

COMECON 1968 GENERAL CONDITIONS FOR THE DELIVERY OF GOODS

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I. INTRODUCTION

The world's most advanced unification of international trade law in actual operation belongs to the Council for Mutual Economic Assistance (Comecon).¹ Many other regional and international groups have attempted such unification, and in 1966 the U.N. General Assembly formed the United Nations Commission on International Trade Law (UNCITRAL) to promote these efforts. But it is Comecon through its *General Conditions for the Delivery of Goods*² that has best achieved the final step—putting a unification into practice.

The Comecon *General Conditions* go far beyond the standardized terms and form contracts used in the West. Since their adoption in 1958, these *General Conditions* have regulated with the force of law any sales contract concluded between foreign trade organizations of the Comecon countries without the need for any reference to the *General Conditions* in the contract or for any other adoption of them by the contracting parties.

Recently the 1958 *General Conditions* underwent their first major revision.³ The outcome was the 1968 *General Conditions*, which have enlarged the 1958 version and improved its organization. Officially entitled *General Conditions for the Delivery of Goods Between Organizations of Member-Countries of the Council for Mutual Economic Assistance*,⁴ the

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¹ Member countries of the Council for Mutual Economic Assistance, sometimes translated the Council for Mutual Economic Aid, are: Bulgaria, Czechoslovakia, East Germany, Hungary, Mongolia, Poland, Rumania, and the Soviet Union. Albania is apparently also still a member, but no longer participates in the activities of the organization.

² For an extended discussion of the *General Conditions*, see Hoya, *The Comecon General Conditions—A Socialist Unification of International Trade Law*, 70 COLUM. L. REV. 253 (1970). For an examination of the legal regulation of Soviet Foreign trade including the relations between the Soviet foreign trade combines and Soviet domestic economic enterprises, see a forthcoming book by Mr. Quigley.

³ The only other change in the *General Conditions* since their inception in 1958 was an amendment of their payments chapter made effective in 1964 to accommodate the formation in that year of the Comecon International Bank for Economic Cooperation.

⁴ The title of the 1958 version is GENERAL CONDITIONS FOR THE DELIVERY OF GOODS BETWEEN FOREIGN TRADE ORGANIZATIONS OF PARTICIPATING COUNTRIES OF THE COUNCIL FOR MUTUAL ECONOMIC ASSISTANCE. In the title of the 1968 version, omission of the

1968 *General Conditions* govern all contracts concluded in Comecon foreign trade on and after January 1, 1969. Any contract concluded before 1969 continues to be subject to the 1958 *General Conditions*, unless the contracting parties elect to submit their contract to the 1968 *General Conditions*.

The *General Conditions* in both their 1958 and 1968 versions are broad in scope. Matters covered include conclusion of the contract, terms of delivery, guarantees, payment, remedies for contract breach, and arbitration. For those matters of substantive law not unified, the *General Conditions* provide a conflict of laws reference to the substantive law of the seller's country.

The most important change effected by the 1968 *General Conditions* is the addition of a statute of limitations. This addition fills a major gap in the 1958 unification, a gap that proved troublesome because of substantial differences among the member-countries in limitations periods and procedures for their application. The member-countries' statutes of limitations vary from one and one-half to five years in the time period; they are imperative in some countries and nonimperative in others, and can be applied in some countries by the court or arbitration tribunal on its own initiative and in other countries only at the request of a party.⁵

Besides adding a statute of limitations, the 1968 *General Conditions* amplify, clarify, and reorganize many of the provisions of the 1958 *General Conditions*. Much of the increase from the 1958 *General Conditions*' 74 sections to the 1968 *General Conditions*' 110 sections, aside from the statute of limitations' 12 sections, stems from this reworking and subdividing of sections. As with the statute of limitations, this redrafting essentially grew out of the experience gained from a decade of operating under the 1958 *General Conditions*.

A. Summary of 1968 *General Conditions*

Chapter I—Conclusion of the Contract (§§ 1-4). This chapter is enlarged over the 1958 version, but the basic provisions remain the same. A contract is deemed concluded between parties in each other's presence when it is signed or, between parties not in each other's presence, when the offeror receives an unconditional acceptance (§ 1). The offeror is bound by his offer for 30 days unless the offer expressly provides otherwise (§ 1). The offer, acceptance, and any amendments to the contract must be in writing (§ 2). An addition to Chapter I made by the 1968

modifying words FOREIGN TRADE before ORGANIZATIONS reflects the growing practice in a number of the countries to permit economic organizations other than specialized foreign trade organizations to buy and sell abroad. Burguchev & Rozenberg, *Obshchie Usloviia Postavok SEV 1968 Goda (Comecon 1968 General Conditions of Delivery)*, 1969 VNESHNIAIA TORGOVIA (FOREIGN TRADE) No. 5, at 30, 31.

⁵ *Id.* at 36; LUNZ, *Conflict of Laws in International Sale: Theory and Practice of Socialist Countries*, 114 RECUEIL DES COURS 1, 17 (1965).

General Conditions is that an acceptance received late but sent within the time period for acceptance will be deemed late only if the offeror immediately informs the offeree of the late receipt (§ 1).

Chapter II—Terms of Delivery (§§ 5-10). This chapter is little changed from the 1958 version. The risk of accidental loss or damage passes to the buyer simultaneously with the right of ownership in the goods, upon delivery. In carriage by rail, delivery is to be made f.o.b. the border of the seller's country (§ 5), in carriage by air, f.o.b. the place in the seller's country the goods are transferred to the air carrier (§ 8), and in carriage by motor vehicle, f.o.b. the place in the seller's country the goods are loaded onto the buyer's means of transport or, if the seller delivers the goods outside his own country, f.o.b. the border of the seller's country (§ 6). In postal dispatch, the seller pays transportation expenses to the buyer's address, but the right of ownership and risk of accidental loss or damage pass upon transfer of the goods to the postal department in the seller's country (§ 9). Only in carriage by water may the contracting parties choose delivery f.o.b., c.i.f., or c. & f. (§ 7). In any means of carriage a seller must insure only if expressly so required by the contract (§ 10).

Chapter III—Times of Delivery (§§ 11-14). This chapter is significantly enlarged over the 1958 version. One important provision remaining from the 1958 version is that if the buyer causes substantial production difficulties for the seller by failing timely to perform contractual obligations to assure the seller's production or by changing data previously furnished to the seller, the seller may postpone delivery commensurately (§ 13).

Chapter IV—Quality of Goods (§§ 15-17). This chapter is significantly enlarged over the 1958 version. If the quality of the goods is not established in the contract, the seller must deliver "goods of the usual average quality existing in the seller's country for the delivery of the given type of goods, and conforming to the intended use provided in the contract" (§ 15). The requirement of conformity to the intended use was added in 1968.

Chapter V—Quantity of Goods (§§ 18-19). This chapter is little changed from the 1958 version. The chapter specifies which shipping documents are determinative of quantity in the various modes of transport used for delivery.

Chapter VI—Packing and Marking (§§ 20-23). Packing and marking, each the subject of a separate chapter in the 1958 version, are now combined into one chapter, but with little change in their provisions, which are detailed.

Chapter VII—Technical Documentation (§§ 24-25). This chapter is little changed from the 1958 version.

Chapter VIII—Verification of the Quality of Goods (§§ 26-27). This chapter is little changed from the 1958 version. The seller is obliged to verify the quality of the goods and to furnish the buyer with a document confirming the quality (§ 26). Provisions are made for cases where the contract gives the buyer a right to participate in the verification in the seller's country (§ 27).

Chapter IX—Guarantees (§§ 28-38). This chapter is significantly enlarged over the 1958 version. Specific guarantee periods are established for certain types of goods (§ 29). If during the guarantee period the goods prove defective, the buyer may demand elimination of the defect or a reduction in price (§ 31). If the buyer demands elimination of the defect, the seller has to repair or replace the goods (§ 31). Even if the buyer demands a reduction in price, the seller may still repair or replace the goods rather than grant the reduction (§ 31). The buyer may combine his demand for elimination of the defect or a reduction in price with a demand for payment of a penalty (§ 31).

Chapter X—Shipping Instructions and Notifications of Delivery (§§ 39-48). This chapter is somewhat reorganized but otherwise little changed from the 1958 version.

Chapter XI—Procedure for Payment (§§ 49-67). A revised version of this chapter was implemented in 1964 to take into account the organization in that year of the Comecon International Bank for Economic Cooperation, and this revised version is little changed in the 1968 *General Conditions*. Normally the "subsequent-acceptance" form of payment is used. Thus, the seller receives payment from the bank of his country upon the presentation of certain shipping and/or other documents, without needing prior authorization from the buyer (§§ 49-50). The bank of the seller's country, having paid the seller, sends the documents received from the seller to the bank of the buyer's country, and receives payment from that bank either directly or through the International Bank for Economic Cooperation (§ 50). The bank of the buyer's country simultaneously collects from the buyer and gives the buyer the documents (§ 50). A buyer having so paid may demand full repayment in certain enumerated situations (§§ 52, 53), and partial repayment in others (§§ 52, 54, 55). Services are paid for in a manner similar to that outlined above for payment for goods (§§ 59-65). Payment for goods using a letter of credit is also provided for (§ 67).

Chapter XII—Occurrences Relieving the Parties of Liability (§§ 68-70). This *force majeure* chapter is reorganized and the notice and proof of *force majeure* section is enlarged over the 1958 version, but the basic provisions of the chapter remain the same. A party's nonperformance of a contract is excused if caused by "circumstances of insuperable force," defined as circumstances (1) arising after conclusion of the contract (2) as

a result of events of an extraordinary character (3) that were unforeseen and (4) unavoidable by the party (§ 68).⁶ A party's nonperformance may be excused also by provisions in the contract itself, in a bilateral agreement between the foreign trade ministries of the buyer's and seller's countries, or in the law of the seller's country (§ 68).

Chapter XIII—Claims for Quality and Quantity (§§ 71-82). This chapter, which governs claims regarding goods for which no guarantee was given or for which the guarantee has expired, is enlarged over the 1958 version, but the basic provisions remain the same. Time limits for claim presentation are short: six months for quality claims and three months for quantity claims, both periods measured from the date of delivery and not from the date when the defect was or should have been discovered (§ 72). In presenting such a quality or quantity claim, the buyer may demand either a correction of the deficiency or a price adjustment, and the seller must satisfy the demand that is made (§ 75). The buyer may combine his demand for correction of the deficiency or for a price adjustment with a demand for payment of a penalty (§ 75). Declaration of a claim with respect to one lot of goods does not give the buyer the right to refuse subsequent lots under the contract, such right arising only after repeated deliveries of defective lots (§ 80).

Chapter XIV—Sanctions (§§ 83-89). This chapter is significantly enlarged over the 1958 version, but the basic provisions remain the same. For a delay in delivery, the seller has to pay the buyer a penalty based on the number of days of delay and the value of the goods delivered late, but the total penalty may not exceed eight percent of the value of such goods (§ 83). For a delay in delivery exceeding four months, or in the case of large-scale equipment made-to-order six months, the buyer may refuse performance of the contract in relation to the delayed goods (§ 85).

Chapter XV—Arbitration (§§ 90-91). This chapter is expanded over the 1958 version, but the basic provisions remain the same. All disputes arising out of a contract or in connection with it are subject to arbitration in the defendant's country or, by agreement of the parties, in a third Comecon country (§ 90). The jurisdiction of general, i.e., judicial, courts is excluded (§ 90). Each Comecon country has a special foreign trade arbitration tribunal for foreign trade cases.

Chapter XVI—Limitation of Actions (§§ 92-103). This chapter is wholly new with the 1968 *General Conditions*. The limitation periods are short—the general period is two years, and a special period of one year applies to claims for quality and quantity of goods and for payment of a penalty (§ 93). The limitation period is applied by the arbitration tri-

⁶ Berman, *Unification of Contract Clauses in Trade Between Member-Countries of the Council for Mutual Economic Aid*, 7 INT'L & COMP. L.Q. 659, 663 (1958).

bunal only if the debtor pleads it (§ 95), and expiration of the period extinguishes only the remedy, not the right (§ 96).

Chapter XVII—Other Provisions (§§ 104-110). This chapter is somewhat changed and reorganized from the 1958 version. The flat prohibition in 1958 against either party's transferring rights and obligations under a contract to third persons without the other party's consent has now been eased so that a competent organ can authorize such a transfer (§ 108). As in the 1958 *General Conditions*, the conflict of laws section provides that all questions not regulated by the contract or by the *General Conditions* are governed by the substantive law of the seller's county (§ 110).

B. Translation Note

The translation that follows has been made from the Russian language version of the 1968 *General Conditions*.^{6a} The reader may wish to compare these 1968 *General Conditions* with the 1958 *General Conditions*, translated from the Russian in Berman, *Unification of Contract Clauses in Trade Between Member-Countries of the Council for Mutual Economic Aid*, 7 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 659 (1958). Just before the preamble and each section of the translation of the 1968 *General Conditions* below, a bracketed insertion indicates the source, if any, in the 1958 *General Conditions* (as amended in 1964) of the portion of the 1968 *General Conditions* that follows. The above cited translation of the 1958 *General Conditions* noted that the Russian version frequently used different words to express the same idea,⁷ a defect in style according to standards of English language legal draftsmanship. This same style characteristic is true of the Russian version of the 1968 *General Conditions*, and this style characteristic has been sought to be preserved in the translation that follows. All footnotes to the translation have been added except for the footnote to section 29, which is from the original.

II. TEXT

GENERAL CONDITIONS FOR THE DELIVERY OF GOODS BETWEEN ORGANIZATIONS OF MEMBER-COUNTRIES OF COMECON

(GENERAL CONDITIONS OF COMECON, 1968)

[1958 preamble with minor changes]

All deliveries of goods between organizations, authorized to conduct

^{6a} An unpublished English translation of the 1968 *General Conditions* has recently been prepared under the auspices of Comecon.

⁷ *Id.* at 664-65. For example, "to convey the meaning 'if the contract does not state otherwise,'" the Russian verb is sometimes "stipulate" (*ogovorit'*), sometimes "determine" (*opredelit'*), sometimes "establish" (*ustanovit'*), and sometimes "provide" (*predusmotret'*). *Id.*

foreign trade operations, of member-countries⁸ of the Council for Mutual Economic Assistance shall be made on the basis of the following General Conditions of Delivery.

In those instances when the parties in concluding a contract come to the conclusion that because of the specific nature of the goods and/or special characteristics of their delivery a departure from individual provisions of the present General Conditions of Delivery is required, the parties may so agree in the contract.

Chapter I

CONCLUSION OF THE CONTRACT

§ 1

[1958 § 1, 1st para., with minor changes is 1968 § 1, para. 1; 1968 § 1, paras. 2, 3, & 4 are new]

1. The contract shall be deemed to have been concluded:

- (a) between parties in the presence of each other⁹—at the time it is signed by the contracting parties;
- (b) between parties not in the presence of each other—at the time the offeror receives notification of unconditional acceptance of the offer within the period specified in the offer; if no such period is determined in the offer, then within 30 days from the day of dispatch of the offer.

2. If the offeror receives a notification of acceptance that is other than unconditional acceptance or receives a notification of acceptance after expiration of the period specified in the offer or in subparagraph (b) of paragraph 1 of the present section, then such notification shall be considered to be a counteroffer. If, however, it is evident from a notification of acceptance received late that the notification was sent before expiration of the period specified in the offer or in subparagraph (b) of paragraph 1 of the present section, the notification shall be deemed late only if the party that made the offer immediately informs the other party of the late receipt of the notification.

3. The offer shall be considered binding on the offeror unless it is otherwise expressly stipulated in the offer, or unless notification of revocation reaches the buyer before or simultaneously with receipt of the offer.

4. Within the meaning of the word “offer” in the present General Conditions of Delivery shall also be understood an order, and within the

⁸ The phrase “of member-countries” refers to the organizations, not to foreign trade operations.

⁹ *Inter praesentes.*

meaning of the words "acceptance of an offer" shall also be understood confirmation of an order.

§ 2

[1958 § 1, 2d & 3d paras., with minor changes]

1. The offer and the acceptance of the offer shall be valid on condition that they are executed in written form. Written form shall also be understood to include communications by telegraph and teletype.

2. Attachments to, additions to, and changes in the contract shall also be executed in the form provided in paragraph 1 of the present section.

§ 3

[1958 § 2 substantially unchanged]

All attachments to the contract, such as technical conditions,¹⁰ specifications, special conditions of testing, requirements for packing, marking, loading, and other attachments that are specified in the contract or that contain a reference to the particular contract, shall form an integral part of the contract.

§ 4

[1958 § 3 substantially unchanged]

After conclusion of the contract all previous correspondence and negotiations for the contract shall lose their force.

Chapter II

TERMS OF DELIVERY

§ 5

[1958 § 4 substantially unchanged]

In carriage by rail, deliveries shall be made f.o.b. the border of the seller's country, in which case:

(a) the seller shall bear the expenses of transporting the goods as far as the state border of his country; the expenses of transshipment and/or rewheeling shall be borne by the buyer;

(b) the right of ownership in the goods, as well as the risk of accidental loss or accidental damage to the goods, shall pass from the seller to

¹⁰ In the Soviet Union technical conditions are official product specifications prescribed for various products by various governmental bodies.

the buyer at the time of transfer of the goods from the railroad of the seller's country to the railroad that receives the goods;

(c) the date of delivery shall be the date of the stamp on the rail bill of lading¹¹ of the border station at which the goods are transferred by the railroad of the seller's country to the railroad that receives the goods.

§ 6

[1958 § 5 substantially unchanged]

In carriage by motor vehicle, deliveries shall be made f.o.b. the place of loading the goods onto the buyer's means of transport, but if the goods are delivered by the seller's means of transport beyond the state border of his country, f.o.b. the place of inspection of the goods by the border customs of the country bordering on the seller's country, in which case:

(a) the seller shall bear the expenses of transporting the goods as far as the place where the goods are loaded onto the buyer's means of transport, but if the goods are delivered by the seller's means of transport beyond the state border of his country, then to the place of inspection of the goods by the border customs of the country bordering on the seller's country;

(b) the right of ownership in the goods, as well as the risk of accidental loss or accidental damage to the goods, shall pass from the seller to the buyer at the time of receipt of the goods from the seller's means of transport onto the buyer's means of transport, but if the goods are delivered by the seller's means of transport beyond the state border of his country, then at the time of inspection of the goods by the border customs of the country bordering on the seller's country;

(c) the date of delivery shall be the date of the document confirming receipt of the goods by the buyer's means of transport, but when the goods are delivered beyond the state border of the seller's country by the seller's means of transport, then the date of inspection of the goods by the border customs of the country bordering on the seller's country.

§ 7

[1958 § 6 substantially unchanged]

1. In carriage by water, deliveries shall be made f.o.b., c.i.f., or c. & f. the port provided in the contract.

¹¹ A distinction is made in Russian legal terminology, as in Continental legal terminology generally, between two types of bills of lading. The first type is *nakladnaia* (German *frachtbrief*, French *lettre de voiture*), which is any kind of bill of lading. The second type is *konosament* (German *konosament*, French *connaissance*), which is a bill of lading used only in carriage by sea. The English term "bill of lading" is used in this translation of the Comecon *General Conditions* for both types of bills of lading, since English legal terminology does not make the distinction made in Continental terminology. The Russian term in § 5, para. (c) of the *General Conditions* is *nakladnaia*.

2. In delivery f.o.b.:

(a) the seller shall bear all expenses until the time of loading the goods on board the vessel. The parties may, however, agree in the contract that the seller shall also bear the expenses of loading the goods into the hold of the vessel, including the expenses of stacking (stowage) of the goods;

(b) the right of ownership in the goods, as well as the risk of accidental loss or accidental damage to the goods, shall pass from the seller to the buyer at the time of passage of the goods over the vessel's rail at the port of loading;

(c) the date of delivery shall be the date of the on-board bill of lading¹² or of the water bill of lading.¹³

3. In delivery c.i.f. and c. & f.:

(a) the seller shall bear all transportation expenses until the time of the vessel's arrival at the port of unloading. All expenses of unloading the goods from the holds of the vessel shall be borne by the buyer; however, in carriage on line vessels where the expenses of unloading the goods are included in the freight, these expenses shall not be reimbursed to the seller by the buyer;

(b) the right of ownership in the goods, as well as the risk of accidental loss or accidental damage to the goods, shall pass from the seller to the buyer at the time of passage of the goods over the vessel's rail at the port of loading;

(c) the date of delivery shall be the date of the on-board bill of lading¹⁴ or of the water bill of lading.¹⁵

4. In carriage by water, it may be agreed in the contract which of the parties shall bear the expenses of separation materials.

§ 8

[1958 § 7 substantially unchanged]

In carriage by air, deliveries shall be made f.o.b. the place of transfer of the goods for carriage to the air transport organization in the seller's country, in which case:

(a) the seller shall bear all expenses until the time of transfer of the goods to the air transport organization in the seller's country;

(b) the right of ownership in the goods, as well as the risk of accidental loss or accidental damage to the goods, shall pass from the seller to

¹² The Russian term is *konosament*. See note 11 *supra*.

¹³ The Russian term is *nakladnaia*. See note 11 *supra*.

¹⁴ The Russian term is *konosament*. See note 11 *supra*.

¹⁵ The Russian term is *nakladnaia*. See note 11 *supra*.

the buyer at the time of transfer of the goods to the air transport organization in the seller's country;

(c) the date of delivery shall be the date of the air bill of lading.¹⁶

§ 9

[1958 § 8 substantially unchanged]

In postal dispatch, deliveries shall be made f.o.b. the recipient, in which case:

(a) the seller shall bear all transportation expenses as far as the point of destination;

(b) the right of ownership in the goods, as well as the risk of accidental loss or accidental damage to the goods, shall pass from the seller to the buyer at the time of transfer of the goods to the postal department of the seller's country. The right of claim under a contract of carriage concluded with the postal department shall pass from the seller to the buyer at the time of transfer of the package to the postal department of the seller's country.

(c) the date of delivery shall be the date of the postal receipt.

§ 10

[1958 § 69 unchanged]

The seller shall not be obliged to insure the goods being delivered unless such is expressly provided by the contract.

Chapter III

TIMES OF DELIVERY

§ 11

[New]

1. Unless otherwise agreed in the contract, in bulk delivery of goods by individual lots, the shipment of the individual lots within the time periods established in the contract must be spaced in time as evenly as possible.

2. The provisions of paragraph 1 of the present section shall not apply to the delivery of complete plants¹⁷ and of complete installations.

3. The provisions of paragraph 1 of the present section also shall not

¹⁶ The Russian term is *nakladnaia*. See note 11 *supra*.

¹⁷ Turn-key contracts.

apply to perishable agricultural and animal produce of a seasonal character. In the delivery of such produce the parties may agree on periodic shipments within the established time periods.

§ 12

[New]

1. Except for cases established in the contract, the seller may make early or installment delivery of the goods only with the consent of the buyer.

2. If the buyer, in giving consent to early or installment delivery, does not stipulate supplementary terms, then the seller shall make the delivery on the terms established in the contract.

§ 13

[1958 § 9 substantially unchanged is 1968 § 13,
paras. 1 & 2; 1968 § 13, para. 3 is new]

1. If the buyer does not perform within the times established in the contract obligations provided by the contract for assuring the seller's production, or if the buyer subsequently changes data furnished by him, and if in connection with such nonperformance or change by the buyer there follow substantial difficulties for the seller connected with production, then the seller shall have the right to postpone the time of delivery commensurately, though not longer than the period of delay on the buyer's part in performing the aforementioned obligations, and/or to demand compensation for the actual losses incurred in connection with the buyer's delayed performance or change of data.

2. The seller shall be obliged to inform the buyer in good time of the postponement of the delivery time.

3. In exceptional, technically justified cases, a technically justified time period other than that provided by paragraph 1 of the present section may be established by agreement between the seller and the buyer. However, if the parties do not arrive at an agreement, then the provisions of paragraph 1 of the present section shall apply.

§ 14

[1958 § 10 substantially unchanged]

1. If in a contract for machines and equipment specific times of delivery of component parts are not established, then the date of delivery shall be the day when delivery is made of the last part of the machine or

equipment without which the given machine or equipment cannot be put into operation.

2. The provisions of the present section shall not deprive the buyer of his rights in relation to undelivered parts.

Chapter IV

QUALITY OF GOODS

§ 15

[1958 § 11 substantially unchanged up to "and conforming"; beginning with these words, 1968 § 15 is new]

If it is not established in the contract that the quality of the goods must conform to a defined quality characteristic, technical conditions, or standard¹⁸ (with specification of number and date), or to a model agreed on between the parties, then the seller shall be obliged to deliver goods of the usual average quality existing in the seller's country for the delivery of the given type of goods, and conforming to the intended use provided in the contract. If the intended use of the goods is not specified in the contract, the goods delivered shall be of the usual average quality conforming to the usual intended use of such goods in the seller's country.

§ 16

[1958 § 12 is 1968 § 16, para. 2; 1968 § 16, para. 1 is new]

1. During the period of performance of the contract the seller shall be obliged to inform the buyer of improvements and changes in the design of the machines and equipment forming the subject of the contract.

2. Improvements involving design changes, if such improvements are proposed after conclusion of the contract, may be introduced only by agreement of the parties.

§ 17

[New]

The quality of items and parts delivered in place of defective ones must be such that the quality of the goods of which they become an integral part conforms to the requirements of the contract.

¹⁸ In the Soviet Union standards and technical conditions are official product specifications prescribed for various products by various governmental bodies.

Chapter V

QUANTITY OF GOODS

§ 18

[1958 § 13 substantially unchanged, except that last paragraph of 1958 § 13 is omitted and 1968 § 18, para. 1, subpara. (c) is new]

The number of pieces and/or weight of the delivered goods shall be determined:

1. In carriage by rail:

(a) if the number of pieces and/or weight of the goods was determined by the railroad station of departure in the seller's country, which determination must be certified by a representative of the railroad in the appropriate columns of the rail bill of lading¹⁹—on the basis of the rail bill of lading²⁰ for direct international rail freight communication;

(b) if the number of pieces and/or weight of the goods at the railroad station of departure in the seller's country was determined by the consignor and was not verified by the railroad, then in carriage without transshipment, unless otherwise established by the contract—on the basis of the bill of lading²¹ for direct international railroad freight communication; but in the event that the weight and/or number of pieces was verified by the railroad en route or at the station of destination, the goods and car having arrived at the place of verification in a condition excluding the railroads' liability—on the basis of the document reflecting the results of such weighing and/or verification of the number of pieces by the railroad, drawn up in conformity with the Agreement on International Rail Freight Communication (A.I.F.C.).

(c) if the number of pieces and/or weight of the goods at the railroad station of departure in the seller's country was determined by the consignor and was not verified by the railroad, then in carriage with transshipment the number of pieces and/or weight of the goods shall be determined in a procedure established by the bilateral agreement²² or by the contract.

2. In carriage by motor vehicle—on the basis of the document of carriage.

¹⁹ The Russian term is *nakladnaia*. See note 11 *supra*.

²⁰ The Russian term is *nakladnaia*. See note 11 *supra*.

²¹ The Russian term is *nakladnaia*. See note 11 *supra*.

²² "Bilateral agreement" as used in these *General Conditions* means an agreement between the foreign trade ministries of the buyer's and seller's countries containing commercial provisions designed to supplement these *General Conditions*.

3. In carriage by water—on the basis of the bill of lading²³ or of the water bill of lading.²⁴
4. In carriage by air—on the basis of the air bill of lading.²⁵
5. In postal dispatch—on the basis of the postal receipt.
6. In the event the goods are placed in a warehouse in accordance with § 40 and § 41—on the basis of the warehouse certificate or storage receipt.

§ 19

[1958 § 13, last para., substantially unchanged]

The verification of the quantity of delivered goods in specified units of measurement (for example, by meter, piece, pair, net weight) shall be made in units specified by the seller.

Chapter VI

PACKING AND MARKING

§ 20

[1958 § 14 substantially unchanged]

1. If there are no special directions in the contract concerning packing, the seller must ship the goods in packing that is used for export goods in the seller's country and that will assure preservation of the goods during carriage, taking into account possible transshipment and proper and usual handling of the goods. In appropriate cases the duration and means of transport must also be taken into account.

2. Before packing, machines and equipment must be properly greased to assure their preservation from corrosion.

§ 21

[1958 § 15 with minor changes]

1. In each freight parcel there must be enclosed a detailed packing list.

2. In delivery of equipment and machines, the packing list must indicate: the name of the machines and of individual component parts packed in the given parcel, their quantity with the statement of technical data designated in the manner stipulated in the contract, the factory

²³ The Russian term is *konosament*. See note 11 *supra*.

²⁴ The Russian term is *nakladnaia*. See note 11 *supra*.

²⁵ The Russian term is *nakladnaia*. See note 11 *supra*.

number of the machines, drawing number, gross and net weight, and exact marking of the given parcel so that it is possible to establish the identity of the goods through the data of technical specification indicated in the contract.

3. One copy of the packing list in a waterproof envelope shall be enclosed together with the equipment or machine in the crate or shall be fastened to the outside of the crate.

4. In cases where the equipment or machine is shipped without packing, the envelope of waterproof paper containing the packing list must be covered with a thin tin sheet welded directly to the metal parts of the machine.

§ 22

[1958 § 16 substantially unchanged]

Unless otherwise established in the contract, the seller shall be obliged to send, together with the transport documents, one copy of the weight specification per parcel and of the document confirming the quality of the goods.

§ 23

[1958 § 17 substantially unchanged]

1. Unless otherwise established in the contract, on each freight parcel there must be clearly applied with indelible paint the following marking:
contract number and/or the buyer's order number
parcel number
consignee
net and gross weight in kilograms.

2. In carriage by rail, the marking must conform to the requirements of the A.I.F.C.²⁶

3. In carriage by water, the marking must also contain the dimensions of the crates in centimeters, and where necessary the port of destination and the country of destination of the goods.

4. In carriage by other means of transport, the marking must satisfy the requirements of the rules in force for such means of transport.

5. If, by virtue of the specific nature of the goods, a special (precautionary) marking is required, the seller shall be obliged to apply such marking.

6. Crates shall be marked on the two butt-ends, and uncrated goods on two sides.

²⁶ Agreement on International Rail Freight Communication.

7. Marking shall be applied in the language of the seller's country, with a translation of its text into Russian or German.

8. For equipment and machines, the parcel number shall be written as a fraction, of which the numerator shall be the number of the parcel in the series, and the denominator shall be the total number of parcels in which the complete unit of equipment is packed.

Chapter VII

TECHNICAL DOCUMENTATION

§ 24

[1958 § 18 with additions that include 1968 § 24, para. 3]

1. If the contract does not determine which technical documentation (drawings, specifications, instructions for maintenance and operation and for installation, etc.) must be transferred by the seller in connection with performance of the contract, and also the number of sets of documents, and the procedure and times for their delivery, then the seller must furnish the buyer technical documentation in conformity with the practice existing in the corresponding sector of industry in the seller's country, and at such times as to ensure normal use of the machines and/or equipment, putting them into operation, and maintaining them, as well as current repair.

2. The technical documentation must be prepared in such a way as to ensure the possibility of normal use of the machines and/or equipment in production, and in the case of complete installations, to ensure the installing, if the contract does not provide that the seller shall do the installing work, and to ensure starting, operating, and maintaining the machines and/or equipment during the process of operation, as well as current repairs.

3. The technical documentation must be written in the language agreed upon in the contract.

4. In the technical documentation must be indicated the appropriate contract number, the appropriate allocation order number, and the appropriate lot (tranche) number.

5. The technical documentation that is provided for in the contract and that is sent together with the goods must be wrapped in waterproof paper or protected in some other fashion from damage during transport with the goods.

6. If the contract does not establish times of transfer by the seller to the buyer of drawings for foundations, or of construction specifications,

or of data necessary for designing the foundations, then the parties shall make a supplementary agreement as to such times.

§ 25

[1958 § 19 substantially unchanged]

1. Unless otherwise established by the contract, the exclusive right to the technical documentation transferred to the buyer shall be retained by the seller.

2. The buyer shall have the right to use the technical documentation furnished him over which the seller retains the exclusive right, or to permit it to be used, only within the limits of his country and only for the maintenance, operation, and repair (including manufacture of spare parts necessary for repair) of the machine and/or equipment for which the particular documentation was transferred.

3. Technical documentation transferred in accordance with the contract shall not be subject to publication.

4. In case of rescission of the contract, technical documentation transferred by the seller to the buyer must at the demand of the seller be returned to the latter without delay, but not later than three months from the day of rescission of the contract.

5. If the manufacture of goods is carried out according to technical documentation of the buyer, the relevant provisions of the present section shall apply to the mutual relations of the parties in respect to such technical documentation.

Chapter VIII

VERIFICATION OF THE QUALITY OF GOODS

§ 26

[1958 § 20 substantially unchanged is 1968 § 26, paras. 1-5; 1968 § 26, para. 6 is new]

1. Before shipment of the goods the seller shall be obliged at his own expense to submit the quality of the goods to verification (by test, analysis, examination, etc., depending on the type of goods) in accordance with the conditions agreed upon with the buyer; and in case there are no such agreed conditions, in accordance with the usual conditions of verification existing in the seller's country with relation to the given goods.

2. In delivery of mass produced industrial goods and agricultural goods, including consumer goods and food products, in the event other conditions are absent from the contract, the verification of quality shall be

carried out only in relation to samples selected at random in accordance with generally accepted rules in the seller's country.

3. Before shipment of goods to be delivered, there must be drawn up, at the direction and expense of the seller, in relation to machines and equipment on which a test is performed, a report of the test indicating the essential details and results of the test, and in relation to other goods, a certificate of quality or other document confirming the conformity of the quality of the goods to the conditions of the contract.

4. Unless otherwise established by the contract, the seller shall be obliged to furnish the buyer with the appropriate document confirming the quality of the goods. A test report shall be furnished by the seller to the buyer at the demand of the latter.

5. If, as a result of special characteristics of the machines or equipment or of other circumstances, verification of the productivity specified in the contract is required at the site of installation, such verification shall be carried out in full or in part at the site of installation of the machines or equipment in the buyer's country, in the procedure and within the time limits established in the contract.

6. In delivery of a complete set of large-scale equipment, a representative of the seller shall at the request of the buyer and on terms agreed on by the parties take part in verification of the quality provided by the contract for such equipment. The results of the verification shall be indicated in a report to be signed by both parties.

§ 27

[1958 § 21 substantially unchanged]

1. In cases where the contract provides a right of participation by the buyer's representative in the verification of the quality of the goods in the country of the seller, the latter shall be obliged to notify the buyer of the readiness of the goods for verification in time to give the buyer an opportunity to take part in the verification.

2. The seller shall be obliged to assure the buyer of an opportunity to participate in the verification, in accordance with the terms of the contract and of the procedure used in the given sector of industry. All expenses connected with the conduct of the verification (expenses for personnel, for use of technical equipment, power, auxiliary materials, etc.), with the exception of expenses for the buyer's representative, shall be borne by the seller.

3. The absence of a representative of the buyer during the conduct of the verification of the quality of the goods shall not delay shipment of the goods, if there is a document confirming the conformity of the goods to the conditions of the contract.

4. The participation of a representative of the buyer in the verification of the quality of the goods conducted by the seller shall not relieve the seller of liability for the quality of the goods.

Chapter IX

GUARANTEES

§ 28

[1958 § 22 unchanged is 1968 § 28, para. 1;
1968 § 28, para. 2 is new]

1. During the guarantee period the seller shall be answerable for the quality of the goods, including the quality of the materials used in their manufacture and the design of machines and equipment (if the equipment, machines, etc., are not manufactured according to drawings of the buyer), as well as for those characteristics of the goods that are agreed upon in the contract.

2. The extent and conditions of a guarantee of technical and economic performance of complete plants and of complete installations must be determined in the bilateral agreement²⁷ or in the contract.

§ 29

[1958 § 23 substantially unchanged, except that 1958 § 23, last para., is omitted, and 1968 § 29, para. 1 footnote is new]

1. Guarantee periods shall be established:*

(a) for items of precise mechanical construction, measuring instruments, optical articles and instruments—9 months from the date of delivery;

(b) for standard machines and apparatus, small and medium-sized installations—12 months, beginning with the starting day of operation, but not more than 15 months from the date of delivery;

(c) for large-scale machines and large installations—12 months, beginning with the starting day of operation, but not more than 24 months from the date of delivery.

2. For complete plants and complete installations, longer guarantee periods may be agreed upon in the contract.

3. For machines and equipment not specified in the present section,

²⁷ See note 22 *supra*.

* In delivery of goods to the Mongolian People's Republic from countries not having a common state border with the Mongolian People's Republic, guarantee periods calculated from the date of delivery shall be extended by two months. [Footnote in original].

vessels and other floating structures, railroad rolling stock, wheel components of railroad rolling stock, and cable products, as well as for goods for which a guarantee is provided by agreement of the parties or on the basis of a trade custom, as, for example, canned goods and consumer durables, guarantee periods shall be established in the contract.

§ 30

[1958 § 23, last para. substantially unchanged]

In case of delay in putting machines or equipment into operation through the fault of the seller, as, for example, in consequence of the seller's failure to present drawings, operating instructions, or other data or services provided for by the contract, a guarantee period calculated from the date of delivery shall be extended by the period of the delay, arising through the fault of the seller, in putting the machines or equipment into operation.

§ 31

[1958 § 24, 1st para., with changes is 1968 § 31, paras. 1, 2, & 5;
1968 § 31, paras. 3, 4, 6, 7, & 8 are new]

1. If during the guarantee period the goods prove defective or not in conformity with the terms of the contract, then irrespective of whether or not this fact could have been established in testing at the seller's plant, the buyer shall have the right to demand either the elimination of the discovered defects or a reduction in the price of the goods.

2. If the buyer demands elimination of the defects, then the seller shall be obliged at his own expense to eliminate the discovered defects without delay, either by making repairs or by replacing the defective goods or defective parts of the goods with new ones conforming to the requirements of the contract or to the requirements of § 17.

3. If the buyer demands a reduction in the price of the goods, then the seller shall have the right at his discretion either to eliminate the defect, or to replace the goods or defective part of the goods, or to give the buyer a price reduction in an agreed upon amount.

4. If the seller does not eliminate the defect within the agreed upon time or, if no such time was agreed upon, within a technically justified time, then the buyer shall have the right to demand from the seller, instead of elimination of the defect, the allowance of a proportional price reduction.

5. In instances provided in paragraph 2 of the present section, and also in instances where the seller undertook the obligation to eliminate the defect or to replace the defective goods on the basis of para. 3 of the present section, the buyer shall have the right to demand from the seller

payment of a penalty in the procedure and in the amount provided by § 75, paragraph 4.

6. In the event of agreement between the parties on a reduction in the price of the goods instead of an elimination of the defect, the parties, in agreeing upon the amount of the price reduction, must agree as to whether the penalty charged and/or paid in accordance with paragraph 5 of the present section is to be included in the amount of the price reduction or whether the price reduction is to be taken over and above such penalty.

7. If the parties agreed on the amount of the price reduction but did not reach an agreement on the question of whether the penalty specified in paragraph 5 of the present section is to be included in the amount of the price reduction or whether the price reduction is to be made over and above such penalty, then in those instances where the actual losses that have arisen for the buyer as result of nonuse of the goods prior to the time of agreement on the price reduction:

—are lower than the amount of the penalty, the penalty charged and/or paid shall be lowered to the amount of the actual losses;

—are higher than the amount of the penalty, the actual losses exceeding the amount of the penalty shall be paid by the seller to the buyer, if such is provided for in the bilateral agreement.²⁸

8. If the bilateral agreement²⁹ or contract establishes the right of the buyer to rescind the contract but does not contain the conditions for rescission, then the buyer may exercise such right if an arbitration tribunal determines that the seller cannot eliminate the defect through repair or replacement and that the buyer cannot use the goods as intended taking into account a price reduction proposed by the seller.

§ 32

[1958 § 24, 2d para., & 1958 § 55, both with minor changes, are 1968 § 32, paras. 1 & 3; 1968 § 32, para. 2 is new]

1. Replaced defective goods or defective parts of goods shall be returned to the seller not later than 6 months after receipt by the buyer of the seller's demand for their return. The seller shall have the right to demand the return of defective goods or defective parts of goods not later than 6 months, and in the case of complete plants and installations not later than 12 months, from the date of replacement.

2. Failure to present a demand for the return of replaced defective goods within the times specified in paragraph 1 of the present section shall deprive the seller of the right to go to arbitration.

3. All transportation and other expenses connected with the return

²⁸ See note 22 *supra*.

²⁹ See note 22 *supra*.

and/or replacement of defective goods or of defective parts of goods, on the territory of the buyer's country and of a country of transit as well as on the territory of the seller's country, shall be borne by the seller.

§ 33

[1958 § 25 substantially unchanged]

1. If the seller, at the demand of the buyer, does not without delay eliminate the declared defects, the buyer shall have the right to eliminate them himself at the seller's expense, without prejudice to his rights under the guarantee. The seller shall be obliged in such event to pay for the repairs in the amount of normal actual expenses.

2. Minor deficiencies whose elimination cannot be postponed and does not require the seller's participation shall be repaired by the buyer, charging the seller for normal actual expenses.

§ 34

[1958 § 26 substantially unchanged]

The seller shall not be liable under a guarantee if he proves that the discovered defects did not arise through his fault but occurred, in particular, as a result of improper installation by the buyer, improper repair of the equipment or machines by the buyer, failure of the buyer to observe the instructions for operation and maintenance, or changes made by the buyer in the equipment or machines.

§35

[1958 § 27 substantially unchanged]

In case of repair or replacement of defective goods or of defective parts of goods, the guarantee periods for the basic equipment or machines shall be extended by the period during which the equipment or machines were not used as a result of the defect discovered.

§ 36

[New]

Unless otherwise established in the contract, guarantee periods for spare parts delivered together with machines or equipment shall expire at the same time as the guarantee period for such machines or equipment.

§ 37

[New]

1. Guarantees for fast wearing spare parts that are being delivered shall be granted by agreement between the seller and buyer with consider-

ation given to international practice. The guarantees agreed upon shall be stipulated in the contract.

2. Unless otherwise agreed upon in the contract, the seller must, at the request of the buyer, ensure delivery of fast wearing spare parts for which no guarantee is given, or for which the guarantee period is less than the guarantee period for the basic machines and equipment, for the entire guarantee period established for the machines or equipment in quantities determined on the basis of normal operation of such machines or equipment and of the normal use of such spare parts. If the cost of such spare parts is not included in the price of the machines or equipment, the spare parts shall be delivered for a supplementary payment.

§ 38

[New]

For parts of goods being delivered to replace defective parts, a guarantee may be established in the contract, with consideration given to international practice.

Chapter X

SHIPPING INSTRUCTIONS AND NOTIFICATIONS OF DELIVERY

§ 39

[1958 § 28 substantially unchanged]

1. The mode of transportation shall be agreed upon by the parties.
2. If no other time limits are established in the contract, the buyer shall be obliged to transmit shipping data to the seller not later than 30 days before commencement of the time established in the contract for delivery of the goods.

§ 40

[1958 § 29 substantially unchanged]

1. Unless otherwise established in the contract, the right to determine the route of carriage in carriage by rail shall belong to the buyer.
2. Unless other data is provided for in the contract, the shipping instruction, in carriage by rail, must contain the rate schedule, the border crossing point for the goods in the seller's country, the consignee, as well as the station of destination. The buyer shall be obliged to determine the crossing point of the goods in the seller's country at the shortest pos-

sible total distance between the station of shipment and the station of destination.

3. The seller shall be obliged to reimburse the buyer for all expenses arising as a result of the seller's failure to observe the data in the shipping instruction.

4. If the seller does not in good time receive from the buyer an instruction to ship goods subject to delivery by rail, the seller shall have the right, upon expiration of the delivery period established by the parties, to place the goods in storage at the expense and risk of the buyer. In such event the buyer shall also reimburse additional expenses connected with delivery of the goods to the warehouse and from the warehouse into cars. The date of the warehouse certificate or storage receipt of acceptance of the goods for storage shall be considered as the date of delivery of the goods. However, the seller shall not be relieved of the duty to ship the goods to the buyer's address and to pay the expenses of delivering the goods to the border.

§ 41

[1958 § 30 substantially unchanged is 1968 § 41,
paras. 1 & 3-7; 1968 § 41, para. 2 is new]

1. In delivery f.o.b., the seller shall be obliged to notify the buyer by telegraph or teletype, within the time established by the contract, of the readiness of the goods for shipment to the port.

2. Unless otherwise agreed upon in the contract, the notification must contain the following data:

name of the goods,

quantity of the goods, with an indication of the gross weight,

contract number.

3. Upon receipt of the notification, the buyer shall be obliged within a 7-day period to inform the seller by telegraph or teletype of the time of delivery of the goods to the port of shipment. Such time may not be less than 15 or more than 30 days, counting from the date the specified notification was sent to the seller.

4. In the event of delay in obtaining freight space, the buyer shall bear the expenses of storing the goods in a warehouse at the port of shipment in excess of 21 days, counting from the date the goods arrive at the port of shipment. However, if the goods are taken to the port by the seller before the time agreed upon by the parties, the charging of storage expenses to the buyer shall commence only upon expiration of 21 days after the agreed upon time of delivery of the goods to the port.

5. Upon expiration of 21 days, the seller shall have the right to place the goods in storage at the expense and risk of the buyer; the buyer

must be notified of such storage immediately. In such event the buyer shall also reimburse additional expenses that arose after expiration of 21 days in connection with delivery of the goods to the warehouse and from the warehouse on board the vessel.

6. Storage of goods in a port may be entrusted only to a warehouse or organization that has the right to issue warehouse certificates. A document of storage of the goods in a warehouse at a port, issued by a state port administration or by a state forwarding agent, shall also be regarded as a warehouse certificate.

7. The date of the warehouse certificate shall be considered the date of delivery of the goods. The seller, however, shall not be relieved of the duties provided by § 7, paragraph 2, subparagraph (a).

§ 42

[1958 § 31 substantially unchanged]

If, according to the contract, freight space must be obtained by the seller, the buyer shall be obliged, at least 55 days before the time of delivery, to inform the seller of the port of destination of the goods, and the seller shall be obliged, at least 7 days before the day of the beginning of the loading of the goods, to notify the buyer by telegraph or teletype of the proposed shipment, indicating the name of the vessel, the expected date of sailing for the port of destination, the name of the goods, the number of pieces and/or the tentative weight.

§ 43

[1958 § 32 with additions]

1. If no time and/or method of sending the notification of subsequent shipment of the goods is agreed upon in the contract, or if it is not provided that no notification is required, then in carriage by rail, motor vehicle, or air the seller shall be obliged to send the notification to the buyer at such time and by such method that the buyer receives it before arrival of the goods at the border of the buyer's country.

2. Unless otherwise established in the contract, the notification must contain the following data:

- date of shipment,
- name of the goods,
- quantity of the goods,
- contract number,
- car number (in carriage by rail).

§ 44

[1958 § 33 substantially unchanged is 1968 § 44, paras. 1, 2, & 4; 1968 § 44, para. 3 is new]

1. Unless otherwise established in the contract, in carriage by water the seller or his forwarding agent shall be obliged to notify the buyer by telegraph or teletype of shipment of the goods immediately after the vessel's sailing, but not later than two hours from the time of sailing if the period of carriage of the cargo from the port of shipment to the port of destination does not exceed 72 hours, or not later than 24 hours from the time of sailing if the period of carriage exceeds 72 hours.

2. Unless otherwise established in the contract, such notification must contain the following data:

name of the vessel,
date of its sailing,
port of destination,
name of the goods,
contract number,
number of the bill of lading³⁰ (or water bill of lading),³¹
number of pieces,
gross weight,
quantity, in specified units of measurement (in pieces, pairs, net tons, etc.).

3. A notification sent by telegraph or teletype must be confirmed by letter.

4. If as a result of untimely notification there is demurrage at the port of unloading, the seller shall bear the expenses of the demurrage.

§ 45

[1958 § 34 unchanged]

The seller shall bear the expenses of notifying the buyer of shipment of goods.

§ 46

[1958 § 66 substantially unchanged]

1. If the railroad makes available a car with a larger loading capacity than that applied for by the seller, or if the railroad, relying on the limits of pressure on the axle for the particular section, refuses to load the car up to the weight norm prescribed or provided by the schedule for

³⁰ The Russian term is *konosament*. See note 11 *supra*.

³¹ The Russian term is *nakladnaia*. See note 11 *supra*.

the given freight, the seller shall be obliged to demand official confirmation of such refusal by the railroad in the bill of lading.³²

2. The provisions of paragraph 1 of the present section shall also extend to cases where cars are made available by the buyer.

§ 47

[1958 § 67 substantially unchanged]

If the car, through fault of the seller, is not loaded in accordance with the norms of the Uniform Transit Tariff (UTT), the seller shall bear the expenses for the consequent under-loading on the transit railroads.

§ 48

[1958 § 68 substantially unchanged]

In the event of delivery of freight not corresponding to the dimension requirements of the railroad of the buyer's country, the seller shall be obliged, not later than two months before the time of delivery, to warn the buyer of this fact by a registered letter, attaching drawings that show the dimensions of the freight, with an indication of its measurements and weight. The date of shipment and the border station through which the freight is to pass shall be subject to precise definition by the parties. In such event the date of shipment must be confirmed by the seller not later than 21 days before shipment of the goods.

Chapter XI

PROCEDURE FOR PAYMENT

§ 49

[1964 § 35 substantially unchanged]

1. Payment for goods being delivered shall be made in the encashment³³ form with subsequent acceptance (encashment with immediate payment) against presentation by the seller to the bank of the seller's country of the following documents:

(a) an invoice in three copies indicating: year and name of the agreement (or protocol), number of the contract and/or buyer's order, item covering the goods in the agreement (or protocol), and other data provided for by the contract.

³² The Russian term is *nakladnaia*. See note 11 *supra*.

³³ "Encashment" (*inkasso*) is a banking operation whereby an obligee collects, through a bank, money owed him by presenting to the bank documents confirming the existence of the debt.

In the event of delivery of goods before conclusion of the agreement (or protocol), instead of the year and name of the agreement (or protocol), and the item covering the goods in the agreement (or protocol), the invoice shall indicate only the year to the account of whose quota the delivery is being made;

(b) the transport document, depending on the type of carriage agreed upon in the contract, or the warehouse certificate or storage receipt in instances provided for in § 40 and § 41 respectively of the present General Conditions of Delivery, or a statement of the transfer and acceptance of the goods by the seller to the buyer, or, in the event of more than one consignment in a car:

the forwarding agent's receipt for dispatch, indicating the car number, the rail bill of lading³⁴ number, and the date of dispatch, or, if so agreed in the contract, the forwarding agent's receipt of acceptance of the freight for subsequent dispatch without a right of recall by the seller;

(c) other documents provided for in the contract.

2. If so established in the contract, the invoice (or invoice statement), in addition to the cost of the goods, may also include the cost of the freight, insurance, and other expenses subject to payment pursuant to the same invoice and in the same procedure as the goods themselves.

3. One of the three copies of the invoice or, by agreement of the seller and the buyer, a duplicate of the invoice, shall be presented by the seller, either through the bank or directly, to the trade delegation or to the trade counsellor (or the counsellor for economic affairs) of the embassy of the buyer's country in the seller's country, upon demand of the trade delegation or of the trade counsellor (or the counsellor for economic affairs).

§ 50

[1964 § 36 substantially unchanged is 1968 § 50, paras. 1, 2, & 3; 1968 § 50, para. 4 is new]

1. The seller shall bear full liability for the conformity to the terms of the contract of the documents presented by him to the bank pursuant to § 49, paragraph 1, subparagraphs (a), (b), and (c), and of the data contained in them.

2. The bank of the seller's country shall verify the presence of the documents provided for in § 49, paragraph 1, subparagraphs (a) and (b), and the internal consistency of all documents presented with respect to content and numerical data.

3. The bank of the seller's country, on the basis of the verified docu-

³⁴ The Russian term is *nakladnaia*. See note 11 *supra*.

ments, shall make payment to the seller and, in accordance with the agreements in force between the countries and/or the banks, shall settle the accounts with the bank of the buyer's country, sending the documents directly to the bank of the buyer's country without delay. The bank of the buyer's country shall transfer the documents to the buyer without delay, simultaneously collecting from the buyer the amount paid pursuant to these documents by the bank of the seller's country. For this accounting, prior consent on the part of the buyer shall not be required.

4. The payment obligations of the buyer to the seller shall be considered fulfilled, if the accounting is made through the International Bank for Economic Cooperation, at the time of making entries in the accounts of the bank of the buyer's country and of the bank of the seller's country at the International Bank for Economic Cooperation, or if the accounting is made through accounts opened by the national banks with each other, at the time of making an entry in the account of the bank of the buyer's country at the bank of the seller's country.

§ 51

[1964 § 37 substantially unchanged]

If the buyer, in giving consent to early delivery, did not simultaneously stipulate otherwise, it shall be considered that he also gave consent to early payment.

§ 52

[1964 § 38, 1st sentence, substantially unchanged]

The buyer shall have the right, within 14 working days from the day of receipt by his country's bank of the seller's invoice, to demand return of all or part of the amount paid in the instances provided respectively in § 53, § 54, and § 55.

§ 53

[1964 § 38, para. A, substantially unchanged except that last sentence is omitted]

The buyer shall have the right to demand return of the entire amount of the invoice, if:

1. The goods were not ordered, or were shipped after rescission of the contract with the consent of the seller.
2. The goods were already paid for previously by the buyer.
3. All the types of documents specified in § 49, paragraph 1, subparagraphs (a), (b), and (c) were not presented.

4. The equipment was shipped incomplete, whereas the contract provided for payment for complete shipments.

5. The seller shipped the goods earlier than the time established by the contract without the buyer's consent, or received payment before commencement of the delivery period for goods in relation to which the buyer agreed to early shipment but warned that he did not agree to early payment.

6. The seller shipped the goods after receipt of the buyer's renunciation of the contract made in accordance with § 70 and § 85.

7. The invoice and/or the documents attached to it have discrepancies or insufficient information such that it is not possible to determine the quantity, and/or grade, and/or quality, and/or cost of the goods.

8. Detailed prices provided for by the contract are not indicated in the invoice, or the rate specifications provided for by the contract are not attached.

9. Payment is to be made in a form other than encashment³⁵ with subsequent acceptance (encashment with immediate payment) or is to be made through another account.

10. Other circumstances occur in relation to which such a right is expressly provided by the contract.

§ 54

[1964 § 38, para. A, last sentence, substantially unchanged]

The buyer may also at his discretion demand partial return of the amount of the invoice for the reasons specified in § 53, paragraphs 2-9.

§ 55

[1964 § 38, para. B, substantially unchanged]

The buyer shall have the right to demand partial return of the amount of the invoice, if:

1. The prices in the invoice exceed those established by the contract, or expenses whose payment was not agreed upon in the contract are included in the invoice.

2. From the documents on the basis of which payment was made, it is evident that goods that were not ordered were shipped together with the goods that were ordered.

3. The buyer refuses to accept part of the goods in view of the seller's nonobservance of the assortment established by the contract, if such nonobservance of the assortment is evident from the documents on the basis of which payment was made.

³⁵ See note 33 *supra*.

4. From the documents on the basis of which payment was made, it is evident that the quantity of goods shipped exceeds the quantity ordered, and the excess of the quantity of the goods shipped over the quantity of goods ordered exceeds the tolerance established by the contract.

5. The quantity of goods specified in the invoice exceeds the quantity specified in the transport documents and/or specifications.

6. In the invoice or in the documents attached to it there is discovered an arithmetical error in favor of the seller.

7. Other circumstances occur in relation to which such a right is expressly provided by the contract.

§ 56

[1964 § 39, para. 1, 1st-4th subparas., substantially unchanged, are 1968 § 56, paras. 1-4; 1964 § 39, para. 2, substantially unchanged, is 1968 § 56, para. 5]

1. In presenting a demand for full or partial return of an amount paid on the basis of the seller's invoice, the buyer shall be obliged to present to the bank of the buyer's country a declaration, binding on the buyer and giving reasons for the demand, in a number of copies to be determined by the bank of the buyer's country, but not less than three. One copy of this declaration is intended for transmittal to the seller. The buyer must, in every instance of making a declaration for return of the amount, refer to that paragraph of § 53 or of § 55 on the basis of which he demands return of the amount.

2. Simultaneously with presenting to the bank a demand for return of the amount, the buyer shall be obliged to inform the seller of the return being made. In the event of continual installment deliveries, such notice must be given by telegraph or teletype.

3. At the demand of the bank, the buyer shall be obliged to present to the bank the documents necessary to justify the conformity of the reasons of the demand for return of the amount paid to the conditions specified in § 53 or § 55.

4. If the declaration for return of the amount paid relates to § 53, paragraph 10, or to § 55, paragraph 7, or to § 62, paragraph 5, the bank of the buyer's country shall in every instance verify the presence of these conditions.

5. In the instances referred to in § 53, paragraphs 1, 3, and 6, and in § 55, paragraphs 2, 3, and 4, the buyer, in his declaration containing the demand for return of the amount paid, shall be obliged at the same time to confirm that he is holding the goods not accepted by him at the disposal of the seller, at the expense and risk of the latter.

§ 57

[1964 § 39, paras. 3-6, substantially unchanged, are
1968 § 57, paras. 1, 3, 4, & 5; 1964 § 39, para. 1,
5th subpara., substantially unchanged, is 1968 § 57,
para. 2]

1. If the bank of the buyer's country establishes that a demand for full or partial return of an amount paid conforms to the conditions provided by § 53 or § 55, then the bank of the buyer's country shall restore the amount deducted from the buyer's account in accordance with the agreements in force between the countries and/or the banks. Simultaneously the bank of the buyer's country shall send a copy of the buyer's declaration to the bank of the seller's country, which shall debit the seller's account.

2. In returning amounts, the bank of the buyer's country shall notify the bank of the seller's country of the date of receipt of the documents specified in § 49, paragraph 1, subparagraphs (a), (b), and (c).

3. In the event of a full return of an amount received pursuant to an invoice in accordance with § 53, paragraphs 1, 3, and 6, the buyer shall be obliged to return to the seller at the seller's first demand the documents received by the buyer relating to the given lot of the goods.

4. After return to the buyer of an amount received previously by the seller, the seller shall have the right for a second time to present to his country's bank a document and/or invoice, together with a copy of the buyer's declaration for a return, for new payment through encashment³⁶ with subsequent acceptance (encashment with immediate payment) if in the instances specified:

(a) in § 53, paragraphs 3, 7, and 8, the seller has presented the missing and/or corrected documents;

(b) in § 53, paragraph 4, the seller has made complete delivery;

(c) in § 53, paragraph 5, the time for payment provided by the contract has arrived;

(d) in § 53, paragraph 9, the seller has presented documents for payment through the appropriate account.

5. After restoration by the bank of the amount to the buyer's account, all disagreements between the seller and the buyer shall be resolved directly between them.

§ 58

[1964 § 39, para. 7, substantially unchanged]

If the buyer admits, or an arbitration tribunal establishes, that the amount paid was without justification returned to the buyer on the basis

³⁶ See note 33 *supra*.

of his demand, the buyer must, in addition to payment of the said amount, pay a penalty in the amount of 0.1% of such amount for each day of delay, counting from the day of return of the amount until the day of final payment, but not exceeding 5% of the amount returned without justification.

§ 59

[1964 § 40 substantially unchanged]

Payment for services and for other expenses that are connected with mutual deliveries of goods and that are not included in the invoice for the goods, including expenses of installation, of design and preparatory work, and of transport and forwarding services, shall be made in the encashment³⁷ procedure with subsequent acceptance (encashment with immediate payment) against presentation by the creditor to the bank of his own country of an invoice and other documents agreed on between the parties.

§ 60

[1964 § 41 substantially unchanged]

In accounts for services and other expenses provided in § 59, the creditor shall bear full responsibility for the fact that the documents presented by him to the bank and the data contained in them, or the presentation of an invoice without documents, corresponds to the agreement with the debtor.

§ 61

[1964 § 42, 1st para., substantially unchanged]

In accounts for services and other expenses provided in § 59, the debtor shall have the right, within 24 working days from the day of receipt by his country's bank of the creditor's invoice, to demand return of all or part of the amount paid in the instances provided in § 62 and § 63 respectively.

§ 62

[1964 § 42, para. A, unchanged]

The debtor shall have the right to demand return of the entire amount of the invoice, if:

1. An order for the services was lacking, or was cancelled before rendering of the services;

³⁷ See note 33 *supra*.

2. These services were paid for previously;
3. All the types of documents agreed upon by the parties have not been presented, or from the documents presented it is impossible to determine which services were rendered and for what amount;
4. Payment is to be made in a form other than encashment³⁸ with subsequent acceptance (encashment with immediate payment) or is to be made through another account.
5. Other circumstances occurred in relation to which such a right is expressly provided by agreement of the parties.

§ 63

[1964 § 42, para. B, substantially unchanged except that last sentence is omitted]

The debtor shall have the right to demand partial return of the amount, if:

1. In the invoice or in the documents attached to it there is an arithmetical error in favor of the creditor;
2. In the invoice, higher rates and/or charges are applied than were agreed on between the parties;
3. Exchange rates are incorrectly applied;
4. In the invoice are included services, duties, commission fees, and extra charges that were not agreed on by the parties;
5. The amount of the invoice is calculated on the basis of incorrect data as to the quantity, weight, or size of the goods;
6. In the invoice is included along with the cost of services performed the cost of unperformed and/or partially performed services;
7. Payment is to be made in a form other than encashment³⁹ with subsequent acceptance (encashment with immediate payment) or is to be made through another account.

§ 64

[1964 § 42, para. B, last sentence, substantially unchanged]

In case of return to the debtor of an amount in accordance with § 62 and § 63, the return of documents shall be carried out by agreement of the parties.

§ 65

[1964 § 43 substantially unchanged]

In accounts for services and other expenses provided in § 59, in addi-

³⁸ See note 33 *supra*.

³⁹ See note 33 *supra*.

tion to the provisions of §§ 59-63 being applied directly, the provisions of § 50 and §§ 56-58 shall be applied by analogy.

§ 66

[1964 § 44 substantially unchanged]

1. Payments on claims regarding quantity, quality, penalties, and other causes, shall be made through:

(a) direct transfer by the debtor to the creditor of the acknowledged amount, or

(b) payment by the bank of the creditor's country in the encashment⁴⁰ procedure with subsequent acceptance (encashment with immediate payment) of an amount acknowledged by the debtor, on the basis of his credit note.

2. The debtor shall have the right to demand return of the amount paid on the basis of subparagraph (b) of paragraph 1 of the present section if the debtor proves that he transferred, in accordance with subparagraph (a) of paragraph 1 of the present section, the amount of the invoice, that being the amount by which his account was debited.

§ 67

[1964 § 45 substantially unchanged]

1. If a letter of credit, provided for by the contract by virtue of special conditions of delivery, is not opened by the buyer within the period established by the contract, he shall be obliged to pay the seller for each day of delinquency beyond the periods established in the contract through the day of the opening of a letter of credit a penalty of 0.05%, but not more than 5% of the amount of the letter of credit.

2. The seller shall be obliged to grant the buyer additional time for opening a letter of credit, not losing thereby his right to charge a penalty.

3. If the buyer does not open a letter of credit even within the additional time, the seller shall have the right to rescind the contract. In such event, the seller may at his discretion either receive from the buyer the penalty provided in paragraph 1 of the present section or a penalty levied once in the amount of 3% of the amount of the letter of credit, if no other measure of penalty is established in the contract.

4. In the event of delay in opening a letter of credit, the seller shall have the right to delay shipment of the goods.

5. If the goods are shipped by the seller before the opening of the letter of credit, although with a delay beyond the agreed times, the bank

⁴⁰ See note 33 *supra*.

of the seller's country shall accept the documents for payment in the encashment⁴¹ procedure with prior acceptance.

Chapter XII

OCCURRENCES RELIEVING THE PARTIES OF LIABILITY

§ 68

[1958 § 46, 1st, 2d, & 3d paras., substantially unchanged]

1. The parties shall be relieved of liability for partial or total non-performance of obligations under a contract if such nonperformance was the consequence of circumstances of insuperable force.

2. By circumstances of insuperable force shall be understood circumstances that arose after conclusion of the contract as a result of events of an extraordinary character that were unforeseen and unavoidable by the party.

3. The parties shall also be relieved of liability for partial or total non-performance of obligations under the contract if such follows from the bilateral agreement,⁴² or from the contract, or from the substantive law of the seller's country applicable to the given contract.

§ 69

[1958 § 46, 7th para., with additions is 1968 § 69, para. 1; 1968 § 69, para. 2 is new]

1. A party for whom it has become impossible to perform obligations under the contract in consequence of circumstances specified in § 68 must notify the other party in writing of the occurrence of such circumstances without delay and, in any event, within the time period for performance of the contractual obligations. The notification must contain information concerning the onset and nature of the circumstances and their possible consequences. The party must also without delay notify the other party in writing of the cessation of these circumstances.

2. Circumstances relieving the parties of liability for total or partial non-performance of the contract must be certified by the chamber of commerce or other competent central agency of the relevant country.

§ 70

[1958 § 46, 4th, 5th, & 6th paras., substantially unchanged are 1968 § 70, paras. 1, 2, & 4; 1968 § 70, para. 3 is new]

1. In instances provided for in § 68, the period of performance by

⁴¹ See note 33 *supra*.

⁴² See note 22 *supra*.

the parties of obligations under the contract shall be extended by the period during which such circumstances and their consequences are operative.

2. If such circumstances and their consequences continue to be operative longer than 5 months for goods whose times of delivery do not exceed 12 months from the time of conclusion of the contract, or more than 8 months for goods whose times of delivery are established at more than 12 months from the time of conclusion of the contract, each of the parties shall have the right to refuse further performance of the contract. In such event neither of the parties shall have the right to demand from the other party compensation for possible losses.

3. A party may exercise his right to renounce a contract if he makes known his refusal to perform the contract before commencement of performance of obligations under the contract by the other party, but in no event later than 30 days from the time of expiration of the applicable 5- or 8-month period provided in paragraph 2 of the present section.

4. The provisions of the present section relating to extending times of performance of obligations shall not apply to contracts for a time, i.e., those contracts containing an express indication, or from whose contents it clearly follows, that upon violation of the times of delivery they are automatically rescinded or the buyer has the right immediately to renounce performance of them.

Chapter XIII

CLAIMS FOR QUALITY AND QUANTITY

§ 71

[1958 § 47 substantially unchanged]

1. Claims may be submitted:

(a) for the quality of goods (including violations of completeness or assortment) in the event of their nonconformity to the terms of the contract or to the provisions of § 15 if that section is applicable;

(b) for the quantity of goods if the circumstances of the case do not indicate the liability of the carrier.

2. The seller shall bear liability for a change in the quality of goods, their injury, spoilage, or insufficiency, even after transfer of the right of ownership and risk to the buyer, if the change in quality of the goods, their injury, spoilage, or insufficiency occurred through the fault of the seller.

§ 72

[1958 § 48 substantially unchanged is 1968 § 72, paras. 1 & 3; 1968 § 72, para. 2 is new]

1. Claims may be submitted:
 - (a) in relation to the quality of goods, within six months from the date of delivery;
 - (b) in relation to the quantity of goods, within three months from the date of delivery;
 - (c) in relation to goods for which a guarantee has been given, not later than 30 days after expiration of the guarantee period, provided that the defect was discovered within the guarantee period.
2. Claims for the quality and quantity of perishable fresh vegetables and fruits must be submitted within shorter periods than those established in subparagraphs (a) and (b) of paragraph 1 of the present section. Specific times for submitting claims for such goods shall be established in the contract.
3. Failure to submit a claim within the periods specified in paragraph 1 of the present section or established in accordance with paragraph 2 of the present section shall deprive the buyer of the right to go to arbitration.

§ 73

[1958 § 49 substantially unchanged]

1. In the event that it is not clear from the circumstances of the case who must bear the liability for the quantitative or qualitative defects in the goods (the carrier or the consignor), or where mixed liability is possible and a claim is submitted to the carrier, the buyer, in order not to lose his right to present a claim to the seller through missing the time period, must within the periods for submitting claims to the seller notify him of presentation of a claim to the carrier.
2. If it follows from the explanations of the carrier or from the decision of a court that liability under the given claim must be borne by the consignor, the buyer shall be obliged without delay, after receiving the carrier's rejection or a court decision, to send the seller documents confirming the buyer's claim, attaching a copy of the carrier's letter or the court decision. In such event the claim shall be considered as having been submitted on time.

§ 74

[1958 § 50 with additions is 1968 § 74, para. 1; 1968 § 74, paras. 2, 3, & 4 are new]

1. The declaration of a claim must, at a minimum, indicate:

- (a) a designation of the goods that conforms to the contract;
- (b) the quantity concerning which the claim is being submitted;
- (c) the contract number;
- (d) data making it possible to determine with respect to precisely which goods the claim is submitted through an indication, with regard to bulk goods, of the transportation requisites, and with regard to other goods, of the transportation or other requisites;
- (e) the substance of the claim (insufficiency, nonconformity to required quality, incompleteness, etc.);
- (f) the demands of the buyer (completion of delivery, elimination of defects, etc.).

2. If the declaration of a claim does not contain any of the data specified in subparagraphs (a)-(f) of paragraph 1 of the present section, the seller shall be obliged without delay to inform the buyer what data are necessary to complete the declaration of the claim. In the event of nonperformance by the seller of this duty, he shall not have the right subsequently to plead the incompleteness of the claim.

3. If the buyer received the seller's notification mentioned in paragraph 2 of the present section at a time when the period for declaring a claim had expired according to § 72, or would expire within the next 7 days counting from the date of receipt of the seller's notification, the buyer shall have the right to complete the declaration of the claim within 7 days counting from such date, notwithstanding the expiration of the period for declaring a claim.

4. In the instances specified in paragraphs 2 and 3 of the present section, the period for consideration of a claim by the seller according to § 76 shall be calculated from the date of receipt from the buyer of that supplementary data completing the claim in accordance with paragraph 1 of the present section.

§ 75

[1958 § 51 substantially unchanged is 1968 § 75,
paras. 1-4; 1968 § 75, paras. 5-7 are new]

1. In presenting a claim for quantity, the buyer shall have the right to demand either completion of delivery of the remaining quantity or return of the amount he paid for the quantity of the goods that is lacking.

2. In presenting a claim for quality, the buyer shall have the right to demand either elimination of the discovered defects or a reduction in the price of the goods.

3. If the buyer demands elimination of defects, the seller must at his own expense without delay repair the defect or replace the defective goods.

4. In instances specified in paragraph 3 of the present section, the

buyer shall have the right to demand from the seller payment of a penalty as for a delay in delivery, in the amount provided in § 83, counting from the date of declaration of the claim through the day of elimination of the defect or through the date of delivery of goods to replace those rejected. However, the amount of the penalty for a single lot or unit of the goods may not exceed 8% of the cost of the defective goods or of the defective part of the goods subject to repair or replacement, including the penalty for delay in delivery, if such delay occurred and the penalty has already been charged.

5. In the event of agreement by the parties upon a reduction in the price of the goods instead of elimination of the defect, the parties in agreeing upon the amount of the price reduction must agree as to whether the penalty charged and/or paid in accordance with paragraph 4 of the present section is to be included in the amount of the price reduction or whether the price reduction is to be taken over and above such penalty.

6. If the parties agreed upon the amount of the price reduction but not as to the question of whether the penalty specified in paragraph 4 of the present section is to be included in the amount of the price reduction or whether the price reduction is to be taken over and above such penalty, then in those instances when the actual losses that arose for the buyer as a result of nonuse of the goods up until the time of agreement on the price reduction:

—are lower than the amount of the penalty—the penalty charged and/or paid shall be reduced to the amount of the actual losses;

—are higher than the amount of the penalty—the actual losses exceeding the amount of the penalty shall be paid by the seller to the buyer if such is provided in the bilateral agreement.⁴³

7. If the bilateral agreement⁴⁴ or the contract establishes the right of the buyer to rescind the contract but does not contain the conditions for rescission, then the buyer may exercise such right if an arbitration tribunal determines that the seller cannot eliminate the defect through repair or replacement and the buyer cannot use the goods for the intended purpose taking into account the price reduction proposed by the seller.

§ 76

[1958 § 52 with changes is 1968 § 76, paras. 1 & 2;
1968 § 76, paras. 2-5 are new]

1. The seller shall be obliged to consider a claim for the quality or quantity of goods and to answer the buyer on the substance of the claim (to confirm agreement to total or partial satisfaction of it or to give notice of

⁴³ See note 22 *supra*.

⁴⁴ See note 22 *supra*.

total or partial refusal of its satisfaction) without delay, but not later than the time established in the contract. If such a time is not established in the contract, the answer on the substance of the claim must be given by the seller without delay, but not later than 60 days thereafter, and in relation to complete plants and installations not later than 90 days thereafter, counting from the date of receipt of the claim by the seller.

2. If the seller does not give an answer on the substance of the claim within the time indicated in paragraph 1 of the present section, and the buyer goes to arbitration before receipt of an answer, then, regardless of the outcome of the case, expenses of the arbitration fee shall be charged to the account of the seller. The provisions of the present paragraph shall not apply to the instances provided by paragraph 3 of the present section.

3. If due to technically justified reasons the seller does not have an opportunity to give an answer on the substance of the claim within the time indicated in paragraph 1 of the present section, he may propose to the buyer to prolong the time until a specified date.

4. If the buyer does not agree to the seller's proposal for a prolongation of the time for the answer on the substance of the claim and goes to arbitration, the question of the expenses of the arbitration fee shall be decided by the arbitration tribunal depending on the outcome of the case.

5. If the buyer agreed to the seller's proposal for a prolongation of the time for the answer on the substance of the claim, but the seller does not give such answer within the time agreed upon and the buyer goes to arbitration with his demands, then the arbitration tribunal, in resolving the substance of the case, shall charge the expenses of the arbitration fee to the seller, regardless of the outcome of the case.

§ 77

[1958 § 53 substantially unchanged]

In contracts for a time, the seller must eliminate the defect or replace the defective goods within the delivery time established by the contract. Otherwise, the buyer shall have the right to rescind the contract immediately upon the expiration of the delivery time and to demand from the seller both the payment of a penalty according to § 86 as in a delay in delivery and the return of amounts paid.

§ 78

[1958 § 54 substantially unchanged]

1. The buyer shall not have the right without the seller's consent to return to the seller goods with respect to which the buyer declared a claim for quality.

2. The provision of paragraph 1 of the present section shall not apply to instances where the seller, in the event of repeated deliveries of defective lots, continues shipment despite the demand of the buyer to suspend shipment of the goods (§ 80).

§ 79

[1958 § 55 with changes]

The provisions of § 32 shall apply to the return of replaced defective goods or defective parts for goods on which no guarantee has been given.

§ 80

[1958 § 56 substantially unchanged]

1. The declaration of a claim with respect to one lot does not give the buyer the right to refuse acceptance of subsequent lots of the goods provided by the contract.

2. In case of repeated deliveries of defective lots of goods, the buyer shall have the right to demand a suspension of further delivery of the goods until such time as the circumstances giving rise to the defects have been eliminated by the seller.

3. In such event the buyer shall have the right to demand from the seller payment of a penalty as for a delay in delivery in the amount provided in § 83, from the day when according to the contract the goods should have been delivered until the day when the seller resumes deliveries of good quality goods.

§ 81

[1958 § 57 substantially unchanged is 1968 § 81, para. 1;
1968 § 81, para. 2 is new]

1. If the seller, in relation to goods for which no guarantee has been provided by the contract, does not eliminate without delay defects for which he bears liability, the buyer shall have the right to eliminate them himself, charging the seller for normal actual expenses.

2. Minor deficiencies for which the seller bears liability, if their elimination cannot be postponed and does not require the seller's participation, shall be repaired by the buyer, charging the seller for normal actual expenses.

§ 82

[1958 § 58 substantially unchanged]

If in accordance with the contract final acceptance of the goods for

quality is made in the seller's country, claims for quality may be presented, unless otherwise established in the contract, only with respect to latent defects (which could not have been discovered by ordinary verification of the goods).

Chapter XIV

SANCTIONS

§ 83

[1958 § 59 substantially unchanged]

1. In the event of delay in delivery of goods beyond the times established in the contract, the seller shall pay the buyer a penalty calculated on the basis of the value of the goods not delivered on time.

2. The penalty shall be charged from the time established in the bilateral agreement⁴⁵ or in the contract, in the following amount:

during the first thirty days—0.05% for each day,

during the next thirty days—0.08% for each day,

subsequently—0.12% for each day of delay.

3. The total amount of penalty for delay, however, may not exceed 8% of the value of the goods in relation to which the delay occurred.

§ 84

[1958 § 60 substantially unchanged is 1968 § 84, para. 1;

1968 § 84, para. 2 is new]

1. If the seller permits a delay in the presentation of technical documentation without which the machines or equipment cannot be put into operation, he shall pay a penalty calculated on the basis of the value of the machines or equipment to which the technical documentation pertains, in the procedure and amount established in § 83.

2. If the parties agreed, in a contract for goods intended for processing (for example, raw materials, castings, and rolled products), on provision by the seller of a certificate of analysis without which the goods cannot be used for the intended purpose, with an indication in the contract of the indices that the certificate must contain, then the parties may also agree in the contract that the seller is to pay a penalty for lateness in providing the specified certificate. Unless otherwise established in the contract, the said penalty shall be calculated on the basis of the value of the goods to which the certificate pertains, in the procedure and amount established in § 83.

⁴⁵ See note 22 *supra*.

§ 85

[1958 § 61 substantially unchanged is 1968 § 85, paras. 1, 3, 4, & 5; 1968 § 85, para. 2 is new]

1. If no other period is established in the contract, then in the event of delay in delivery of goods exceeding 4 months, and for large-scale equipment made-to-order exceeding 6 months, beyond the delivery time established in the contract, the buyer shall have the right to refuse performance of the contract in relation to the delayed portion and to a previously delivered portion, if the delivered portion of the goods cannot be used without that portion that was not delivered.

2. The buyer shall have the right to rescind the contract even before expiration of the periods specified in paragraph 1 of the present section if the seller informs the buyer in writing that he will not deliver the goods within such periods.

3. For complete plants and installations, periods for rescission of the contract shall be agreed upon by the parties in each individual case.

4. In the event of rescission of the contract, the seller shall be obliged to return to the buyer payments made by the latter, adding on 4% per annum.

5. The provisions of paragraphs 1, 2, and 3 of the present section shall not apply to contracts for a time.

§ 86

[1958 § 62 substantially unchanged]

1. In the event of violation of the delivery time in contracts for a time, if the buyer rescinds the contract, the seller shall pay him a penalty in the amount established in the bilateral agreement⁴⁶ or in the contract.

2. If under such a contract the buyer consents to accept the goods late, the penalty specified in paragraph 1 of the present section shall not be levied. In such event the seller shall pay the buyer a penalty for each day from the first day of delay in the amount established in § 83.

§ 87

[1958 § 63 with changes]

For non-notification or untimely notification by the seller of the buyer that a shipment of goods has been made, the seller shall pay the buyer a penalty in the amount of 0.1% of the value of the goods shipped, but in no event less than 10 rubles or more than 100 rubles for a single shipment.

⁴⁶ See note 22 *supra*.

§ 88

[1958 § 64 substantially unchanged is 1968 § 88, para. 1, 1st sentence, & para. 4; 1968 § 88, para. 1, subparas. (a) & (b), & paras. 2 & 3 are new]

1. Claims for payment of a penalty must be presented within a period of not more than three months. Whereupon:

(a) with respect to penalties being charged by the day, the running of such period shall commence on the day of performance of the obligation or on the day when the penalty reaches the maximum amount, on the given basis, if the obligation has not been performed before such day;

(b) with respect to penalties that can be charged only once, the running of such period shall commence on the day the right to demand them arises.

2. The provisions of paragraph 1 of the present section shall also apply to claims for payment of a penalty in the event of rescission of the contract.

3. The calculation of a penalty charged shall be done either in the invoice attached to the claim or in the claim declaration itself.

4. Failure to present a claim for payment of a penalty within the period provided by paragraph 1 of the present section shall deprive the party that declared the claim of the right to go to arbitration.

§ 89

[New]

A party to whom a claim for payment of a penalty has been presented shall be obliged to consider it and to give an answer on the substance within 30 days from the date of its receipt.

Chapter XV

ARBITRATION

§ 90

[1958 § 65, 1st & 2d paras., 1st substantially unchanged & 2d with additions]

1. All disputes that may arise out of a contract or in connection with it shall be subject, to the exclusion of the jurisdiction of general courts, to consideration in arbitration procedure in the arbitration tribunal established for such disputes in the defendant's country or, by agreement of the

parties, in a third member-country of the Council for Mutual Economic Assistance.

2. A counterclaim and a demand for set-off arising from the same legal relationship as the original suit shall be subject to consideration in the same arbitration tribunal that is considering the original suit.

§ 91

[1958 § 65, 3d & 4th paras., substantially unchanged, are
1968 § 91, paras. 1 & 3; 1968 § 91, para. 2 is new]

1. Disputes shall be considered in accordance with the rules for handling of cases in force in the arbitration tribunal in which the case is being resolved.

2. Consideration of a case in an arbitration tribunal and the announcement of decisions shall be done in the language of the country of the arbitration tribunal, with an official translation into another language at the request of one of the parties. Decisions of an arbitration tribunal shall also be written in the language of the country of the arbitration tribunal, with an official translation into another language at the request of one of the parties.

3. Decisions of an arbitration tribunal shall be final and binding on the parties.

Chapter XVI

LIMITATION OF ACTIONS

§ 92

[New]

The provisions on limitation of actions set forth in the present chapter shall apply to demands arising out of relations regulated by the present General Conditions of Delivery.

§ 93

[New]

1. The general period of limitation of actions shall be established as two years.

2. A special period of limitation of actions of one year shall be established:

(a) for actions based on claims for quality and quantity of goods (§§ 31, 33, 71, 75, 77, 80-82);

(b) for actions based on claims for payment of a penalty.

§ 94

[New]

1. The general period of limitation of actions shall be calculated from the time the right to the demand arises.

2. The special period of limitation of actions shall be calculated:

(a) for actions based on claims for quality and quantity of goods, from the day following the day of receipt by the buyer of the seller's answer on the substance of the claim; but if an answer is not given by the seller within the periods indicated in paragraphs 1 or 5 respectively, § 76, then from the day following the day on which the aforesaid period for an answer on the substance of the claim expires. If the seller's answer does not contain a resolution of the substance of the claim, the period of limitation of actions shall be calculated from the day following the day on which the period for an answer on the substance of the claim expires;

(b) for actions based on claims for payment of a penalty, from the day following the day of receipt by the buyer of an answer on the substance of the claim; but if an answer on the substance of the claim is not given by the seller within the period established in § 89, from the day following the day on which the period for an answer to the claim expires.

§ 95

[New]

Limitation of actions shall be applied by the arbitration tribunal if the debtor pleads it.

§ 96

[New]

In the event of performance by the debtor of the obligation after expiration of the period of limitation of actions, he shall not have the right to demand a return of the performance, even though at the time of performance he did not know of the expiration of the period of limitation.

§ 97

[New]

Demands on which the periods of limitation of actions have expired may, by agreement of the parties, be presented for set-off.

§ 98

[New]

The running of a period of limitation of actions shall be suspended if

the presentation of an action is prevented by a circumstance of insuperable force that has arisen or continues to operate during the period of limitation. The time during which the limitation of actions was suspended shall not be counted in the period of limitation of actions.

§ 99

[New]

1. The running of a period of limitation of actions shall be interrupted by the presentation of an action or by a written acknowledgment of the debt by the person liable.

2. After an interruption, the running of the period of limitation of actions shall begin anew.

3. If the plaintiff withdraws his action from the arbitration tribunal, then the period of limitation of actions shall not be considered as interrupted.

§ 100

[New]

Upon the expiration of the period of limitation of actions on the main demand, the period of limitation of actions on supplementary demands shall expire as well.

§ 101

[New]

The date of presentation of an action shall be considered to be the day of its filing in an arbitration tribunal, and where the petition to sue is sent by mail, the date of the stamp of the postal department indicating receipt of the registered letter for dispatch.

§ 102

[New]

Alteration of the provisions set forth in the present chapter shall not be allowed.

§ 103

[New]

The provisions set forth by the present chapter shall apply to obligations arising out of contracts to which the present General Conditions of Delivery extend.

Chapter XVII

OTHER PROVISIONS

§ 104

[1958 § 70 with substantial changes & additions]

1. Claims must be presented in writing.
2. A claim for quality, including a claim for goods on which a guarantee has been given, as well as a claim for quantity, may be declared by telegraph or teletype. In such instances they must be confirmed by letter not later than 7 working days from the date of declaration of the claim by telegraph or teletype, and in any event within the periods established by § 72. In the event of late dispatch of the confirmation by the buyer, such letter shall be considered to be the declaration of the claim for the first time.
3. Documents confirming a claim shall be attached to it. It is recommended to parties that in presenting claims for quality and quantity they adduce as one of the documents confirming the claim an act of complaint.⁴⁷
4. The date of declaration of a claim shall be considered to be the date of the stamp of the postal department of the declarant's country indicating receipt of the letter or telegram, or the date of the teletype communication, or the date of submission of the claim to the party against whom it is being presented.

§ 105

[1958 § 71 with changes & additions]

1. The parties shall mutually refrain from presenting claims where the amount of the demand does not exceed 10 rubles.
2. The provisions of paragraph 1 of the present section shall not extend to demands relating to accounts in connection with arithmetical errors that have been discovered and to claims without whose satisfaction the goods cannot be used by the buyer.

§ 106

[New]

If a debtor is delinquent concerning a money obligation, he must pay the creditor 4 % per annum on the amount of the delinquent payment.

⁴⁷ An "act of complaint" (*reklamatsionnyi akt*) is a declaration submitted by the buyer to the seller when the buyer has received defective goods from the seller.

§ 107

[New]

If the last day of a period for presentation of a claim or of a period of limitation of actions falls on a nonworking day in the country of the declarant, the day of termination of the period shall be deemed to be the next following working day.

§ 108

[1958 § 72 substantially unchanged is 1968 § 108,
para. 1; 1968 § 108, para. 2 is new]

1. Neither of the parties shall have the right to transfer his rights and obligations under a contract to third persons without the written consent of the other party.

2. The provisions of paragraph 1 of the present section shall not extend to instances of transfer, pursuant to the decision of a competent organ, of rights and obligations under a contract to another organization of the same country that is authorized to conduct foreign trade operations, provided that a written notice is sent to the other party.

§ 109

[1958 § 73 unchanged]

All expenses, taxes, customs fees, and duties on the territory of the seller's country connected with performance of the contract shall be paid by the seller, and on the territory of the buyer's country and on transit territory, by the buyer.

§ 110

[1958 § 74 substantially unchanged is 1968 § 110,
para. 1; 1968 § 110, para. 2 is new]

1. The substantive law of the seller's country shall apply to relations of the parties regarding deliveries of goods on those questions that are not regulated or are not fully regulated by contracts or by the present General Conditions of Delivery.

2. By the substantive law of the seller's country shall be understood the general provisions of civil law, and not the special provisions established for relations between socialist organizations and enterprises of the seller's country.