible movable items; it excludes:
  - (i) electricity and natural gas; and
  - (ii) water and other types of gas unless they are put up for sale in a limited volume or set quantity;
- (i) ‘price’ means money that is due in exchange for goods sold, digital content supplied or a related service provided;
- (j) ‘digital content’ means data which are produced and supplied in digital form, whether or not according to the buyer’s specifications, including video, audio, picture or written digital content, digital games, software and digital content which makes it possible to personalise existing hardware or software; it excludes:
  - (i) financial services, including online banking services;

- (ii) legal or financial advice provided in electronic form;
  - (iii) electronic healthcare services;
  - (iv) electronic communications services and networks, and associated facilities and services;
  - (v) gambling;
  - (vi) the creation of new digital content and the amendment of existing digital content by consumers or any other interaction with the creations of other users;
- (k) ‘sales contract’ means any contract under which the trader ('the seller') transfers or undertakes to transfer the ownership of the goods to another person ('the buyer'), and the buyer pays or undertakes to pay the price thereof; it includes a contract for the supply of goods to be manufactured or produced and excludes contracts for sale on execution or otherwise involving the exercise of public authority;
- (l) ‘consumer sales contract’ means a sales contract where the seller is a trader and the buyer is a consumer;
- (m) ‘related service’ means any service related to goods or digital content, such as installation, maintenance, repair or any other processing, provided by the seller of the goods or the supplier of the digital content under the sales contract, the contract for the supply of digital content or a separate related service contract which was concluded at the same time as the sales contract or the contract for the supply of digital content; it excludes:
- (i) transport services,
  - (ii) training services,
  - (iii) telecommunications support services; and
  - (iv) financial services;
- (n) ‘service provider’ means a seller of goods or supplier of digital content who undertakes to provide a customer with a service related to those goods or that digital content;
- (o) ‘customer’ means any person who purchases a related service;
- (p) ‘distance contract’ means any contract between the trader and the consumer under an organised distance sales scheme concluded without the simultaneous physical presence of the trader or, in case the trader is a legal person, a natural person representing the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;
- (q) ‘off-premises contract’ means any contract between a trader and a consumer:

(i) concluded in the simultaneous physical presence of the trader or, where the trader is a legal person, the natural person representing the trader and the consumer in a place which is not the trader's business premises, or concluded on the basis of an offer made by the consumer in the same circumstances; or

(ii) concluded on the trader's business premises or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the trader's business premises in the simultaneous physical presence of the trader or, where the trader is a legal person, a natural person representing the trader and the consumer; or

(iii) concluded during an excursion organised by the trader or, where the trader is a legal person, the natural person representing the trader with the aim or effect of promoting and selling goods or supplying digital content or related services to the consumer;

(r) 'business premises' means:

(i) any immovable retail premises where a trader carries out activity on a permanent basis, or

(ii) any movable retail premises where a trader carries out activity on a usual basis;

(s) 'commercial guarantee' means any undertaking by the trader or a producer to the consumer, in addition to legal obligations under Article 106 in case of lack of conformity to reimburse the price paid or to replace or repair, or service goods or digital content in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

(t) 'durable medium' means any medium which enables a party to store information addressed personally to that party in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

(u) 'public auction' means a method of sale where goods or digital content are offered by the trader to the consumer who attends or is given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or digital content;

(v) 'mandatory rule' means any provision the application of which the parties cannot exclude, or derogate from or the effect of which they cannot vary;

(w) 'creditor' means a person who has a right to performance of an obligation, whether monetary or non-monetary, by another person, the debtor;

(x) 'debtor' means a person who has an obligation, whether monetary or non-monetary, to another person, the creditor;

(y) 'obligation' means a duty to perform which one party to a legal relationship owes to another party.



*Article 3*  
***Optional nature of the Common European Sales Law***

The parties may agree that the Common European Sales Law governs their cross-border contracts for the sale of goods, for the supply of digital content and for the provision of related services within the territorial, material and personal scope as set out in Articles 4 to 7.

*Article 4*  
***Cross-border contracts***

1. The Common European Sales Law may be used for cross-border contracts.
2. For the purposes of this Regulation, a contract between traders is a cross-border contract if the parties have their habitual residence in different countries of which at least one is a Member State.
3. For the purposes of this Regulation, a contract between a trader and a consumer is a cross-border contract if:
  - (a) either the address indicated by the consumer, the delivery address for goods or the billing address are located in a country other than the country of the trader's habitual residence; and
  - (b) at least one of these countries is a Member State.
4. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration. The habitual residence of a trader who is a natural person shall be that person's principal place of business.
5. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment of a trader, the place where the branch, agency or any other establishment is located shall be treated as the place of the trader's habitual residence.
6. For the purpose of determining whether a contract is a cross-border contract the relevant point in time is the time of the agreement on the use of the Common European Sales Law.

*Article 5*  
***Contracts for which the Common European Sales Law can be used***

The Common European Sales Law may be used for:

- (a) sales contracts;
- (b) contracts for the supply of digital content whether or not supplied on a tangible medium which can be stored, processed or accessed, and re-used by the user, irrespective of whether the digital content is supplied in exchange for the payment of a price.

- (c) related service contracts, irrespective of whether a separate price was agreed for the related service.

#### *Article 6*

#### ***Exclusion of mixed-purpose contracts and contracts linked to a consumer credit***

1. The Common European Sales Law may not be used for mixed-purpose contracts including any elements other than the sale of goods, the supply of digital content and the provision of related services within the meaning of Article 5.
2. The Common European Sales Law may not be used for contracts between a trader and a consumer where the trader grants or promises to grant to the consumer credit in the form of a deferred payment, loan or other similar financial accommodation. The Common European Sales Law may be used for contracts between a trader and a consumer where goods, digital content or related services of the same kind are supplied on a continuing basis and the consumer pays for such goods, digital content or related services for the duration of the supply by means of instalments.

#### *Article 7*

#### ***Parties to the contract***

1. The Common European Sales Law may be used only if the seller of goods or the supplier of digital content is a trader. Where all the parties to a contract are traders, the Common European Sales Law may be used if at least one of those parties is a small or medium-sized enterprise ('SME').
2. For the purposes of this Regulation, an SME is a trader which
  - (a) employs fewer than 250 persons; and
  - (b) has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME which has its habitual residence in a Member State whose currency is not the euro or in a third country, the equivalent amounts in the currency of that Member State or third country.

#### *Article 8*

#### ***Agreement on the use of the Common European Sales Law***

1. The use of the Common European Sales Law requires an agreement of the parties to that effect. The existence of such an agreement and its validity shall be determined on the basis of paragraphs 2 and 3 of this Article and Article 9, as well as the relevant provisions in the Common European Sales Law.
2. In relations between a trader and a consumer the agreement on the use of the Common European Sales Law shall be valid only if the consumer's consent is given by an explicit statement which is separate from the statement indicating the agreement to conclude a contract. The trader shall provide the consumer with a confirmation of that agreement on a durable medium.

3. In relations between a trader and a consumer the Common European Sales Law may not be chosen partially, but only in its entirety.

#### *Article 9*

##### ***Standard Information Notice in contracts between a trader and a consumer***

1. In addition to the pre-contractual information duties laid down in the Common European Sales Law, in relations between a trader and a consumer the trader shall draw the consumer's attention to the intended application of the Common European Sales Law before the agreement by providing the consumer with the information notice in Annex II in a prominent manner. Where the agreement to use the Common European Sales Law is concluded by telephone or by any other means that do not make it possible to provide the consumer with the information notice, or where the trader has failed to provide the information notice, the consumer shall not be bound by the agreement until the consumer has received the confirmation referred to in Article 8(2) accompanied by the information notice and has expressly consented subsequently to the use of the Common European Sales Law.
2. The information notice referred to in paragraph 1 shall, if given in electronic form, contain a hyperlink or, in all other circumstances, include the indication of a website through which the text of the Common European Sales Law can be obtained free of charge.

#### *Article 10*

##### ***Penalties for breach of specific requirements***

Member States shall lay down penalties for breaches by traders in relations with consumers of the requirements set out in Articles 8 and 9 and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided shall be effective, proportionate and dissuasive. Member States shall notify the relevant provisions to the Commission no later than [1 year after the date of application of this Regulation] and shall notify any subsequent changes as soon as possible.

#### *Article 11*

##### ***Consequences of the use of the Common European Sales Law***

Where the parties have validly agreed to use the Common European Sales Law for a contract, only the Common European Sales Law shall govern the matters addressed in its rules. Provided that the contract was actually concluded, the Common European Sales Law shall also govern the compliance with and remedies for failure to comply with the pre-contractual information duties.

*Article 12*  
***Information requirements resulting from the Services Directive***

This Regulation is without prejudice to the information requirements laid down by national laws which transpose the provisions of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market and which complement the information requirements laid down in the Common European Sales Law.

*Article 13*

***Member States' options***

A Member State may decide to make the Common European Sales Law available for:

- (a) contracts where the habitual residence of the traders or, in the case of a contract between a trader and a consumer, the habitual residence of the trader, the address indicated by the consumer, the delivery address for goods and the billing address, are located in that Member State; and/or
- (b) contracts where all the parties are traders but none of them is an SME within the meaning of Article 7(2).

*Article 14*

***Communication of judgments applying this Regulation***

- 1. Member States shall ensure that final judgments of their courts applying the rules of this Regulation are communicated without undue delay to the Commission.
- 2. The Commission shall set up a system which allows the information concerning the judgments referred to in paragraph 1 and relevant judgements of the Court of Justice of the European Union to be consulted. That system shall be accessible to the public.

*Article 15*

***Review***

- 1. By ... [4 years after the date of application of this Regulation], Member States shall provide the Commission with information relating to the application of this Regulation, in particular on the level of acceptance of the Common European Sales Law, the extent to which its provisions have given rise to litigation and on the state of play concerning differences in the level of consumer protection between the Common European Sales Law and national law. That information shall include a comprehensive overview of the case law of the national courts interpreting the provisions of the Common European Sales Law.
- 2. By ... [5 years after the date of application of this Regulation], the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a detailed report reviewing the operation of this Regulation, and taking

account of, amongst others, the need to extend the scope in relation to business-to-business contracts, market and technological developments in respect of digital content and future developments of the Union acquis.

*Article 16*

***Entry into force and application***

1. This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from [ *6 months after its the entry into force*].

This Regulation shall be binding in its entirety and directly applicable in the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**ANNEX I**  
**COMMON EUROPEAN SALES LAW**

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# **Part I    Introductory provisions**

## **Chapter 1 General principles and application**

### **SECTION 1    GENERAL PRINCIPLES**

#### *Article 1* ***Freedom of contract***

1. Parties are free to conclude a contract and to determine its contents, subject to any applicable mandatory rules.
2. Parties may exclude the application of any of the provisions of the Common European Sales Law, or derogate from or vary their effects, unless otherwise stated in those provisions.

#### *Article 2* ***Good faith and fair dealing***

1. Each party has a duty to act in accordance with good faith and fair dealing.
2. Breach of this duty may preclude the party in breach from exercising or relying on a right, remedy or defence which that party would otherwise have, or may make the party liable for any loss thereby caused to the other party.
3. The parties may not exclude the application of this Article or derogate from or vary its effects.

#### *Article 3* ***Co-operation***

The parties are obliged to co-operate with each other to the extent that this can be expected for the performance of their contractual obligations.

### **SECTION 2    APPLICATION**

#### *Article 4* ***Interpretation***

1. The Common European Sales Law is to be interpreted autonomously and in accordance with its objectives and the principles underlying it.
2. Issues within the scope of the Common European Sales Law but not expressly settled by it are to be settled in accordance with the objectives and the principles underlying

it and all its provisions, without recourse to the national law that would be applicable in the absence of an agreement to use the Common European Sales Law or to any other law.

3. Where there is a general rule and a special rule applying to a particular situation within the scope of the general rule, the special rule prevails in any case of conflict.

*Article 5*  
***Reasonableness***

1. Reasonableness is to be objectively ascertained, having regard to the nature and purpose of the contract, to the circumstances of the case and to the usages and practices of the trades or professions involved.
2. Any reference to what can be expected of or by a person, or in a particular situation, is a reference to what can reasonably be expected.

*Article 6*  
***No form required***

Unless otherwise stated in the Common European Sales Law, a contract, statement or any other act which is governed by it need not be made in or evidenced by a particular form.

*Article 7*  
***Not individually negotiated contract terms***

1. A contract term is not individually negotiated if it has been supplied by one party and the other party has not been able to influence its content.
2. Where one party supplies a selection of contract terms to the other party, a term will not be regarded as individually negotiated merely because the other party chooses that term from that selection.
3. A party who claims that a contract term supplied as part of standard contract terms has since been individually negotiated bears the burden of proving that it has been.
4. In a contract between a trader and a consumer, the trader bears the burden of proving that a contract term supplied by the trader has been individually negotiated.
5. In a contract between a trader and a consumer, contract terms drafted by a third party are considered to have been supplied by the trader, unless the consumer introduced them to the contract.

*Article 8*  
***Termination of a contract***

1. To ‘terminate a contract’ means to bring to an end the rights and obligations of the parties under the contract with the exception of those arising under any contract term

providing for the settlement of disputes or any other contract term which is to operate even after termination.

2. Payments due and damages for any non-performance before the time of termination remain payable. Where the termination is for non-performance or for anticipated non-performance, the terminating party is also entitled to damages in lieu of the other party's future performance.
3. The effects of termination on the repayment of the price and the return of the goods or the digital content, and other restitutionary effects, are governed by the rules on restitution set out in Chapter 17.

*Article 9*  
***Mixed-purpose contracts***

1. Where a contract provides both for the sale of goods or the supply of digital content and for the provision of a related service, the rules of Part IV apply to the obligations and remedies of the parties as seller and buyer of goods or digital content and the rules of Part V apply to the obligations and remedies of the parties as service provider and customer.
2. Where, in a contract falling under paragraph 1, the obligations of the seller and the service provider under the contract are to be performed in separate parts or are otherwise divisible, then if there is a ground for termination for non-performance of a part to which a part of the price can be apportioned, the buyer and customer may terminate only in relation to that part.
3. Paragraph 2 does not apply where the buyer and customer cannot be expected to accept performance of the other parts or the non-performance is such as to justify termination of the contract as a whole.
4. Where the obligations of the seller and the service provider under the contract are not divisible or a part of the price cannot be apportioned, the buyer and the customer may terminate only if the non-performance is such as to justify termination of the contract as a whole.

*Article 10*  
***Notice***

1. This Article applies in relation to the giving of notice for any purpose under the rules of the Common European Sales Law and the contract. 'Notice' includes the communication of any statement which is intended to have legal effect or to convey information for a legal purpose.
2. A notice may be given by any means appropriate to the circumstances.
3. A notice becomes effective when it reaches the addressee, unless it provides for a delayed effect.
4. A notice reaches the addressee:

- (a) when it is delivered to the addressee;
- (b) when it is delivered to the addressee's place of business or, where there is no such place of business or the notice is addressed to a consumer, to the addressee's habitual residence;
- (c) in the case of a notice transmitted by electronic mail or other individual communication, when it can be accessed by the addressee; or
- (d) when it is otherwise made available to the addressee at such a place and in such a way that the addressee could be expected to obtain access to it without undue delay.

The notice has reached the addressee after one of the requirements in point (a), (b), (c) or (d) is fulfilled, whichever is the earliest.

- 5. A notice has no effect if a revocation of it reaches the addressee before or at the same time as the notice.
- 6. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of paragraphs 3 and 4 or derogate from or vary its effects.

#### *Article 11* ***Computation of time***

- 1. The provisions of this Article apply in relation to the computation of time for any purpose under the Common European Sales Law.
- 2. Subject to paragraphs 3 to 7:
  - (a) a period expressed in days starts at the beginning of the first hour of the first day and ends with the expiry of the last hour of the last day of the period;
  - (b) a period expressed in weeks, months or years starts at the beginning of the first hour of the first day of the period, and ends with the expiry of the last hour of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day from which the period runs; with the qualification that if, in a period expressed in months or in years, the day on which the period should expire does not occur in the last month, it ends with the expiry of the last hour of the last day of that month.
- 3. Where a period expressed in days, weeks, months or years is to be calculated from a specified event, action or time the day during which the event occurs, the action takes place or the specified time arrives does not fall within the period in question.
- 4. The periods concerned include Saturdays, Sundays and public holidays, save where these are expressly excepted or where the periods are expressed in working days.
- 5. Where the last day of a period is a Saturday, Sunday or public holiday at the place where a prescribed act is to be done, the period ends with the expiry of the last hour

of the following working day. This provision does not apply to periods calculated retroactively from a given date or event.

6. Where a person sends another person a document which sets a period of time within which the addressee has to reply or take other action but does not state when the period is to begin, then, in the absence of indications to the contrary, the period is calculated from the moment the document reaches the addressee.
7. For the purposes of this Article:
  - (a) “public holiday” with reference to a Member State, or part of a Member State, of the European Union means any day designated as such for that Member State or part in a list published in the Official Journal of the European Union; and
  - (b) “working days” means all days other than Saturdays, Sundays and public holidays.

*Article 12*  
***Unilateral statements or conduct***

1. A unilateral statement indicating intention is to be interpreted in the way in which the person to whom it is addressed could be expected to understand it.
2. Where the person making the statement intended an expression used in it to have a particular meaning and the other party was aware, or could be expected to have been aware, of that intention, the expression is to be interpreted in the way intended by the person making the statement.
3. Articles 59 to 65 apply with appropriate adaptations to the interpretation of unilateral statements indicating intention.
4. The rules on defects in consent in Chapter 5 apply with appropriate adaptations to unilateral statements indicating intention.
5. Any reference to a statement referred to in this Article includes a reference to conduct which can be regarded as the equivalent of a statement.

## Part II Making a binding contract

### Chapter 2 Pre-contractual information

#### SECTION 1 PRE-CONTRACTUAL INFORMATION TO BE GIVEN BY A TRADER DEALING WITH A CONSUMER

##### *Article 13*

##### *Duty to provide information when concluding a distance or off-premises contract*

1. A trader concluding a distance contract or off-premises contract has a duty to provide the following information to the consumer, in a clear and comprehensible manner before the contract is concluded or the consumer is bound by any offer:
  - (a) the main characteristics of the goods, digital content or related services to be supplied, to an extent appropriate to the medium of communication and to the goods, digital content or related services;
  - (b) the total price and additional charges and costs, in accordance with Article 14;
  - (c) the identity and address of the trader, in accordance with Article 15;
  - (d) the contract terms, in accordance with Article 16;
  - (e) the rights of withdrawal, in accordance with Article 17;
  - (f) where applicable, the existence and the conditions of the trader's after-sale customer assistance, after-sale services, commercial guarantees and complaints handling policy;
  - (g) where applicable, the possibility of having recourse to an Alternative Dispute Resolution mechanism to which the trader is subject and the methods for having access to it;
  - (h) where applicable, the functionality, including applicable technical protection measures, of digital content; and
  - (i) where applicable, any relevant interoperability of digital content with hardware and software which the trader is aware of or can be expected to have been aware of.
2. The information provided, except for the addresses required by point (c) of paragraph 1, forms an integral part of the contract and shall not be altered unless the parties expressly agree otherwise.
3. For a distance contract, the information required by this Article must:

- (a) be given or made available to the consumer in a way that is appropriate to the means of distance communication used;
  - (b) be in plain and intelligible language; and
  - (c) insofar as it is provided on a durable medium, be legible.
4. For an off-premises contract, the information required by this Article must:
- (a) be given on paper or, if the consumer agrees, on another durable medium; and
  - (b) be legible and in plain, intelligible language.
5. This Article does not apply where the contract is:
- (a) for the supply of foodstuffs, beverages or other goods which are intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;
  - (b) concluded by means of an automatic vending machine or automated commercial premises;
  - (c) an off-premises contract if the price or, where multiple contracts were concluded at the same time, the total price of the contracts does not exceed EUR 50 or the equivalent sum in the currency agreed for the contract price.

*Article 14*  
***Information about price and additional charges and costs***

1. The information to be provided under point (b) of Article 13 (1) must include:
- (a) the total price of the goods, digital content or related services, inclusive of taxes, or where the nature of the goods, digital content or related services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated; and
  - (b) where applicable, any additional freight, delivery or postal charges and any other costs or, where these cannot reasonably be calculated in advance, the fact that such additional charges and costs may be payable.
2. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price must include the total price per billing period. Where such contracts are charged at a fixed rate, the total price must include the total monthly price. Where the total price cannot be reasonably calculated in advance, the manner in which the price is to be calculated must be provided.
3. Where applicable, the trader must inform the consumer of the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate.

*Article 15*  
***Information about the identity and address of the trader***

The information to be provided under point (c) of Article 13 (1) must include:

- (a) the identity of the trader, such as its trading name;
- (b) the geographical address at which the trader is established;
- (c) the telephone number, fax number and e-mail address of the trader, where available, to enable the consumer to contact the trader quickly and communicate with the trader efficiently;
- (d) where applicable, the identity and geographical address of any other trader on whose behalf the trader is acting; and
- (e) where different from the address given pursuant to points (b) and (d) of this Article, the geographical address of the trader, and where applicable that of the trader on whose behalf it is acting, where the consumer can address any complaints.

*Article 16*  
***Information about the contract terms***

The information to be provided under point (d) of Article 13 (1) must include:

- (a) the arrangements for payment, delivery of the goods, supply of the digital content or performance of the related services and the time by which the trader undertakes to deliver the goods, to supply the digital content or to perform the related services;
- (b) where applicable, the duration of the contract, the minimum duration of the consumer's obligations or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract; and
- (c) where applicable, the existence and conditions for deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
- (d) where applicable, the existence of relevant codes of conduct and how copies of them can be obtained.

*Article 17*  
***Information about rights of withdrawal when concluding a distance or off-premises contract***

1. Where the consumer has a right of withdrawal under Chapter 4, the information to be provided under point (e) of Article 13 (1) must include the conditions, time limit and procedures for exercising that right in accordance with Appendix 1, as well as the model withdrawal form set out in Appendix 2.
2. Where applicable, the information to be provided under point (e) of Article 13(1) must include the fact that the consumer will have to bear the cost of returning the



goods in case of withdrawal and, for distance contracts, that the consumer will have to bear the cost of returning the goods in the event of withdrawal if the goods by their nature cannot be normally returned by post.

3. Where the consumer can exercise the right of withdrawal after having made a request for the provision of related services to begin during the withdrawal period, the information to be provided under point (e) of Article 13(1) must include the fact that the consumer would be liable to pay the trader the amount referred to in Article 45 (5).
4. The duty to provide the information required by paragraphs 1, 2 and 3 may be fulfilled by supplying the Model instructions on withdrawal set out in Appendix 1 to the consumer. The trader will be deemed to have fulfilled these information requirements if he has supplied these instructions to the consumer correctly filled in.
5. Where a right of withdrawal is not provided for in accordance with points (c) to (i) of Article 40 (2) and paragraph 3 of that Article, the information to be provided under point (e) of Article 13 (1) must include a statement that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses the right of withdrawal.

#### *Article 18*

#### ***Off-premises contracts: additional information requirements and confirmation***

1. The trader must provide the consumer with a copy of the signed contract or the confirmation of the contract, including where applicable, the confirmation of the consumer's consent and acknowledgment as provided for in point (d) of Article 40(3) on paper or, if the consumer agrees, on a different durable medium.
2. Where the consumer wants the provision of related services to begin during the withdrawal period provided for in Article 42(2), the trader must require that the consumer makes such an express request on a durable medium.

#### *Article 19*

#### ***Distance contracts: additional information and other requirements***

1. When a trader makes a telephone call to a consumer, with a view to concluding a distance contract, the trader must, at the beginning of the conversation with the consumer, disclose its identity and, where applicable, the identity of the person on whose behalf it is making the call and the commercial purpose of the call.
2. If the distance contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader must provide at least the information referred to in paragraph 3 of this Article on that particular means prior to the conclusion of such a contract. The other information referred to in Article 13 shall be provided by the trader to the consumer in an appropriate way in accordance with Article 13(3).
3. The information required under paragraph 2 is:

- (a) the main characteristics of the goods, digital content or related services, as required by point (a) of Article 13 (1);
  - (b) the identity of the trader, as required by point (a) of Article 15;
  - (c) the total price, including all items referred to in point (b) of Article 13 (1) and Article 14(1) and (2);
  - (d) the right of withdrawal; and
  - (e) where relevant, the duration of the contract, and if the contract is for an indefinite period, the requirements for terminating the contract, referred to in point (b) of Article 16.
4. A distance contract concluded by telephone is valid only if the consumer has signed the offer or has sent his written consent indicating the agreement to conclude a contract. The trader must provide the consumer with a confirmation of that agreement on a durable medium.
5. The trader must give the consumer a confirmation of the contract concluded, including where applicable, of the consent and acknowledgement of the consumer referred to in point (d) of Article 40(3), and all the information referred to in Article 13 on a durable medium. The trader must give that information in reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the supply of digital content or the provision of the related service begins, unless the information has already been given to the consumer prior to the conclusion of the distance contract on a durable medium.
6. Where the consumer wants the provision of related services to begin during the withdrawal period provided for in Article 42(2), the trader must require that the consumer makes an express request to that effect on a durable medium.

#### *Article 20*

#### ***Duty to provide information when concluding contracts other than distance and off-premises contracts***

1. In contracts other than distance and off-premises contracts, a trader has a duty to provide the following information to the consumer, in a clear and comprehensible manner before the contract is concluded or the consumer is bound by any offer, if that information is not already apparent from the context:
- (a) the main characteristics of the goods, digital content or related services to be supplied, to an extent appropriate to the medium of communication and to the goods, digital content or related services;
  - (b) the total price and additional charges and costs, in accordance with Article 14(1);
  - (c) the identity of the trader, such as the trader's trading name, the geographical address at which it is established and its telephone number;

- (d) the contract terms in accordance with points (a) and (b) of Article 16;
  - (e) where applicable, the existence and the conditions of the trader's after-sale services, commercial guarantees and complaints handling policy;
  - (f) where applicable, the functionality, including applicable technical protection measures of digital content; and
  - (g) where applicable, any relevant interoperability of digital content with hardware and software which the trader is aware of or can be expected to have been aware of.
2. This Article does not apply where the contract involves a day-to-day transaction and is performed immediately at the time of its conclusion.

*Article 21*  
***Burden of proof***

The trader bears the burden of proof that it has provided the information required by this Section.

*Article 22*  
***Mandatory nature***

The parties may not, to the detriment of the consumer, exclude the application of this Section or derogate from or vary its effects.

**SECTION 2 PRE-CONTRACTUAL INFORMATION TO BE GIVEN BY A TRADER  
DEALING WITH ANOTHER TRADER**

*Article 23*  
***Duty to disclose information about goods and related services***

1. Before the conclusion of a contract for the sale of goods, supply of digital content or provision of related services by a trader to another trader, the supplier has a duty to disclose by any appropriate means to the other trader any information concerning the main characteristics of the goods, digital content or related services to be supplied which the supplier has or can be expected to have and which it would be contrary to good faith and fair dealing not to disclose to the other party.
2. In determining whether paragraph 1 requires the supplier to disclose any information, regard is to be had to all the circumstances, including:
  - (a) whether the supplier had special expertise;
  - (b) the cost to the supplier of acquiring the relevant information;

- (c) the ease with which the other trader could have acquired the information by other means;
- (d) the nature of the information;
- (e) the likely importance of the information to the other trader; and
- (f) good commercial practice in the situation concerned.

### **SECTION 3: CONTRACTS CONCLUDED BY ELECTRONIC MEANS**

#### *Article 24*

#### ***Additional duties to provide information in distance contracts concluded by electronic means***

1. This Article applies where a trader provides the means for concluding a contract and where those means are electronic and do not involve the exclusive exchange of electronic mail or other individual communication.
2. The trader must make available to the other party appropriate, effective and accessible technical means for identifying and correcting input errors before the other party makes or accepts an offer.
3. The trader must provide information about the following matters before the other party makes or accepts an offer:
  - (a) the technical steps to be taken in order to conclude the contract;
  - (b) whether or not a contract document will be filed by the trader and whether it will be accessible;
  - (c) the technical means for identifying and correcting input errors before the other party makes or accepts an offer;
  - (d) the languages offered for the conclusion of the contract;
  - (e) the contract terms.
4. The trader must ensure that the contract terms referred to in point (e) of paragraph 3 are made available in alphabetical or other intelligible characters and on a durable medium by means of any support which permits reading, recording of the information contained in the text and its reproduction in tangible form.
5. The trader must acknowledge by electronic means and without undue delay the receipt of an offer or an acceptance sent by the other party.

#### *Article 25*

#### ***Additional requirements in distance contracts concluded by electronic means***

1. Where a distance contract which is concluded by electronic means would oblige the consumer to make a payment, the trader must make the consumer aware in a clear and prominent manner, and immediately before the consumer places the order, of the information required by point (a) of Article 13 (1), Article 14(1) and (2), and point (b) of Article 16.
2. The trader must ensure that the consumer, when placing the order, explicitly acknowledges that the order implies an obligation to pay. Where placing an order entails activating a button or a similar function, the button or similar function must be labelled in an easily legible manner only with the words "order with obligation to pay" or similar unambiguous wording indicating that placing the order entails an obligation to make a payment to the trader. Where the trader has not complied with this paragraph, the consumer is not bound by the contract or order.
3. The trader must indicate clearly and legibly on its trading website at the latest at the beginning of the ordering process whether any delivery restrictions apply and what means of payment are accepted.

#### *Article 26*

#### ***Burden of proof***

In relations between a trader and a consumer, the trader bears the burden of proof that it has provided the information required by this Section.

#### *Article 27*

#### ***Mandatory nature***

In relations between a trader and a consumer, the parties may not, to the detriment of the consumer, exclude the application of this Section or derogate from or vary its effects.

### **SECTION 4 DUTY TO ENSURE THAT INFORMATION SUPPLIED IS CORRECT**

#### *Article 28*

#### ***Duty to ensure that information supplied is correct***

1. A party who supplies information before or at the time a contract is concluded, whether in order to comply with the duties imposed by this Chapter or otherwise, has a duty to take reasonable care to ensure that the information supplied is correct and is not misleading.
2. A party to whom incorrect or misleading information has been supplied in breach of the duty referred to in paragraph 1, and who reasonably relies on that information in concluding a contract with the party who supplied it, has the remedies set out in Article 29.

3. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

## **SECTION 5 REMEDIES FOR BREACH OF INFORMATION DUTIES**

### *Article 29*

#### ***Remedies for breach of information duties***

1. A party which has failed to comply with any duty imposed by this Chapter is liable for any loss caused to the other party by such failure.
2. Where the trader has not complied with the information requirements relating to additional charges or other costs as referred to in Article 14 or on the costs of returning the goods as referred to in Article 17(2) the consumer is not liable to pay the additional charges and other costs.
3. The remedies provided under this Article are without prejudice to any remedy which may be available under Article 42 (2), Article 48 or Article 49.
4. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

## Chapter 3 Conclusion of contract

### *Article 30*

#### *Requirements for the conclusion of a contract*

1. A contract is concluded if:
  - (a) the parties reach an agreement;
  - (b) they intend the agreement to have legal effect; and
  - (c) the agreement, supplemented if necessary by rules of the Common European Sales Law, has sufficient content and certainty to be given legal effect.
2. Agreement is reached by acceptance of an offer. Acceptance may be made explicitly or by other statements or conduct.
3. Whether the parties intend the agreement to have legal effect is to be determined from their statements and conduct.
4. Where one of the parties makes agreement on some specific matter a requirement for the conclusion of a contract, there is no contract unless agreement on that matter has been reached.

### *Article 31*

#### *Offer*

1. A proposal is an offer if:
  - (a) it is intended to result in a contract if it is accepted; and
  - (b) it has sufficient content and certainty for there to be a contract.
2. An offer may be made to one or more specific persons.
3. A proposal made to the public is not an offer, unless the circumstances indicate otherwise.

### *Article 32*

#### *Revocation of offer*

1. An offer may be revoked if the revocation reaches the offeree before the offeree has sent an acceptance or, in cases of acceptance by conduct, before the contract has been concluded.
2. Where a proposal made to the public is an offer, it can be revoked by the same means as were used to make the offer.

3. A revocation of an offer is ineffective if:
  - (a) the offer indicates that it is irrevocable;
  - (b) the offer states a fixed time period for its acceptance; or
  - (c) it was otherwise reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

*Article 33*  
**Rejection of offer**

When a rejection of an offer reaches the offeror, the offer lapses.

*Article 34*  
**Acceptance**

1. Any form of statement or conduct by the offeree is an acceptance if it indicates assent to the offer.
2. Silence or inactivity does not in itself constitute acceptance.

*Article 35*  
**Time of conclusion of the contract**

1. Where an acceptance is sent by the offeree the contract is concluded when the acceptance reaches the offeror.
2. Where an offer is accepted by conduct, the contract is concluded when notice of the conduct reaches the offeror.
3. Notwithstanding paragraph 2, where by virtue of the offer, of practices which the parties have established between themselves, or of a usage, the offeree may accept the offer by conduct without notice to the offeror, the contract is concluded when the offeree begins to act.

*Article 36*  
**Time limit for acceptance**

1. An acceptance of an offer is effective only if it reaches the offeror within any time limit stipulated in the offer by the offeror.
2. Where no time limit has been fixed by the offeror the acceptance is effective only if it reaches the offeror within a reasonable time after the offer was made.
3. Where an offer may be accepted by doing an act without notice to the offeror, the acceptance is effective only if the act is done within the time for acceptance fixed by the offeror or, if no such time is fixed, within a reasonable time.



*Article 37*  
***Late acceptance***

1. A late acceptance is effective as an acceptance if without undue delay the offeror informs the offeree that the offeror is treating it as an effective acceptance.
2. Where a letter or other communication containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without undue delay, the offeror informs the offeree that the offer has lapsed.

*Article 38*  
***Modified acceptance***

1. A reply by the offeree which states or implies additional or different contract terms which materially alter the terms of the offer is a rejection and a new offer.
2. Additional or different contract terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are presumed to alter the terms of the offer materially.
3. A reply which gives a definite assent to an offer is an acceptance even if it states or implies additional or different contract terms, provided that these do not materially alter the terms of the offer. The additional or different terms then become part of the contract.
4. A reply which states or implies additional or different contract terms is always a rejection of the offer if:
  - (a) the offer expressly limits acceptance to the terms of the offer;
  - (b) the offeror objects to the additional or different terms without undue delay; or
  - (c) the offeree makes the acceptance conditional upon the offeror's assent to the additional or different terms, and the assent does not reach the offeree within a reasonable time.

*Article 39*  
***Conflicting standard contract terms***

1. Where the parties have reached agreement except that the offer and acceptance refer to conflicting standard contract terms, a contract is nonetheless concluded. The standard contract terms are part of the contract to the extent that they are common in substance.
2. Notwithstanding paragraph 1, no contract is concluded if one party:
  - (a) has indicated in advance, explicitly, and not by way of standard contract terms, an intention not to be bound by a contract on the basis of paragraph 1; or
  - (b) without undue delay, informs the other party of such an intention.



## **Chapter 4 Right to withdraw in distance and off-premises contracts between traders and consumers**

### *Article 40* ***Right to withdraw***

1. During the period provided for in Article 42, the consumer has a right to withdraw from the contract without giving any reason, and at no cost to the consumer except as provided in Article 45, from:
  - (a) a distance contract;
  - (b) an off-premises contract, provided that the price or, where multiple contracts were concluded at the same time, the total price of the contracts exceeds EUR 50 or the equivalent sum in the currency agreed for the contract price at the time of the conclusion of the contract.
  
2. Paragraph 1 does not apply to:
  - (a) a contract concluded by means of an automatic vending machine or automated commercial premises;
  - (b) a contract for the supply of foodstuffs, beverages or other goods which are intended for current consumption in the household and which are physically supplied by the trader on frequent and regular rounds to the consumer's home, residence or workplace;
  - (c) a contract for the supply of goods or related services for which the price depends on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period;
  - (d) a contract for the supply of goods or digital content which are made to the consumer's specifications, or are clearly personalised;
  - (e) a contract for the supply of goods which are liable to deteriorate or expire rapidly;
  - (f) a contract for the supply of alcoholic beverages, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place after 30 days from the time of conclusion of the contract and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;
  - (g) a contract for the sale of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications;
  - (h) a contract concluded at a public auction; and

- (i) a contract for catering or services related to leisure activities which provides for a specific date or period of performance.
3. Paragraph 1 does not apply in the following situations:
- (a) where the goods supplied were sealed, have been unsealed by the consumer and are not then suitable for return due to health protection or hygiene reasons;
  - (b) where the goods supplied have, according to their nature, been inseparably mixed with other items after delivery;
  - (c) where the goods supplied were sealed audio or video recordings or computer software and have been unsealed after delivery;
  - (d) where the supply of digital content which is not supplied on a tangible medium has begun with the consumer's prior express consent and with the acknowledgement by the consumer of losing the right to withdraw;
  - (e) the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance. Where on the occasion of such a visit the trader provides related services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal applies to those additional related services or goods.
4. Where the consumer has made an offer which, if accepted, would lead to the conclusion of a contract from which there would be a right to withdraw under this Chapter, the consumer may withdraw the offer even if it would otherwise be irrevocable.

#### *Article 41*

#### ***Exercise of right to withdraw***

1. The consumer may exercise the right to withdraw at any time before the end of the period of withdrawal provided for in Article 42.
2. The consumer exercises the right to withdraw by notice to the trader. For this purpose, the consumer may use either the Model withdrawal form set out in Appendix 2 or any other unequivocal statement setting out the decision to withdraw.
3. Where the trader gives the consumer the option to withdraw electronically on its trading website, and the consumer does so, the trader has a duty to communicate to the consumer an acknowledgement of receipt of such a withdrawal on a durable medium without delay. The trader is liable for any loss caused to the other party by a breach of this duty.
4. A communication of withdrawal is timely if sent before the end of the withdrawal period.
5. The consumer bears the burden of proof that the right of withdrawal has been exercised in accordance with this Article.

*Article 42*  
***Withdrawal period***

1. The withdrawal period expires after fourteen days from:
  - (a) the day on which the consumer has taken delivery of the goods in the case of a sales contract, including a sales contract under which the seller also agrees to provide related services;
  - (b) the day on which the consumer has taken delivery of the last item in the case of a contract for the sale of multiple goods ordered by the consumer in one order and delivered separately, including a contract under which the seller also agrees to provide related services;
  - (c) the day on which the consumer has taken delivery of the last lot or piece in the case of a contract where the goods consist of multiple lots or pieces, including a contract under which the seller also agrees to provide related services;
  - (d) the day on which the consumer has taken delivery of the first item where the contract is for regular delivery of goods during a defined period of time, including a contract under which the seller also agrees to provide related services;
  - (e) the day of the conclusion of the contract in the case of a contract for related services concluded after the goods have been delivered;
  - (f) the day when the consumer has taken delivery of the tangible medium in accordance with point (a) in the case of a contract for the supply of digital content where the digital content is supplied on a tangible medium;
  - (g) the day of the conclusion of the contract in the case of a contract where the digital content is not supplied on a tangible medium.
  
2. Where the trader has not provided the consumer with the information referred to in Article 17 (1), the withdrawal period expires:
  - (a) after one year from the end of the initial withdrawal period, as determined in accordance with paragraph 1; or
  - (b) where the trader provides the consumer with the information required within one year from the end of the withdrawal period as determined in accordance with paragraph 1, after fourteen days from the day the consumer receives the information.

*Article 43*  
***Effects of withdrawal***

Withdrawal terminates the obligations of both parties under the contract:

- (a) to perform the contract; or

- (b) to conclude the contract in cases where an offer was made by the consumer.

*Article 44*

***Obligations of the trader in the event of withdrawal***

1. The trader must reimburse all payments received from the consumer, including, where applicable, the costs of delivery without undue delay and in any event not later than fourteen days from the day on which the trader is informed of the consumer's decision to withdraw from the contract in accordance with Article 41. The trader must carry out such reimbursement using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of such reimbursement.
2. Notwithstanding paragraph 1, the trader is not required to reimburse the supplementary costs, if the consumer has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by the trader.
3. In the case of a contract for the sale of goods, the trader may withhold the reimbursement until it has received the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is earlier, unless the trader has offered to collect the goods.
4. In the case of an off-premises contract where the goods have been delivered to the consumer's home at the time of the conclusion of the contract, the trader must collect the goods at its own cost if the goods by their nature cannot be normally returned by post.

*Article 45*

***Obligations of the consumer in the event of withdrawal***

1. The consumer must send back the goods or hand them over to the trader or to a person authorised by the trader without undue delay and in any event not later than fourteen days from the day on which the consumer communicates the decision to withdraw from the contract to the trader in accordance with Article 41, unless the trader has offered to collect the goods. This deadline is met if the consumer sends back the goods before the period of fourteen days has expired.
2. The consumer must bear the direct costs of returning the goods, unless the trader has agreed to bear those costs or the trader failed to inform the consumer that the consumer has to bear them.
3. The consumer is liable for any diminished value of the goods only where that results from handling of the goods in any way other than what is necessary to establish the nature, characteristics and functioning of the goods. The consumer is not liable for diminished value where the trader has not provided all the information about the right to withdraw in accordance with Article 17 (1).
4. Without prejudice to paragraph 3, the consumer is not liable to pay any compensation for the use of the goods during the withdrawal period.

5. Where the consumer exercises the right of withdrawal after having made an express request for the provision of related services to begin during the withdrawal period, the consumer must pay to the trader an amount which is in proportion to what has been provided before the consumer exercised the right of withdrawal, in comparison with the full coverage of the contract. The proportionate amount to be paid by the consumer to the trader must be calculated on the basis of the total price agreed in the contract. Where the total price is excessive, the proportionate amount must be calculated on the basis of the market value of what has been provided.
6. The consumer is not liable for the cost for:
  - (a) the provision of related services, in full or in part, during the withdrawal period, where:
    - (i) the trader has failed to provide information in accordance with Article 17(1) and (3); or
    - (ii) the consumer has not expressly requested performance to begin during the withdrawal period in accordance with Article 18(2) and Article 19(6);
  - (b) for the supply, in full or in part, of digital content which is not supplied on a tangible medium where:
    - (i) the consumer has not given prior express consent for the supply of digital content to begin before the end of the period of withdrawal referred to in Article 42(1);
    - (ii) the consumer has not acknowledged losing the right of withdrawal when giving the consent; or
    - (iii) the trader has failed to provide the confirmation in accordance with Article 18(1) and Article 19(5).
7. Except as provided for in this Article, the consumer does not incur any liability through the exercise of the right of withdrawal.

*Article 46*  
***Ancillary contracts***

1. Where a consumer exercises the right of withdrawal from a distance or an off-premises contract in accordance with Articles 41 to 45, any ancillary contracts are automatically terminated at no cost to the consumer except as provided in paragraphs 2 and 3. For the purpose of this Article an ancillary contract means a contract by which a consumer acquires goods, digital content or related services in connexion to a distance contract or an off-premises contract and these goods, digital content or related services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader.
2. The provisions of Articles 43, 44 and 45 apply accordingly to ancillary contracts to the extent that those contracts are governed by the Common European Sales Law.

3. For ancillary contracts which are not governed by the Common European Sales Law the applicable law governs the obligations of the parties in the event of withdrawal.

*Article 47*  
***Mandatory nature***

The parties may not, to the detriment of the consumer, exclude the application of this Chapter or derogate from or vary its effects.



## Chapter 5 Defects in consent

### *Article 48* *Mistake*

1. A party may avoid a contract for mistake of fact or law existing when the contract was concluded if:
  - (a) the party, but for the mistake, would not have concluded the contract or would have done so only on fundamentally different contract terms and the other party knew or could be expected to have known this; and
  - (b) the other party:
    - (i) caused the mistake;
    - (ii) caused the contract to be concluded in mistake by failing to comply with any pre-contractual information duty under Chapter 2, Sections 1 to 4;
    - (iii) knew or could be expected to have known of the mistake and caused the contract to be concluded in mistake by not pointing out the relevant information, provided that good faith and fair dealing would have required a party aware of the mistake to point it out; or
    - (iv) made the same mistake.
2. A party may not avoid a contract for mistake if the risk of the mistake was assumed, or in the circumstances should be borne, by that party.
3. An inaccuracy in the expression or transmission of a statement is treated as a mistake of the person who made or sent the statement.

### *Article 49* *Fraud*

1. A party may avoid a contract if the other party has induced the conclusion of the contract by fraudulent misrepresentation, whether by words or conduct, or fraudulent non-disclosure of any information which good faith and fair dealing, or any pre-contractual information duty, required that party to disclose.
2. Misrepresentation is fraudulent if it is made with knowledge or belief that the representation is false, or recklessly as to whether it is true or false, and is intended to induce the recipient to make a mistake. Non-disclosure is fraudulent if it is intended to induce the person from whom the information is withheld to make a mistake.

3. In determining whether good faith and fair dealing require a party to disclose particular information, regard should be had to all the circumstances, including:
  - (a) whether the party had special expertise;
  - (b) the cost to the party of acquiring the relevant information;
  - (c) the ease with which the other party could have acquired the information by other means;
  - (d) the nature of the information;
  - (e) the apparent importance of the information to the other party; and
  - (f) in contracts between traders good commercial practice in the situation concerned

*Article 50*  
***Threats***

A party may avoid a contract if the other party has induced the conclusion of the contract by the threat of wrongful, imminent and serious harm, or of a wrongful act.

*Article 51*  
***Unfair exploitation***

A party may avoid a contract if, at the time of the conclusion of the contract:

- (a) that party was dependent on, or had a relationship of trust with, the other party, was in economic distress or had urgent needs, was improvident, ignorant, or inexperienced; and
- (b) the other party knew or could be expected to have known this and, in the light of the circumstances and purpose of the contract, exploited the first party's situation by taking an excessive benefit or unfair advantage.

*Article 52*  
***Notice of avoidance***

1. Avoidance is effected by notice to the other party.
2. A notice of avoidance is effective only if it is given within the following period after the avoiding party becomes aware of the relevant circumstances or becomes capable of acting freely:
  - (a) six months in case of mistake; and
  - (b) one year in case of fraud, threats and unfair exploitation.

*Article 53*  
**Confirmation**

Where the party who has the right to avoid a contract under this Chapter confirms it, expressly or impliedly, after becoming aware of the relevant circumstances, or becoming capable of acting freely, that party may no longer avoid the contract.

*Article 54*  
**Effects of avoidance**

1. A contract which may be avoided is valid until avoided but, once avoided, is retrospectively invalid from the beginning.
2. Where a ground of avoidance affects only certain contract terms, the effect of avoidance is limited to those terms unless it is unreasonable to uphold the remainder of the contract.
3. The question whether either party has a right to the return of whatever has been transferred or supplied under a contract which has been avoided, or to a monetary equivalent, is regulated by the rules on restitution in Chapter 17.

*Article 55*  
**Damages for loss**

A party who has the right to avoid a contract under this Chapter or who had such a right before it was lost by the effect of time limits or confirmation is entitled, whether or not the contract is avoided, to damages from the other party for loss suffered as a result of the mistake, fraud, threats or unfair exploitation, provided that the other party knew or could be expected to have known of the relevant circumstances.

*Article 56*  
**Exclusion or restriction of remedies**

1. Remedies for fraud, threats and unfair exploitation cannot be directly or indirectly excluded or restricted.
2. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, directly or indirectly exclude or restrict remedies for mistake.

*Article 57*  
**Choice of remedy**

A party who is entitled to a remedy under this Chapter in circumstances which afford that party a remedy for non-performance may pursue either of those remedies.

## **Part III Assessing what is in the contract**

### **Chapter 6 Interpretation**

#### *Article 58*

##### *General rules on interpretation of contracts*

1. A contract is to be interpreted according to the common intention of the parties even if this differs from the normal meaning of the expressions used in it.
2. Where one party intended an expression used in the contract to have a particular meaning, and at the time of the conclusion of the contract the other party was aware, or could be expected to have been aware, of that intention, the expression is to be interpreted in the way intended by the first party.
3. Unless otherwise provided in paragraphs 1 and 2, the contract is to be interpreted according to the meaning which a reasonable person would give to it.

#### *Article 59*

##### *Relevant matters*

In interpreting a contract, regard may be had, in particular, to:

- (a) the circumstances in which it was concluded, including the preliminary negotiations;
- (b) the conduct of the parties, even subsequent to the conclusion of the contract;
- (c) the interpretation which has already been given by the parties to expressions which are identical to or similar to those used in the contract;
- (d) usages which would be considered generally applicable by parties in the same situation;
- (e) practices which the parties have established between themselves;
- (f) the meaning commonly given to expressions in the branch of activity concerned;
- (g) the nature and purpose of the contract; and
- (h) good faith and fair dealing.

#### *Article 60*

##### *Reference to contract as a whole*

Expressions used in a contract are to be interpreted in the light of the contract as a whole.

*Article 61*  
***Language discrepancies***

Where a contract document is in two or more language versions none of which is stated to be authoritative and where there is a discrepancy between the versions, the version in which the contract was originally drawn up is to be treated as the authoritative one.

*Article 62*  
***Preference for individually negotiated contract terms***

To the extent that there is an inconsistency, contract terms which have been individually negotiated prevail over those which have not been individually negotiated within the meaning of Article 7.

*Article 63*  
***Preference for interpretation which gives contract terms effect***

An interpretation which renders the contract terms effective prevails over one which does not.

*Article 64*  
***Interpretation in favour of consumers***

1. Where there is doubt about the meaning of a contract term in a contract between a trader and a consumer, the interpretation most favourable to the consumer shall prevail unless the term was supplied by the consumer.
2. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

*Article 65*  
***Interpretation against supplier of a contract term***

Where, in a contract which does not fall under Article 64, there is doubt about the meaning of a contract term which has not been individually negotiated within the meaning of Article 7, an interpretation of the term against the party who supplied it shall prevail.

## Chapter 7 Contents and effects

### *Article 66* *Contract terms*

The terms of the contract are derived from:

- (a) the agreement of the parties, subject to any mandatory rules of the Common European Sales Law;
- (b) any usage or practice by which parties are bound by virtue of Article 67;
- (c) any rule of the Common European Sales Law which applies in the absence of an agreement of the parties to the contrary; and
- (d) any contract term implied by virtue of Article 68.

### *Article 67* *Usages and practices in contracts between traders*

1. In a contract between traders, the parties are bound by any usage which they have agreed should be applicable and by any practice they have established between themselves.
2. The parties are bound by a usage which would be considered generally applicable by traders in the same situation as the parties.
3. Usages and practices do not bind the parties to the extent to which they conflict with contract terms which have been individually negotiated or any mandatory rules of the Common European Sales Law.

### *Article 68* *Contract terms which may be implied*

1. Where it is necessary to provide for a matter which is not explicitly regulated by the agreement of the parties, any usage or practice or any rule of the Common European Sales Law, an additional contract term may be implied, having regard in particular to:
  - (a) the nature and purpose of the contract;
  - (b) the circumstances in which the contract was concluded; and
  - (c) good faith and fair dealing.
2. Any contract term implied under paragraph 1 is, as far as possible, to be such as to give effect to what the parties would probably have agreed, had they provided for the matter.

3. Paragraph 1 does not apply if the parties have deliberately left a matter unregulated, accepting that one or other party would bear the risk.

#### *Article 69*

##### ***Contract terms derived from certain pre-contractual statements***

1. Where the trader makes a statement before the contract is concluded, either to the other party or publicly, about the characteristics of what is to be supplied by that trader under the contract, the statement is incorporated as a term of the contract unless:
  - (a) the other party was aware, or could be expected to have been aware when the contract was concluded that the statement was incorrect or could not otherwise be relied on as such a term; or
  - (b) the other party's decision to conclude the contract could not have been influenced by the statement.
2. For the purposes of paragraph 1, a statement made by a person engaged in advertising or marketing for the trader is regarded as being made by the trader.
3. Where the other party is a consumer then, for the purposes of paragraph 1, a public statement made by or on behalf of a producer or other person in earlier links of the chain of transactions leading to the contract is regarded as being made by the trader unless the trader, at the time of conclusion of the contract, did not know and could not be expected to have known of it.
4. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

#### *Article 70*

##### ***Duty to raise awareness of not individually negotiated contract terms***

1. Contract terms supplied by one party and not individually negotiated within the meaning of Article 7 may be invoked against the other party only if the other party was aware of them, or if the party supplying them took reasonable steps to draw the other party's attention to them, before or when the contract was concluded.
2. For the purposes of this Article, in relations between a trader and a consumer contract terms are not sufficiently brought to the consumer's attention by a mere reference to them in a contract document, even if the consumer signs the document.
3. The parties may not exclude the application of this Article or derogate from or vary its effects.

*Article 71*  
***Additional payments in contracts between a trader and a consumer***

1. In a contract between a trader and a consumer, a contract term which obliges the consumer to make any payment in addition to the remuneration stated for the trader's main contractual obligation, in particular where it has been incorporated by the use of default options which the consumer is required to reject in order to avoid the additional payment, is not binding on the consumer unless, before the consumer is bound by the contract, the consumer has expressly consented to the additional payment. If the consumer has made the additional payment, the consumer may recover it.
2. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

*Article 72*  
***Merger clauses***

1. Where a contract in writing includes a term stating that the document contains all contract terms (a merger clause), any prior statements, undertakings or agreements which are not contained in the document do not form part of the contract.
2. Unless the contract otherwise provides, a merger clause does not prevent the parties' prior statements from being used to interpret the contract.
3. In a contract between a trader and a consumer, the consumer is not bound by a merger clause.
4. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

*Article 73*  
***Determination of price***

Where the amount of the price payable under a contract cannot be otherwise determined, the price payable is, in the absence of any indication to the contrary, the price normally charged in comparable circumstances at the time of the conclusion of the contract or, if no such price is available, a reasonable price.

*Article 74*  
***Unilateral determination by a party***

1. Where the price or any other contract term is to be determined by one party and that party's determination is grossly unreasonable then the price normally charged or term normally used in comparable circumstances at the time of the conclusion of the contract or, if no such price or term is available, a reasonable price or a reasonable term is substituted.



2. The parties may not exclude the application of this Article or derogate from or vary its effects.

#### *Article 75*

#### ***Determination by a third party***

1. Where a third party is to determine the price or any other contract term and cannot or will not do so, a court may, unless this is inconsistent with the contract terms, appoint another person to determine it.
2. Where a price or other contract term determined by a third party is grossly unreasonable, the price normally charged or term normally used in comparable circumstances at the time of the conclusion of the contract or, if no such price is available, a reasonable price, or a reasonable term is substituted.
3. For the purpose of paragraph 1 a 'court' includes an arbitral tribunal.
4. In relations between a trader and a consumer the parties may not to the detriment of the consumer exclude the application of paragraph 2 or derogate from or vary its effects.

#### *Article 76*

#### ***Language***

Where the language to be used for communications relating to the contract or the rights or obligations arising from it cannot be otherwise determined, the language to be used is that used for the conclusion of the contract.

#### *Article 77*

#### ***Contracts of indeterminate duration***

1. Where, in a case involving continuous or repeated performance of a contractual obligation, the contract terms do not stipulate when the contractual relationship is to end or provide for it to be terminated upon giving notice to that effect, it may be terminated by either party by giving a reasonable period of notice not exceeding two months.
2. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

#### *Article 78*

#### ***Contract terms in favour of third parties***

1. The contracting parties may, by the contract, confer a right on a third party. The third party need not be in existence or identified at the time the contract is concluded but needs to be identifiable.

2. The nature and content of the third party's right are determined by the contract. The right may take the form of an exclusion or limitation of the third party's liability to one of the contracting parties.
3. When one of the contracting parties is bound to render a performance to the third party under the contract, then:
  - (a) the third party has the same rights to performance and remedies for non-performance as if the contracting party was bound to render the performance under a contract with the third party; and
  - (b) the contracting party who is bound may assert against the third party all defences which the contracting party could assert against the other party to the contract.
4. The third party may reject a right conferred upon them by notice to either of the contracting parties, if that is done before it has been expressly or impliedly accepted. On such rejection, the right is treated as never having accrued to the third party.
5. The contracting parties may remove or modify the contract term conferring the right if this is done before either of them has given the third party notice that the right has been conferred.

## **Chapter 8 Unfair contract terms**

### **SECTION 1 GENERAL PROVISIONS**

#### *Article 79*

#### *Effects of unfair contract terms*

1. A contract term which is supplied by one party and which is unfair under Sections 2 and 3 of this Chapter is not binding on the other party.
2. Where the contract can be maintained without the unfair contract term, the other contract terms remain binding.

#### *Article 80*

#### *Exclusions from unfairness test*

1. Sections 2 and 3 do not apply to contract terms which reflect rules of the Common European Sales Law which would apply if the terms did not regulate the matter.
2. Section 2 does not apply to the definition of the main subject matter of the contract, or to the appropriateness of the price to be paid in so far as the trader has complied with the duty of transparency set out in Article 82.
3. Section 3 does not apply to the definition of the main subject matter of the contract or to the appropriateness of the price to be paid.

#### *Article 81*

#### *Mandatory nature*

The parties may not exclude the application of this Chapter or derogate from or vary its effects.

### **SECTION 2 UNFAIR CONTRACT TERMS IN CONTRACTS BETWEEN A TRADER AND A CONSUMER**

#### *Article 82*

#### *Duty of transparency in contract terms not individually negotiated*

Where a trader supplies contract terms which have not been individually negotiated with the consumer within the meaning of Article 7, it has a duty to ensure that they are drafted and communicated in plain, intelligible language.

*Article 83*  
*Meaning of "unfair" in contracts between a trader and a consumer*

1. In a contract between a trader and a consumer, a contract term supplied by the trader which has not been individually negotiated within the meaning of Article 7 is unfair for the purposes of this Section if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, contrary to good faith and fair dealing.
2. When assessing the unfairness of a contract term for the purposes of this Section, regard is to be had to:
  - (a) whether the trader complied with the duty of transparency set out in Article 82;
  - (b) the nature of what is to be provided under the contract;
  - (c) the circumstances prevailing during the conclusion of the contract;
  - (d) to the other contract terms; and
  - (e) to the terms of any other contract on which the contract depends.

*Article 84*  
*Contract terms which are always unfair*

A contract term is always unfair for the purposes of this Section if its object or effect is to:

- (a) exclude or limit the liability of the trader for death or personal injury caused to the consumer through an act or omission of the trader or of someone acting on behalf of the trader;
- (b) exclude or limit the liability of the trader for any loss or damage to the consumer caused deliberately or as a result of gross negligence;
- (c) limit the trader's obligation to be bound by commitments undertaken by its authorised agents or make its commitments subject to compliance with a particular condition the fulfilment of which depends exclusively on the trader;
- (d) exclude or hinder the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to an arbitration system not foreseen generally in legal provisions that apply to contracts between a trader and a consumer;
- (e) confer exclusive jurisdiction for all disputes arising under the contract to a court for the place where the trader is domiciled unless the chosen court is also the court for the place where the consumer is domiciled;
- (f) give the trader the exclusive right to determine whether the goods, digital content or related services supplied are in conformity with the contract or gives the trader the exclusive right to interpret any contract term;

- (g) provide that the consumer is bound by the contract when the trader is not;
- (h) require the consumer to use a more formal method for terminating the contract within the meaning of Article 8 than was used for conclusion of the contract;
- (i) grant the trader a shorter notice period to terminate the contract than the one required of the consumer;
- (j) oblige the consumer to pay for goods, digital content or related services not actually delivered, supplied or rendered;
- (k) determine that non-individually negotiated contract terms within the meaning of Article 7 prevail or have preference over contract terms which have been individually negotiated.

#### *Article 85*

#### ***Contract terms which are presumed to be unfair***

A contract term is presumed to be unfair for the purposes of this Section if its object or effect is to:

- (a) restrict the evidence available to the consumer or impose on the consumer a burden of proof which should legally lie with the trader;
- (b) inappropriately exclude or limit the remedies available to the consumer against the trader or a third party for non-performance by the trader of obligations under the contract;
- (c) inappropriately exclude or limit the right to set-off claims that the consumer may have against the trader against what the consumer may owe to the trader;
- (d) permit a trader to keep money paid by the consumer if the latter decides not to conclude the contract, or perform obligations under it, without providing for the consumer to receive compensation of an equivalent amount from the trader in the reverse situation;
- (e) require a consumer who fails to perform obligations under the contract to pay a disproportionately high amount by way of damages or a stipulated payment for non-performance;
- (f) entitle a trader to withdraw from or terminate the contract within the meaning of Article 8 on a discretionary basis without giving the same right to the consumer, or entitle a trader to keep money paid for related services not yet supplied in the case where the trader withdraws from or terminates the contract;
- (g) enable a trader to terminate a contract of indeterminate duration without reasonable notice, except where there are serious grounds for doing so;
- (h) automatically extend a contract of fixed duration unless the consumer indicates otherwise, in cases where contract terms provide for an unreasonably early deadline for giving notice;

- (i) enable a trader to alter contract terms unilaterally without a valid reason which is specified in the contract; this does not affect contract terms under which a trader reserves the right to alter unilaterally the terms of a contract of indeterminate duration, provided that the trader is required to inform the consumer with reasonable notice, and that the consumer is free to terminate the contract at no cost to the consumer;
- (j) enable a trader to alter unilaterally without a valid reason any characteristics of the goods, digital content or related services to be provided or any other features of performance;
- (k) provide that the price of goods, digital content or related services is to be determined at the time of delivery or supply, or allow a trader to increase the price without giving the consumer the right to withdraw if the increased price is too high in relation to the price agreed at the conclusion of the contract; this does not affect price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described;
- (l) oblige a consumer to perform all their obligations under the contract where the trader fails to perform its own;
- (m) allow a trader to transfer its rights and obligations under the contract without the consumer's consent, unless it is to a subsidiary controlled by the trader, or as a result of a merger or a similar lawful company transaction, and such transfer is not likely to negatively affect any right of the consumer;
- (n) allow a trader, where what has been ordered is unavailable, to supply an equivalent without having expressly informed the consumer of this possibility and of the fact that the trader must bear the cost of returning what the consumer has received under the contract if the consumer exercises a right to reject performance;
- (o) allow a trader to reserve an unreasonably long or inadequately specified period to accept or refuse an offer;
- (p) allow a trader to reserve an unreasonably long or inadequately specified period to perform the obligations under the contract;
- (q) inappropriately exclude or limit the remedies available to the consumer against the trader or the defences available to the consumer against claims by the trader;
- (r) subject performance of obligations under the contract by the trader, or subject other beneficial effects of the contract for the consumer, to particular formalities that are not legally required and are unreasonable;
- (s) require from the consumer excessive advance payments or excessive guarantees of performance of obligations;
- (t) unjustifiably prevent the consumer from obtaining supplies or repairs from third party sources;
- (u) unjustifiably bundle the contract with another one with the trader, a subsidiary of the trader, or a third party, in a way that cannot be expected by the consumer;

- (v) impose an excessive burden on the consumer in order to terminate a contract of indeterminate duration;
- (w) make the initial contract period, or any renewal period, of a contract for the protracted provision of goods, digital content or related services longer than one year, unless the consumer may terminate the contract at any time with a termination period of no more than 30 days.

### **SECTION 3 UNFAIR CONTRACT TERMS IN CONTRACTS BETWEEN TRADERS**

#### *Article 86*

#### *Meaning of “unfair” in contracts between traders*

1. In a contract between traders, a contract term is unfair for the purposes of this Section only if:
  - (a) it forms part of not individually negotiated terms within the meaning of Article 7; and
  - (b) it is of such a nature that its use grossly deviates from good commercial practice, contrary to good faith and fair dealing.
2. When assessing the unfairness of a contract term for the purposes of this Section, regard is to be had to:
  - (a) the nature of what is to be provided under the contract;
  - (b) the circumstances prevailing during the conclusion of the contract;
  - (c) the other contract terms; and
  - (d) the terms of any other contract on which the contract depends.

# Part IV Obligations and remedies of the parties to a sales contract or a contract for the supply of digital content

## Chapter 9 General provisions

### *Article 87*

#### *Non-performance and fundamental non-performance*

1. Non-performance of an obligation is any failure to perform that obligation, whether or not the failure is excused, and includes:
  - (a) non-delivery or delayed delivery of the goods;
  - (b) non-supply or delayed supply of the digital content;
  - (c) delivery of goods which are not in conformity with the contract;
  - (d) supply of digital content which is not in conformity with the contract;
  - (e) non-payment or late payment of the price; and
  - (f) any other purported performance which is not in conformity with the contract.
2. Non-performance of an obligation by one party is fundamental if:
  - (a) it substantially deprives the other party of what that party was entitled to expect under the contract, unless at the time of conclusion of the contract the non-performing party did not foresee and could not be expected to have foreseen that result; or
  - (b) it is of such a nature as to make it clear that the non-performing party's future performance cannot be relied on.

### *Article 88*

#### *Excused non-performance*

1. A party's non-performance of an obligation is excused if it is due to an impediment beyond that party's control and if that party could not be expected to have taken the impediment into account at the time of the conclusion of the contract, or to have avoided or overcome the impediment or its consequences.
2. Where the impediment is only temporary the non-performance is excused for the period during which the impediment exists. However, if the delay amounts to a fundamental non-performance, the other party may treat it as such.
3. The party who is unable to perform has a duty to ensure that notice of the impediment and of its effect on the ability to perform reaches the other party without



undue delay after the first party becomes, or could be expected to have become, aware of these circumstances. The other party is entitled to damages for any loss resulting from the breach of this duty.

*Article 89*  
***Change of circumstances***

1. A party must perform its obligations even if performance has become more onerous, whether because the cost of performance has increased or because the value of what is to be received in return has diminished.

Where performance becomes excessively onerous because of an exceptional change of circumstances, the parties have a duty to enter into negotiations with a view to adapting or terminating the contract.

2. If the parties fail to reach an agreement within a reasonable time, then, upon request by either party a court may:
  - (a) adapt the contract in order to bring it into accordance with what the parties would reasonably have agreed at the time of contracting if they had taken the change of circumstances into account; or
  - (b) terminate the contract within the meaning of Article 8 at a date and on terms to be determined by the court.
3. Paragraphs 1 and 2 apply only if:
  - (a) the change of circumstances occurred after the time when the contract was concluded;
  - (b) the party relying on the change of circumstances did not at that time take into account, and could not be expected to have taken into account, the possibility or scale of that change of circumstances; and
  - (c) the aggrieved party did not assume, and cannot reasonably be regarded as having assumed, the risk of that change of circumstances.
4. For the purpose of paragraphs 2 and 3 a 'court' includes an arbitral tribunal.

*Article 90*  
***Extended application of rules on payment and on goods or digital content not accepted***

1. Unless otherwise provided, the rules on payment of the price by the buyer in Chapter 12 apply with appropriate adaptations to other payments.
2. Article 97 applies with appropriate adaptations to other cases where a person is left in possession of goods or digital content because of a failure by another person to take them when bound to do so.

## **Chapter 10      The seller's obligations**

### **SECTION 1   GENERAL PROVISIONS**

#### *Article 91*

#### ***Main obligations of the seller***

The seller of goods or the supplier of digital content (in this part referred to as 'the seller') must:

- (a) deliver the goods or supply the digital content;
- (b) transfer the ownership of the goods, including the tangible medium on which the digital content is supplied;
- (c) ensure that the goods or the digital content are in conformity with the contract;
- (d) ensure that the buyer has the right to use the digital content in accordance with the contract; and
- (e) deliver such documents representing or relating to the goods or documents relating to the digital content as may be required by the contract.

#### *Article 92*

#### ***Performance by a third party***

- 1. A seller may entrust performance to another person, unless personal performance by the seller is required by the contract terms.
- 2. A seller who entrusts performance to another person remains responsible for performance.
- 3. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of paragraph (2) or derogate from or vary its effects.

### **SECTION 2   DELIVERY**

#### *Article 93*

#### ***Place of delivery***

- 1. Where the place of delivery cannot be otherwise determined, it is:
  - (a) in the case of a consumer sales contract or a contract for the supply of digital content which is a distance or off-premises contract, or in which the seller has

undertaken to arrange carriage to the buyer, the consumer's place of residence at the time of the conclusion of the contract;

(b) in any other case,

(i) where the contract of sale involves carriage of the goods by a carrier or series of carriers, the nearest collection point of the first carrier ;

(ii) where the contract does not involve carriage, the seller's place of business at the time of conclusion of the contract.

2. If the seller has more than one place of business, the place of business for the purposes of point (b) of paragraph 1 is that which has the closest relationship to the obligation to deliver.

#### *Article 94* **Method of delivery**

1. Unless agreed otherwise, the seller fulfils the obligation to deliver:

(a) in the case of a consumer sales contract or a contract for the supply of digital content which is a distance or off-premises contract or in which the seller has undertaken to arrange carriage to the buyer, by transferring the physical possession or control of the goods or the digital content to the consumer;

(b) in other cases in which the contract involves carriage of the goods by a carrier, by handing over the goods to the first carrier for transmission to the buyer and by handing over to the buyer any document necessary to enable the buyer to take over the goods from the carrier holding the goods; or

(c) in cases that do not fall within points (a) or (b), by making the goods or the digital content, or where it is agreed that the seller need only deliver documents representing the goods, the documents, available to the buyer.

2. In points (a) and (c) of paragraph 1, any reference to the consumer or the buyer includes a third party, not being the carrier, indicated by the consumer or the buyer in accordance with the contract.

#### *Article 95* **Time of delivery**

1. Where the time of delivery cannot be otherwise determined, the goods or the digital content must be delivered without undue delay after the conclusion of the contract.

2. In contracts between a trader and a consumer, unless agreed otherwise by the parties, the trader must deliver the goods or the digital content not later than 30 days from the conclusion of the contract.

*Article 96*  
***Seller's obligations regarding carriage of the goods***

1. Where the contract requires the seller to arrange for carriage of the goods, the seller must conclude such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.
2. Where the seller, in accordance with the contract, hands over the goods to a carrier and if the goods are not clearly identified as the goods to be supplied under the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.
3. Where the contract does not require the seller to effect insurance in respect of the carriage of the goods, the seller must, at the buyer's request, provide the buyer with all available information necessary to enable the buyer to effect such insurance.

*Article 97*  
***Goods or digital content not accepted by the buyer***

1. A seller who is left in possession of the goods or the digital content because the buyer, when bound to do so, has failed to take delivery must take reasonable steps to protect and preserve them.
2. The seller is discharged from the obligation to deliver if the seller:
  - (a) deposits the goods or the digital content on reasonable terms with a third party to be held to the order of the buyer, and notifies the buyer of this; or
  - (b) sells the goods or the digital content on reasonable terms after notice to the buyer, and pays the net proceeds to the buyer.
3. The seller is entitled to be reimbursed or to retain out of the proceeds of sale any costs reasonably incurred.

*Article 98*  
***Effect on passing of risk***

The effect of delivery on the passing of risk is regulated by Chapter 14.

**SECTION 3 CONFORMITY OF THE GOODS AND DIGITAL CONTENT**

*Article 99*  
***Conformity with the contract***

1. In order to conform with the contract, the goods or digital content must:
  - (a) be of the quantity, quality and description required by the contract;

- (b) be contained or packaged in the manner required by the contract; and
  - (c) be supplied along with any accessories, installation instructions or other instructions required by the contract.
2. In order to conform with the contract the goods or digital content must also meet the requirements of Articles 100, 101 and 102, save to the extent that the parties have agreed otherwise.
  3. In a consumer sales contract, any agreement derogating from the requirements of Articles 100, 102 and 103 to the detriment of the consumer is valid only if, at the time of the conclusion of the contract, the consumer knew of the specific condition of the goods or the digital content and accepted the goods or the digital content as being in conformity with the contract when concluding it.
  4. In a consumer sales contract, the parties may not, to the detriment of the consumer, exclude the application of paragraph 3 or derogate from or vary its effects.

*Article 100*  
***Criteria for conformity of the goods and digital content***

The goods or digital content must:

- (a) be fit for any particular purpose made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for the buyer to rely, on the seller's skill and judgement;
- (b) be fit for the purposes for which goods or digital content of the same description would ordinarily be used;
- (c) possess the qualities of goods or digital content which the seller held out to the buyer as a sample or model;
- (d) be contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods;
- (e) be supplied along with such accessories, installation instructions or other instructions as the buyer may expect to receive;
- (f) possess the qualities and performance capabilities indicated in any pre-contractual statement which forms part of the contract terms by virtue of Article 69; and
- (g) possess such qualities and performance capabilities as the buyer may expect. When determining what the consumer may expect of the digital content regard is to be had to whether or not the digital content was supplied in exchange for the payment of a price.

*Article 101*  
***Incorrect installation under a consumer sales contract***

1. Where goods or digital content supplied under a consumer sales contract are incorrectly installed, any lack of conformity resulting from the incorrect installation is regarded as lack of conformity of the goods or the digital content if:
  - (a) the goods or the digital content were installed by the seller or under the seller's responsibility; or
  - (b) the goods or the digital content were intended to be installed by the consumer and the incorrect installation was due to a shortcoming in the installation instructions.
2. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

*Article 102*  
***Third party rights or claims***

1. The goods must be free from and the digital content must be cleared of any right or not obviously unfounded claim of a third party.
2. As regards rights or claims based on intellectual property, subject to paragraphs 3 and 4, the goods must be free from and the digital content must be cleared of any right or not obviously unfounded claim of a third party:
  - (a) under the law of the state where the goods or digital content will be used according to the contract or, in the absence of such an agreement, under the law of the state of the buyer's place of business or in contracts between a trader and a consumer the consumer's place of residence indicated by the consumer at the time of the conclusion of the contract; and
  - (b) which the seller knew of or could be expected to have known of at the time of the conclusion of the contract.
3. In contracts between businesses, paragraph 2 does not apply where the buyer knew or could be expected to have known of the rights or claims based on intellectual property at the time of the conclusion of the contract.
4. In contracts between a trader and a consumer, paragraph 2 does not apply where the consumer knew of the rights or claims based on intellectual property at the time of the conclusion of the contract.
5. In contracts between a trader and a consumer, the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

*Article 103*  
***Limitation on conformity of digital content***

Digital content is not considered as not conforming to the contract for the sole reason that updated digital content has become available after the conclusion of the contract.

*Article 104*  
***Buyer's knowledge of lack of conformity in a contract between traders***

In a contract between traders, the seller is not liable for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew or could not have been unaware of the lack of conformity.

*Article 105*  
***Relevant time for establishing conformity***

1. The seller is liable for any lack of conformity which exists at the time when the risk passes to the buyer under Chapter 14.
2. In a consumer sales contract, any lack of conformity which becomes apparent within six months of the time when risk passes to the buyer is presumed to have existed at that time unless this is incompatible with the nature of the goods or digital content or with the nature of the lack of conformity.
3. In a case governed by point (a) of Article 101(1) any reference in paragraphs 1 or 2 of this Article to the time when risk passes to the buyer is to be read as a reference to the time when the installation is complete. In a case governed by point (b) of Article 101(1) it is to be read as a reference to the time when the consumer had reasonable time for the installation.
4. Where the digital content must be subsequently updated by the trader, the trader must ensure that the digital content remains in conformity with the contract throughout the duration of the contract.
5. In a contract between a trader and a consumer, the parties may not, to the detriment of a consumer, exclude the application of this Article or derogate from or vary its effect.

## Chapter 11 The buyer's remedies

### SECTION 1 GENERAL PROVISIONS

#### *Article 106*

#### *Overview of buyer's remedies*

1. In the case of non-performance of an obligation by the seller, the buyer may do any of the following:
  - (a) require performance, which includes specific performance, repair or replacement of the goods or digital content, under Section 3 of this Chapter;
  - (b) withhold the buyer's own performance under Section 4 of this Chapter;
  - (c) terminate the contract under Section 5 of this Chapter and claim the return of any price already paid, under Chapter 17;
  - (d) reduce the price under Section 6 of this Chapter; and
  - (e) claim damages under Chapter 16.
2. If the buyer is a trader:
  - (a) the buyer's rights to exercise any remedy except withholding of performance are subject to cure by the seller as set out in Section 2 of this Chapter; and
  - (b) the buyer's rights to rely on lack of conformity are subject to the requirements of examination and notification set out in Section 7 of this Chapter.
3. If the buyer is a consumer:
  - (a) the buyer's rights are not subject to cure by the seller; and
  - (b) the requirements of examination and notification set out in Section 7 of this Chapter do not apply.
4. If the seller's non-performance is excused, the buyer may resort to any of the remedies referred to in paragraph 1 except requiring performance and damages.
5. The buyer may not resort to any of the remedies referred to in paragraph 1 to the extent that the buyer caused the seller's non-performance.
6. Remedies which are not incompatible may be cumulated.



*Article 107*

***Limitation of remedies for digital content not supplied in exchange for a price***

Where digital content is not supplied in exchange for the payment of a price, the buyer may not resort to the remedies referred to in points (a) to (d) of Article 106(1) . The buyer may only claim damages under point (e) of Article 106 (1) for loss or damage caused to the buyer's property, including hardware, software and data, by the lack of conformity of the supplied digital content, except for any gain of which the buyer has been deprived by that damage.

*Article 108*

***Mandatory nature***

In a contract between a trader and a consumer, the parties may not, to the detriment of the consumer, exclude the application of this Chapter, or derogate from or vary its effect before the lack of conformity is brought to the trader's attention by the consumer.

**SECTION 2 CURE BY THE SELLER**

*Article 109*

***Cure by the seller***

1. A seller who has tendered performance early and who has been notified that the performance is not in conformity with the contract may make a new and conforming tender if that can be done within the time allowed for performance.
2. In cases not covered by paragraph 1 a seller who has tendered a performance which is not in conformity with the contract may, without undue delay on being notified of the lack of conformity, offer to cure it at its own expense.
3. An offer to cure is not precluded by notice of termination.
4. The buyer may refuse an offer to cure only if:
  - (a) cure cannot be effected promptly and without significant inconvenience to the buyer;
  - (b) the buyer has reason to believe that the seller's future performance cannot be relied on; or
  - (c) delay in performance would amount to a fundamental non-performance.
5. The seller has a reasonable period of time to effect cure.
6. The buyer may withhold performance pending cure, but the rights of the buyer which are inconsistent with allowing the seller a period of time to effect cure are suspended until that period has expired.
7. Notwithstanding cure, the buyer retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.

## SECTION 3 REQUIRING PERFORMANCE

### *Article 110*

#### ***Requiring performance of seller's obligations***

1. The buyer is entitled to require performance of the seller's obligations.
2. The performance which may be required includes the remedying free of charge of a performance which is not in conformity with the contract.
3. Performance cannot be required where:
  - (a) performance would be impossible or has become unlawful; or
  - (b) the burden or expense of performance would be disproportionate to the benefit that the buyer would obtain.

### *Article 111*

#### ***Consumer's choice between repair and replacement***

1. Where, in a consumer sales contract, the trader is required to remedy a lack of conformity pursuant to Article 110(2) the consumer may choose between repair and replacement unless the option chosen would be unlawful or impossible or, compared to the other option available, would impose costs on the seller that would be disproportionate taking into account:
  - (a) the value the goods would have if there were no lack of conformity;
  - (b) the significance of the lack of conformity; and
  - (c) whether the alternative remedy could be completed without significant inconvenience to the consumer.
2. If the consumer has required the remedying of the lack of conformity by repair or replacement pursuant to paragraph 1, the consumer may resort to other remedies only if the trader has not completed repair or replacement within a reasonable time, not exceeding 30 days. However, the consumer may withhold performance during that time.

### *Article 112*

#### ***Return of replaced item***

1. Where the seller has remedied the lack of conformity by replacement, the seller has a right and an obligation to take back the replaced item at the seller's expense.
2. The buyer is not liable to pay for any use made of the replaced item in the period prior to the replacement.

## **SECTION 4 WITHHOLDING PERFORMANCE OF BUYER'S OBLIGATIONS**

### *Article 113*

#### ***Right to withhold performance***

1. A buyer who is to perform at the same time as, or after, the seller performs has a right to withhold performance until the seller has tendered performance or has performed.
2. A buyer who is to perform before the seller performs and who reasonably believes that there will be non-performance by the seller when the seller's performance becomes due may withhold performance for as long as the reasonable belief continues.
3. The performance which may be withheld under this Article is the whole or part of the performance to the extent justified by the non-performance. Where the seller's obligations are to be performed in separate parts or are otherwise divisible, the buyer may withhold performance only in relation to that part which has not been performed, unless the seller's non-performance is such as to justify withholding the buyer's performance as a whole.

## **SECTION 5 TERMINATION**

### *Article 114*

#### ***Termination for non-performance***

1. A buyer may terminate the contract within the meaning of Article 8 if the seller's non-performance under the contract is fundamental within the meaning of Article 87 (2).
2. In a consumer sales contract and a contract for the supply of digital content between a trader and a consumer, where there is a non-performance because the goods do not conform to the contract, the consumer may terminate the contract unless the lack of conformity is insignificant.

### *Article 115*

#### ***Termination for delay in delivery after notice fixing additional time for performance***

1. A buyer may terminate the contract in a case of delay in delivery which is not in itself fundamental if the buyer gives notice fixing an additional period of time of reasonable length for performance and the seller does not perform within that period.
2. The additional period referred to in paragraph 1 is taken to be of reasonable length if the seller does not object to it without undue delay.

3. Where the notice provides for automatic termination if the seller does not perform within the period fixed by the notice, termination takes effect after that period without further notice.

*Article 116*

***Termination for anticipated non-performance***

A buyer may terminate the contract before performance is due if the seller has declared, or it is otherwise clear, that there will be a non-performance, and if the non-performance would be such as to justify termination.

*Article 117*

***Scope of right to terminate***

1. Where the seller's obligations under the contract are to be performed in separate parts or are otherwise divisible, then if there is a ground for termination under this Section of a part to which a part of the price can be apportioned, the buyer may terminate only in relation to that part.
2. Paragraph 1 does not apply if the buyer cannot be expected to accept performance of the other parts or the non-performance is such as to justify termination of the contract as a whole.
3. Where the seller's obligations under the contract are not divisible or a part of the price cannot be apportioned, the buyer may terminate only if the non-performance is such as to justify termination of the contract as a whole.

*Article 118*

***Notice of termination***

A right to terminate under this Section is exercised by notice to the seller.

*Article 119*

***Loss of right to terminate***

1. The buyer loses the right to terminate under this Section if notice of termination is not given within a reasonable time from when the right arose or the buyer became, or could be expected to have become, aware of the non-performance, whichever is later.
2. Paragraph 1 does not apply:
  - (a) where the buyer is a consumer; or
  - (b) where no performance at all has been tendered.

## SECTION 6 PRICE REDUCTION

### *Article 120*

#### ***Right to reduce price***

1. A buyer who accepts a performance not conforming to the contract may reduce the price. The reduction is to be proportionate to the decrease in the value of what was received in performance at the time performance was made compared to the value of what would have been received by a conforming performance.
2. A buyer who is entitled to reduce the price under paragraph 1 and who has already paid a sum exceeding the reduced price may recover the excess from the seller.
3. A buyer who reduces the price cannot also recover damages for the loss thereby compensated but remains entitled to damages for any further loss suffered.

## SECTION 7 REQUIREMENTS OF EXAMINATION AND NOTIFICATION IN A CONTRACT BETWEEN TRADERS

### *Article 121*

#### ***Examination of the goods in contracts between traders***

1. In a contract between traders the buyer is expected to examine the goods, or cause them to be examined, within as short a period as is reasonable not exceeding 14 days from the date of delivery of the goods, supply of digital content or provision of related services.
2. If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.
3. If the goods are redirected in transit, or redispached by the buyer before the buyer has had a reasonable opportunity to examine them, and at the time of the conclusion of the contract the seller knew or could be expected to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

### *Article 122*

#### ***Requirement of notification of lack of conformity in sales contracts between traders***

1. In a contract between traders the buyer may not rely on a lack of conformity if the buyer does not give notice to the seller within a reasonable time specifying the nature of the lack of conformity.

The time starts to run when the goods are supplied or when the buyer discovers or could be expected to discover the lack of conformity, whichever is later.

2. The buyer loses the right to rely on a lack of conformity if the buyer does not give the seller notice of the lack of conformity within two years from the time at which the goods were actually handed over to the buyer in accordance with the contract.
3. Where the parties have agreed that the goods must remain fit for a particular purpose or for their ordinary purpose during a fixed period of time, the period for giving notice under paragraph 2 does not expire before the end of the agreed period.
4. Paragraph 2 does not apply in respect of the third party claims or rights referred to in Article 102.
5. The buyer does not have to notify the seller that not all the goods have been delivered if the buyer has reason to believe that the remaining goods will be delivered.
6. The seller is not entitled to rely on this Article if the lack of conformity relates to facts of which the seller knew or could be expected to have known and which the seller did not disclose to the buyer.

## **Chapter 12      The buyer's obligations**

### **SECTION 1    GENERAL PROVISIONS**

#### *Article 123*

#### ***Main obligations of the buyer***

1. The buyer must:
  - (a) pay the price;
  - (b) take delivery of the goods or the digital content; and
  - (c) take over documents representing or relating to the goods or documents relating to digital content as may be required by the contract.
2. Point (a) of paragraph 1 does not apply to contracts for the supply of digital content where the digital content is not supplied in exchange for the payment of a price.

### **SECTION 2    PAYMENT OF THE PRICE**

#### *Article 124*

#### ***Means of payment***

1. Payment shall be made by the means of payment indicated by the contract terms or, if there is no such indication, by any means used in the ordinary course of business at the place of payment taking into account the nature of the transaction .
2. A seller who accepts a cheque or other order to pay or a promise to pay is presumed to do so only on condition that it will be honoured. The seller may enforce the original obligation to pay if the order or promise is not honoured.
3. The buyer's original obligation is extinguished if the seller accepts a promise to pay from a third party with whom the seller has a pre-existing arrangement to accept the third party's promise as a means of payment.
4. In a contract between a trader and a consumer, the consumer is not liable, in respect of the use of a given means of payment, for fees that exceed the cost borne by the trader for the use of such means.

#### *Article 125*

#### ***Place of payment***

1. Where the place of payment cannot otherwise be determined it is the seller's place of business at the time of conclusion of the contract.

2. If the seller has more than one place of business, the place of payment is the place of business of the seller which has the closest relationship to the obligation to pay.

*Article 126*  
***Time of payment***

1. Payment of the price is due at the moment of delivery.
2. The seller may reject an offer to pay before payment is due if it has a legitimate interest in so doing.

*Article 127*  
***Payment by a third party***

1. A buyer may entrust payment to another person. A buyer who entrusts payment to another person remains responsible for payment.
2. The seller cannot refuse payment by a third party if:
  - (a) the third party acts with the assent of the buyer; or
  - (b) the third party has a legitimate interest in paying and the buyer has failed to pay or it is clear that the buyer will not pay at the time that payment is due.
3. Payment by a third party in accordance with paragraphs 1 or 2 discharges the buyer from liability to the seller.
4. Where the seller accepts payment by a third party in circumstances not covered by paragraphs 1 or 2 the buyer is discharged from liability to the seller but the seller is liable to the buyer for any loss caused by that acceptance.

*Article 128*  
***Imputation of payment***

1. Where a buyer has to make several payments to the seller and the payment made does not suffice to cover all of them, the buyer may at the time of payment notify the seller of the obligation to which the payment is to be imputed.
2. If the buyer does not make a notification under paragraph 1 the seller may, by notifying the buyer within a reasonable time, impute the performance to one of the obligations.
3. An imputation under paragraph 2 is not effective if it is to an obligation which is not yet due or is disputed.
4. In the absence of an effective imputation by either party, the payment is imputed to that obligation which satisfies one of the following criteria in the sequence indicated:
  - (a) the obligation which is due or is the first to fall due;



- (b) the obligation for which the seller has no or the least security;
- (c) the obligation which is the most burdensome for the buyer;
- (d) the obligation which arose first.

If none of those criteria applies, the payment is imputed proportionately to all the obligations.

- 5. The payment may be imputed under paragraph 2, 3 or 4 to an obligation which is unenforceable as a result of prescription only if there is no other obligation to which the payment could be imputed in accordance with those paragraphs.
- 6. In relation to any one obligation a payment by the buyer is to be imputed, first, to expenses, secondly, to interest, and thirdly, to principal, unless the seller makes a different imputation.

### **SECTION 3 TAKING DELIVERY**

#### *Article 129* ***Taking delivery***

The buyer fulfils the obligation to take delivery by:

- (a) doing all the acts which could be expected in order to enable the seller to perform the obligation to deliver; and
- (b) taking over the goods, or the documents representing the goods or digital content, as required by the contract.

#### *Article 130* ***Early delivery and delivery of wrong quantity***

- 1. If the seller delivers the goods or supplies the digital content before the time fixed, the buyer must take delivery unless the buyer has a legitimate interest in refusing to do so.
- 2. If the seller delivers a quantity of goods or digital content less than that provided for in the contract the buyer must take delivery unless the buyer has a legitimate interest in refusing to do so.
- 3. If the seller delivers a quantity of goods or digital content greater than that provided for by the contract, the buyer may retain or refuse the excess quantity.
- 4. If the buyer retains the excess quantity it is treated as having been supplied under the contract and must be paid for at the contractual rate.
- 5. In a consumer sales contract paragraph 4 does not apply if the buyer reasonably believes that the seller has delivered the excess quantity intentionally and without error, knowing that it had not been ordered.
- 6. This Article does not apply to contracts for the supply of digital content where the digital content is not supplied in exchange for the payment of a price.

## **Chapter 13      The seller's remedies**

### **SECTION 1   GENERAL PROVISIONS**

#### *Article 131*

#### *Overview of seller's remedies*

1. In the case of a non-performance of an obligation by the buyer, the seller may do any of the following:
  - (a) require performance under Section 2 of this Chapter;
  - (b) withhold the seller's own performance under Section 3 of this Chapter;
  - (c) terminate the contract under Section 4 of this Chapter; and
  - (d) claim interest on the price or damages under Chapter 16.
2. If the buyer's non-performance is excused, the seller may resort to any of the remedies referred to in paragraph 1 except requiring performance and damages.
3. The seller may not resort to any of the remedies referred to in paragraph 1 to the extent that the seller caused the buyer's non-performance.
4. Remedies which are not incompatible may be cumulated.

### **SECTION 2   REQUIRING PERFORMANCE**

#### *Article 132*

#### *Requiring performance of buyer's obligations*

1. The seller is entitled to recover payment of the price when it is due, and to require performance of any other obligation undertaken by the buyer.
2. Where the buyer has not yet taken over the goods or the digital content and it is clear that the buyer will be unwilling to receive performance, the seller may nonetheless require the buyer to take delivery, and may recover the price, unless the seller could have made a reasonable substitute transaction without significant effort or expense.

## SECTION 3 WITHHOLDING PERFORMANCE OF SELLER'S OBLIGATIONS

### *Article 133*

#### ***Right to withhold performance***

1. A seller who is to perform at the same time as, or after, the buyer performs has a right to withhold performance until the buyer has tendered performance or has performed.
2. A seller who is to perform before the buyer performs and who reasonably believes that there will be non-performance by the buyer when the buyer's performance becomes due may withhold performance for as long as the reasonable belief continues. However, the right to withhold performance is lost if the buyer gives an adequate assurance of due performance or provides adequate security.
3. The performance which may be withheld under this Article is the whole or part of the performance to the extent justified by the non-performance. Where the buyer's obligations are to be performed in separate parts or are otherwise divisible, the seller may withhold performance only in relation to that part which has not been performed, unless the buyer's non-performance is such as to justify withholding the seller's performance as a whole.

## SECTION 4 TERMINATION

### *Article 134*

#### ***Termination for fundamental non-performance***

A seller may terminate the contract within the meaning of Article 8 if the buyer's non-performance under the contract is fundamental within the meaning of Article 87 (2).

### *Article 135*

#### ***Termination for delay after notice fixing additional time for performance***

1. A seller may terminate in a case of delay in performance which is not in itself fundamental if the seller gives a notice fixing an additional period of time of reasonable length for performance and the buyer does not perform within that period.
2. The period is taken to be of reasonable length if the buyer does not object to it without undue delay. In relations between a trader and a consumer, the additional time for performance must not end before the 30 day period referred to Article 167(2).
3. Where the notice provides for automatic termination if the buyer does not perform within the period fixed by the notice, termination takes effect after that period without further notice.

4. In a consumer sales contract, the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

#### *Article 136*

#### ***Termination for anticipated non-performance***

A seller may terminate the contract before performance is due if the buyer has declared, or it is otherwise clear, that there will be a non-performance, and if the non-performance would be fundamental.

#### *Article 137*

#### ***Scope of right to terminate***

1. Where the buyer's obligations under the contract are to be performed in separate parts or are otherwise divisible, then if there is a ground for termination under this Section of a part which corresponds to a divisible part of the seller's obligations, the seller may terminate only in relation to that part.
2. Paragraph 1 does not apply if the non-performance is fundamental in relation to the contract as a whole.
3. Where the buyer's obligations under the contract are not to be performed in separate parts, the seller may terminate only if the non-performance is fundamental in relation to the contract as a whole.

#### *Article 138*

#### ***Notice of termination***

A right to terminate the contract under this Section is exercised by notice to the buyer.

#### *Article 139*

#### ***Loss of right to terminate***

1. Where performance has been tendered late or a tendered performance otherwise does not conform to the contract the seller loses the right to terminate under this Section unless notice of termination is given within a reasonable time from when the seller has become, or could be expected to have become, aware of the tender or the lack of conformity.
2. A seller loses a right to terminate by notice under Articles 136 unless the seller gives notice of termination within a reasonable time after the right has arisen.
3. Where the buyer has not paid the price or has not performed in some other way which is fundamental, the seller retains the right to terminate.

## **Chapter 14      Passing of risk**

### **SECTION 1   GENERAL PROVISIONS**

#### *Article 140*

#### *Effect of passing of risk*

Loss of, or damage to, the goods or the digital content after the risk has passed to the buyer does not discharge the buyer from the obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

#### *Article 141*

#### *Identification of goods or digital content to contract*

The risk does not pass to the buyer until the goods or the digital content are clearly identified as the goods or digital content to be supplied under the contract, whether by the initial agreement, by notice given to the buyer or otherwise.

### **SECTION 2   PASSING OF RISK IN CONSUMER SALES CONTRACTS**

#### *Article 142*

#### *Passing of risk in a consumer sales contract*

1. In a consumer sales contract, the risk passes at the time when the consumer or a third party designated by the consumer, not being the carrier, has acquired the physical possession of the goods or the tangible medium on which the digital content is supplied.
2. In a contract for the supply of digital content not supplied on a tangible medium, the risk passes at the time when the consumer or a third party designated by the consumer for this purpose has obtained the control of the digital content.
3. Except where the contract is a distance or off-premises contract, paragraphs 1 and 2 do not apply where the consumer fails to perform the obligation to take over the goods or the digital content and the non-performance is not excused under Article 88. In this case, the risk passes at the time when the consumer, or the third party designated by the consumer, would have acquired the physical possession of the goods or obtained the control of the digital content if the obligation to take them over had been performed.
4. Where the consumer arranges the carriage of the goods or the digital content supplied on a tangible medium and that choice was not offered by the trader, the risk passes when the goods or the digital content supplied on a tangible medium are handed over to the carrier, without prejudice to the rights of the consumer against the carrier.

5. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

### **SECTION 3 PASSING OF RISK IN CONTRACTS BETWEEN TRADERS**

#### *Article 143*

##### ***Time when risk passes***

1. In a contract between traders the risk passes when the buyer takes delivery of the goods or digital content or the documents representing the goods.
2. Paragraph 1 is subject to Articles 144, 145 and 146.

#### *Article 144*

##### ***Goods placed at buyer's disposal***

1. If the goods or the digital content are placed at the buyer's disposal and the buyer is aware of this, the risk passes to the buyer at the time when the goods or digital content should have been taken over, unless the buyer was entitled to withhold taking of delivery pursuant to Article 113.
2. If the goods or the digital content are placed at the buyer's disposal at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods or digital content are placed at the buyer's disposal at that place.

#### *Article 145*

##### ***Carriage of the goods***

1. This Article applies to a contract of sale which involves carriage of goods.
2. If the seller is not bound to hand over the goods at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract.
3. If the seller is bound to hand over the goods to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place.
4. The fact that the seller is authorised to retain documents controlling the disposition of the goods does not affect the passing of the risk.

#### *Article 146*

##### ***Goods sold in transit***

1. This Article applies to a contract of sale which involves goods sold in transit.

2. The risk passes to the buyer as from the time the goods were handed over to the first carrier. However, if the circumstances so indicate, the risk passes to the buyer when the contract is concluded.
3. If at the time of the conclusion of the contract the seller knew or could be expected to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

# **Part V Obligations and remedies of the parties to a related service contract**

## **Chapter 15 Obligations and remedies of the parties**

### **SECTION 1 APPLICATION OF CERTAIN GENERAL RULES ON SALES CONTRACTS**

#### *Article 147*

#### *Application of certain general rules on sales contracts*

1. The rules in Chapter 9 apply for the purposes of this Part.
2. Where a sales contract or a contract for the supply of digital content is terminated any related service contract is also terminated.

### **SECTION 2 OBLIGATIONS OF THE SERVICE PROVIDER**

#### *Article 148*

#### *Obligation to achieve result and obligation of care and skill*

1. The service provider must achieve any specific result required by the contract.
2. In the absence of any express or implied contractual obligation to achieve a specific result, the service provider must perform the related service with the care and skill which a reasonable service provider would exercise and in conformity with any statutory or other binding legal rules which are applicable to the related service.
3. In determining the reasonable care and skill required of the service provider, regard is to be had, among other things, to:
  - (a) the nature, the magnitude, the frequency and the foreseeability of the risks involved in the performance of the related service for the customer;
  - (b) if damage has occurred, the costs of any precautions which would have prevented that damage or similar damage from occurring; and
  - (c) the time available for the performance of the related service.
4. Where in a contract between a trader and a consumer the related service includes installation of the goods, the installation must be such that the installed goods conform to the contract as required by Article 101.
5. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of paragraph 2 or derogate from or vary its effects.



*Article 149*  
***Obligation to prevent damage***

The service provider must take reasonable precautions in order to prevent any damage to the goods or the digital content, or physical injury or any other loss or damage in the course of or as a consequence of the performance of the related service.

*Article 150*  
***Performance by a third party***

1. A service provider may entrust performance to another person, unless personal performance by the service provider is required.
2. A service provider who entrusts performance to another person remains responsible for performance.
3. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of paragraph 2 or derogate from or vary its effects.

*Article 151*  
***Obligation to provide invoice***

Where a separate price is payable for the related service, and the price is not a lump sum agreed at the time of conclusion of the contract, the service provider must provide the customer with an invoice which explains, in a clear and intelligible way, how the price was calculated.

*Article 152*  
***Obligation to warn of unexpected or uneconomic cost***

1. The service provider must warn the customer and seek the consent of the customer to proceed if:
  - (a) the cost of the related service would be greater than already indicated by the service provider to the customer; or
  - (b) the related service would cost more than the value of the goods or the digital content after the related service has been provided, so far as this is known to the service provider.
2. A service provider who fails to obtain the consent of the customer in accordance with paragraph 1 is not entitled to a price exceeding the cost already indicated or, as the case may be, the value of the goods or digital content after the related service has been provided.

## **SECTION 3 OBLIGATIONS OF THE CUSTOMER**

### *Article 153*

#### ***Payment of the price***

1. The customer must pay any price that is payable for the related service in accordance with the contract.
2. The price is payable when the related service is completed and the object of the related service is made available to the customer.

### *Article 154*

#### ***Provision of access***

Where it is necessary for the service provider to obtain access to the customer's premises in order to perform the related service the customer must provide such access at reasonable hours.

## **SECTION 4 REMEDIES**

### *Article 155*

#### ***Remedies of the customer***

1. In the case of non-performance of an obligation by the service provider, the customer has, with the adaptations set out in this Article, the same remedies as are provided for the buyer in Chapter 11, namely:
  - (a) to require specific performance;
  - (b) to withhold the customer's own performance;
  - (c) to terminate the contract;
  - (d) to reduce the price; and
  - (e) to claim damages.
2. Without prejudice to paragraph 3, the customer's remedies are subject to a right of the service provider to cure whether or not the customer is a consumer.
3. In the case of incorrect installation under a consumer sales contract as referred to in Article 101 the consumer's remedies are not subject to a right of the service provider to cure.
4. The customer, if a consumer, has the right to terminate the contract for any lack of conformity in the related service provided unless the lack of conformity is insignificant.

5. Chapter 11 applies with the necessary adaptations, in particular:
  - (a) in relation to the right of the service provider to cure, in contracts between a trader and a consumer, the reasonable period under Article 109 (5) must not exceed 30 days;
  - (b) in relation to the remedying of a non-conforming performance Articles 111 and 112 do not apply; and
  - (c) Article 156 applies instead of Article 122.

#### *Article 156*

#### ***Requirement of notification of lack of conformity in related service contracts between traders***

1. In a related service contract between traders, the customer may rely on a lack of conformity only if the customer gives notice to the service provider within a reasonable time specifying the nature of the lack of conformity.

The time starts to run when the related service is completed or when the customer discovers or could be expected to discover the lack of conformity, whichever is later.
2. The service provider is not entitled to rely on this Article if the lack of conformity relates to facts of which the service provider knew or could be expected to have known and which the service provider did not disclose to the customer.

#### *Article 157*

#### ***Remedies of the service provider***

1. In the case of a non-performance by the customer, the service provider has, with the adaptations set out in paragraph 2, the same remedies as are provided for the seller in Chapter 13, namely:
  - (a) to require performance;
  - (b) to withhold the service provider's own performance;
  - (c) to terminate the contract; and
  - (d) to claim interest on the price or damages.
2. Chapter 13 applies with the necessary adaptations. In particular Article 158 applies instead of Article 132 (2).

#### *Article 158*

#### ***Customer's right to decline performance***

1. The customer may at any time give notice to the service provider that performance, or further performance of the related service is no longer required.

2. Where notice is given under paragraph 1:
  - (a) the service provider no longer has the right or obligation to provide the related service; and
  - (b) the customer, if there is no ground for termination under any other provision, remains liable to pay the price less the expenses that the service provider has saved or could be expected to have saved by not having to complete performance.
3. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

## **Part VI Damages and interest**

### **Chapter 16 Damages and interest**

#### **SECTION 1 DAMAGES**

*Article 159*  
***Right to damages***

1. A creditor is entitled to damages for loss caused by the non-performance of an obligation by the debtor, unless the non-performance is excused.
2. The loss for which damages are recoverable includes future loss which the debtor could expect to occur.

*Article 160*  
***General measure of damages***

The general measure of damages for loss caused by non-performance of an obligation is such sum as will put the creditor into the position in which the creditor would have been if the obligation had been duly performed, or, where that is not possible, as nearly as possible into that position. Such damages cover loss which the creditor has suffered and gain of which the creditor has been deprived.

*Article 161*  
***Foreseeability of loss***

The debtor is liable only for loss which the debtor foresaw or could be expected to have foreseen at the time when the contract was concluded as a result of the non-performance.

*Article 162*  
***Loss attributable to creditor***

The debtor is not liable for loss suffered by the creditor to the extent that the creditor contributed to the non-performance or its effects.

*Article 163*  
***Reduction of loss***

1. The debtor is not liable for loss suffered by the creditor to the extent that the creditor could have reduced the loss by taking reasonable steps.
2. The creditor is entitled to recover any expenses reasonably incurred in attempting to reduce the loss.

*Article 164*  
***Substitute transaction***

A creditor who has terminated a contract in whole or in part and has made a substitute transaction within a reasonable time and in a reasonable manner may, in so far as it is entitled to damages, recover the difference between the value of what would have been payable under the terminated contract and the value of what is payable under the substitute transaction, as well as damages for any further loss.

*Article 165*  
***Current price***

Where the creditor has terminated the contract and has not made a substitute transaction but there is a current price for the performance, the creditor may, in so far as entitled to damages, recover the difference between the contract price and the price current at the time of termination as well as damages for any further loss.

**SECTION 2: INTEREST ON LATE PAYMENTS: GENERAL PROVISIONS**

*Article 166*  
***Interest on late payments***

1. Where payment of a sum of money is delayed, the creditor is entitled, without the need to give notice, to interest on that sum from the time when payment is due to the time of payment at the rate specified in paragraph 2.
2. The interest rate for delayed payment is:
  - (a) where the creditor's habitual residence is in a Member State whose currency is the euro or in a third country, the rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question, or the marginal interest rate resulting from variable-rate tender procedures for the most recent main refinancing operations of the European Central Bank, plus two percentage points;
  - (b) where the creditor's habitual residence is in a Member State whose currency is not the euro, the equivalent rate set by the national central bank of that Member State, plus two percentage points.
3. The creditor may recover damages for any further loss.

*Article 167*  
***Interest when the debtor is a consumer***

1. When the debtor is a consumer, interest for delay in payment is due at the rate provided in Article 166 only when non-performance is not excused.

2. Interest does not start to run until 30 days after the creditor has given notice to the debtor specifying the obligation to pay interest and its rate. Notice may be given before the date when payment is due.
3. A term of the contract which fixes a rate of interest higher than that provided in Article 166, or accrual earlier than the time specified in paragraph 2 of this Article is not binding to the extent that this would be unfair according to Article 83.
4. Interest for delay in payment cannot be added to capital in order to produce interest.
5. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.

### **SECTION 3 LATE PAYMENTS BY TRADERS**

#### *Article 168*

#### ***Rate of interest and accrual***

1. Where a trader delays the payment of a price due under a contract for the delivery of goods, supply of digital content or provision of related services without being excused by virtue of Article 88, interest is due at the rate specified in paragraph 5 of this Article.
2. Interest at the rate specified in paragraph 5 starts to run on the day which follows the date or the end of the period for payment provided in the contract. If there is no such date or period, interest at that rate starts to run:
  - (a) 30 days after the date when the debtor receives the invoice or an equivalent request for payment; or
  - (b) 30 days after the date of receipt of the goods, digital content or related services, if the date provided for in point (a) is earlier or uncertain, or if it is uncertain whether the debtor has received an invoice or equivalent request for payment.
3. Where conformity of goods, digital content or related services to the contract is to be ascertained by way of acceptance or examination, the 30 day period provided for in point (b) of paragraph 2 begins on the date of the acceptance or the date the examination procedure is finalised. The maximum duration of the examination procedure cannot exceed 30 days from the date of delivery of the goods, supply of digital content or provision of related services, unless the parties expressly agree otherwise and that agreement is not unfair according to Article 170.
4. The period for payment determined under paragraph 2 cannot exceed 60 days, unless the parties expressly agree otherwise and that agreement is not unfair according to Article 170.
5. The interest rate for delayed payment is:
  - (a) where the creditor's habitual residence is in a Member State whose currency is the euro or in a third country, the interest rate applied by the European Central

Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question, or the marginal interest rate resulting from variable-rate tender procedures for the most recent main refinancing operations of the European Central Bank, plus eight percentage points;

- (b) where the creditor's habitual residence is in a Member State whose currency is not the euro, the equivalent rate set by the national central bank of that Member State, plus eight percentage points.
6. The creditor may recover damages for any further loss.

#### *Article 169*

#### ***Compensation for recovery costs***

1. Where interest is payable in accordance with Article 168, the creditor is entitled to obtain from the debtor, as a minimum, a fixed sum of EUR 40 or the equivalent sum in the currency agreed for the contract price as compensation for the creditor's recovery costs.
2. The creditor is entitled to obtain from the debtor reasonable compensation for any recovery costs exceeding the fixed sum referred to in paragraph 1 and incurred due to the debtor's late payment.

#### *Article 170*

#### ***Unfair contract terms relating to interest for late payment***

1. A contract term relating to the date or the period for payment, the rate of interest for late payment or the compensation for recovery costs is not binding to the extent that the term is unfair. A term is unfair if it grossly deviates from good commercial practice, contrary to good faith and fair dealing, taking into account all circumstances of the case, including the nature of the goods, digital content or related service.
2. For the purpose of paragraph 1, a contract term providing for a time or period for payment or a rate of interest less favourable to the creditor than the time, period or rate specified in Articles 167 or 168, or a term providing for an amount of compensation for recovery costs lower than the amount specified in Article 169 is presumed to be unfair.
3. For the purpose of paragraph 1, a contract term excluding interest for late payment or compensation for recovery costs is always unfair.

#### *Article 171*

#### ***Mandatory nature***

The parties may not exclude the application of this Section or derogate from or vary its effects.



## **Part VII Restitution**

### **Chapter 17 Restitution**

#### *Article 172*

##### ***Restitution on avoidance or termination***

1. Where a contract is avoided or terminated by either party, each party is obliged to return what that party (“the recipient”) has received from the other party.
2. The obligation to return what was received includes any natural and legal fruits derived from what was received.
3. On the termination of a contract for performance in instalments or parts, the return of what was received is not required in relation to any instalment or part where the obligations on both sides have been fully performed, or where the price for what has been done remains payable under Article 8 (2), unless the nature of the contract is such that part performance is of no value to one of the parties.

#### *Article 173*

##### ***Payment for monetary value***

1. Where what was received, including fruits where relevant, cannot be returned, or, in a case of digital content whether or not it was supplied on a tangible medium, the recipient must pay its monetary value. Where the return is possible but would cause unreasonable effort or expense, the recipient may choose to pay the monetary value, provided that this would not harm the other party’s proprietary interests.
2. The monetary value of goods is the value that they would have had at the date when payment of the monetary value is to be made if they had been kept by the recipient without destruction or damage until that date.
3. Where a related service contract is avoided or terminated by the customer after the related service has been performed or partly performed, the monetary value of what was received is the amount the customer saved by receiving the related service.
4. In a case of digital content the monetary value of what was received is the amount the consumer saved by making use of the digital content.
5. Where the recipient has obtained a substitute in money or in kind in exchange for goods or digital content when the recipient knew or could be expected to have known of the ground for avoidance or termination, the other party may choose to claim the substitute or the monetary value of the substitute. A recipient who has obtained a substitute in money or kind in exchange for goods or digital content when the recipient did not know and could not be expected to have known of the ground for avoidance or termination may choose to return the monetary value of the substitute or the substitute.

6. In the case of digital content which is not supplied in exchange for the payment of a price, no restitution will be made.

#### *Article 174*

#### ***Payment for use and interest on money received***

1. A recipient who has made use of goods must pay the other party the monetary value of that use for any period where:
  - (a) the recipient caused the ground for avoidance or termination;
  - (b) the recipient, prior to the start of that period, was aware of the ground for avoidance or termination; or
  - (c) having regard to the nature of the goods, the nature and amount of the use and the availability of remedies other than termination, it would be inequitable to allow the recipient the free use of the goods for that period.
2. A recipient who is obliged to return money must pay interest, at the rate stipulated in Article 166, where :
  - (a) the other party is obliged to pay for use; or
  - (b) the recipient gave cause for the contract to be avoided because of fraud, threats and unfair exploitation.
3. For the purposes of this Chapter, a recipient is not obliged to pay for use of goods received or interest on money received in any circumstances other than those set out in paragraphs 1 and 2.

#### *Article 175*

#### ***Compensation for expenditure***

1. Where a recipient has incurred expenditure on goods or digital content, the recipient is entitled to compensation to the extent that the expenditure benefited the other party provided that the expenditure was made when the recipient did not know and could not be expected to know of the ground for avoidance or termination.
2. A recipient who knew or could be expected to know of the ground for avoidance or termination is entitled to compensation only for expenditure that was necessary to protect the goods or the digital content from being lost or diminished in value, provided that the recipient had no opportunity to ask the other party for advice.

#### *Article 176*

#### ***Equitable modification***

Any obligation to return or to pay under this Chapter may be modified to the extent that its performance would be grossly inequitable, taking into account in particular whether the party did not cause, or lacked knowledge of, the ground for avoidance or termination.

*Article 177*  
*Mandatory nature*

In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Chapter or derogate from or vary its effects.

## **Part VIII      Prescription**

### **Chapter 18      Prescription**

#### **SECTION 1 GENERAL PROVISIONS**

##### *Article 178*

##### ***Rights subject to prescription***

A right to enforce performance of an obligation, and any right ancillary to such a right, is subject to prescription by the expiry of a period of time in accordance with this Chapter.

#### **SECTION 2 PERIODS OF PRESCRIPTION AND THEIR COMMENCEMENT**

##### *Article 179*

##### ***Periods of prescription***

1. The short period of prescription is two years.
2. The long period of prescription is ten years or, in the case of a right to damages for personal injuries, thirty years.

##### *Article 180*

##### ***Commencement***

1. The short period of prescription begins to run from the time when the creditor has become, or could be expected to have become, aware of the facts as a result of which the right can be exercised.
2. The long period of prescription begins to run from the time when the debtor has to perform or, in the case of a right to damages, from the time of the act which gives rise to the right.
3. Where the debtor is under a continuing obligation to do or refrain from doing something, the creditor is regarded as having a separate right in relation to each non-performance of the obligation.

## SECTION 3 EXTENSION OF PERIODS OF PRESCRIPTION

### *Article 181*

#### *Suspension in case of judicial and other proceedings*

1. The running of both periods of prescription is suspended from the time when judicial proceedings to assert the right are begun.
2. Suspension lasts until a final decision has been made, or until the case has been otherwise disposed of. Where the proceedings end within the last six months of the prescription period without a decision on the merits, the period of prescription does not expire before six months have passed after the time when the proceedings ended.
3. Paragraphs 1 and 2 apply, with appropriate adaptations, to arbitration proceedings, to mediation proceedings, to proceedings whereby an issue between two parties is referred to a third party for a binding decision and to all other proceedings initiated with the aim of obtaining a decision relating to the right or to avoid insolvency.
4. Mediation means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the national law. Mediation ends by an agreement of the parties or by declaration of the mediator or one of the parties.

### *Article 182*

#### *Postponement of expiry in the case of negotiations*

If the parties negotiate about the right, or about circumstances from which a claim relating to the right might arise, neither period of prescription expires before one year has passed since the last communication made in the negotiations or since one of the parties communicated to the other that it does not wish to pursue the negotiations.

### *Article 183*

#### *Postponement of expiry in case of incapacity*

If a person subject to an incapacity is without a representative, neither period of prescription of a right held by that person expires before one year has passed since either the incapacity has ended or a representative has been appointed.

## **SECTION 4 RENEWAL OF PERIODS OF PRESCRIPTION**

### *Article 184*

#### ***Renewal by acknowledgement***

If the debtor acknowledges the right vis-à-vis the creditor, by part payment, payment of interest, giving of security, set-off or in any other manner, a new short period of prescription begins to run.

## **SECTION 5 EFFECTS OF PRESCRIPTION**

### *Article 185*

#### ***Effects of prescription***

1. After expiry of the relevant period of prescription the debtor is entitled to refuse performance of the obligation in question and the creditor loses all remedies for non-performance except withholding performance.
2. Whatever has been paid or transferred by the debtor in performance of the obligation in question may not be reclaimed merely because the period of prescription had expired at the moment that the performance was carried out.
3. The period of prescription for a right to payment of interest, and other rights of an ancillary nature, expires not later than the period for the principal right.

## **SECTION 6 MODIFICATION BY AGREEMENT**

### *Article 186*

#### ***Agreements concerning prescription***

1. The rules of this Chapter may be modified by agreement between the parties, in particular by either shortening or lengthening the periods of prescription.
2. The short period of prescription may not be reduced to less than one year or extended to more than ten years.
3. The long period of prescription may not be reduced to less than one year or extended to more than thirty years.
4. The parties may not exclude the application of this Article or derogate from or vary its effects.
5. In a contract between a trader and a consumer this Article may not be applied to the detriment of the consumer.

## Appendix 1

### Model instructions on withdrawal

#### Right of withdrawal

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period expires after 14 days from the day 1.

To exercise the right of withdrawal, you must inform us (2) of your decision to withdraw from this contract by a clear statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model withdrawal form, but it is not obligatory. (3)

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

#### Effects of withdrawal

If you withdraw from this contract, we will reimburse all payments received from you, including the costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), without undue delay and in any event not later than 14 days from the day on which we are informed about your decision to withdraw from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement. (4)

(5)

(6)

#### Instructions for completion:

(1) Insert one of the following texts between inverted commas here:

- a) in the case of a related service contract or a contract for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium: "of the conclusion of the contract.";
- b) in the case of a sales contract: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods.";
- c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last good.";

- d) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.";
- e) in the case of a contract for regular delivery of goods during a defined period of time: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first good."

2 Insert your name, geographical address and, where available, your telephone number, fax number and e-mail address.

3 If you give the option to the consumer to electronically fill in and submit information about his or her withdrawal from the contract on your website, insert the following: "You can also electronically fill in and submit the model withdrawal form or any other clear statement on our website [insert internet address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a withdrawal on a durable medium (e.g. by e-mail) without delay."

4 In the case of sales contracts in which you have not offered to collect the goods in the event of withdrawal insert the following: "We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest".

5 If the consumer has received goods in connection with the contract, insert the following:

a insert:

- "We will collect the goods."; or
- "You shall send back the goods or hand them over to us or \_\_\_\_ [insert the name and geographical address, where applicable, of the person authorised by you to receive the goods], without undue delay and in any event not later than 14 days from the day on which you communicate your withdrawal from this contract to us. The deadline is met if you send back the goods before the period of 14 days has expired."

b insert either:

- "We will bear the cost of returning the goods."; or
- "You will have to bear the direct cost of returning the goods."; or
- If, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: "You will have to bear the direct cost of returning the goods, \_\_\_\_ EUR [insert the amount]."; or if the cost of returning the goods cannot reasonably be calculated in advance: "You will have to bear the direct cost of returning the goods. The cost is estimated to a maximum of approximately \_\_\_\_ EUR [insert the amount]"; or



- If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer's home at the time of the conclusion of the contract: "We will collect the goods at our own expense."

Ⓢ "You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods."

Ⓢ In the case of a contract for the provision of related services insert the following: "If you requested to begin the performance of related services during the withdrawal period, you shall pay us an amount which is in proportion to what has been provided until you have communicated us your withdrawal from this contract, in comparison with the full coverage of the contract."

## Appendix 2

### Model withdrawal form

(complete and return this form only if you wish to withdraw from the contract)

- To [here the trader's name, geographical address and, where available, his fax number and e-mail address are to be inserted by the trader]:
- I/We\* hereby give notice that I/We\* withdraw from my/our\* contract of sale of the following goods\*/for the supply of the following digital content/for the provision of the following related service\*
- Ordered on\*/received on\*
- Name of consumer(s)
- Address of consumer(s)
- Signature of consumer(s) (only if this form is notified on paper)
- Date

\* Delete as appropriate.

## ANNEX II

### STANDARD INFORMATION NOTICE

The contract you are about to conclude will be governed by the Common European Sales Law, which is an alternative system of national contract law available to consumers in cross-border situations. These common rules are identical throughout the European Union, and have been designed to provide consumers with a high level of protection.

These rules only apply if you mark your agreement that the contract is governed by the Common European Sales Law.

You may also have agreed to a contract on the telephone or in any other way (such as by SMS) that did not allow you to get this notice beforehand. In this case the contract will only become valid after you have received this notice and confirmed your consent.

Your core rights are described below.

### **THE COMMON EUROPEAN SALES LAW: SUMMARY OF KEY CONSUMER RIGHTS**

#### **Your rights before signing the contract**

The trader has to give you the important **information on the contract**, for instance on the product and its price including all taxes and charges and his contact details. The information has to be more detailed when you buy something outside the trader's shop or if you do not meet the trader personally at all, for instance if you buy online or by telephone. You are entitled to damages if this information is incomplete or wrong.

#### **Your rights after signing the contract**

In most cases you have 14 days to **withdraw from the purchase if you bought the goods** outside the trader's shop or if you have not met the trader up to the time of the purchase (for instance if you bought online or by telephone). The trader must provide you with information and a Model withdrawal **form**<sup>23</sup>. If the trader has not done so, you can cancel the contract within one year.

**What can you do when products are faulty or not delivered as agreed?** You are entitled to choose between: 1) having the product delivered 2) replaced or 3) repaired. 4) Ask for a price reduction. 5) You can cancel the contract, return the product and get a refund, except if the defect is very small. 6) You can claim damages for your loss. You do not have to pay the price until you get the product without defects.

If the trader has not performed a related *service* as promised in the contract, you have similar rights. However, after you have complained to the trader, he normally has the right to first try to do the job correctly. Only if the trader fails again you have a choice between 1) asking the trader again to provide the related service, 2) not paying the price until you get the related service supplied correctly, 3) requesting a price reduction or 4) claiming damages. 5) You can also cancel the contract and get a refund, except if the failure in providing the related service

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<sup>23</sup> Insert a link here.

is very small. **Period to claim your rights when products are faulty or not delivered as agreed:** You have 2 years to claim your rights after you realise or should have realised that the trader has not done something as agreed in the contract. Where such problems become apparent very late, the last possible moment for you to make such a claim is 10 years from the moment the trader had to deliver the goods, supply the digital content or provide the related service.

**Unfair terms protection:** Trader's standard contract terms which are unfair are not legally binding for you.

This list of rights is only a summary and therefore not exhaustive, nor does it contain all details. You can consult the full text of the Common European Sales Law [here](#). Please read your contract carefully.

In case of dispute you may wish to ask for legal advice.