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limitations (prescription) in  
the international sale of goods  
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TEXT OF PRELIMINARY DRAFT OF UNIFORM LAW ON EXTINGTIVE  
PRESCRIPTION IN INTERNATIONAL SALE OF GOODS BY  
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UNITED KINGDOM TO UNCITRAL

SPHERE OF APPLICATION OF THE LAW

ARTICLE 1

1. This law shall apply to the limitation of legal proceedings and to the prescription of the rights of the buyer and the seller arising from a contract of international sale of goods as defined in article 3 of this law or arising in connexion with the conclusion of, or failure to conclude, such a contract.
2. This law shall not apply to claims arising from loss or damage of any nature caused by or to persons other than the buyer or the seller, whether such claims arise by way of contract or tort or by the application of any law or legal principle.
3. This law shall not apply to the enforcement or execution of claims which arise in any of the following circumstances:
  - (a) from a judgement or award made in legal proceedings;
  - (b) from a compromise or settlement made between the parties in the course of legal proceedings;

(c) from a document on which immediate enforcement or execution can be obtained in accordance with the law of the jurisdiction where such enforcement or execution is sought;

(d) from any bill of exchange, cheque or promissory note.

4. Criminal proceedings shall be excluded for the purposes of the application of this law.

## ARTICLE 2

1. This law shall be applied in all legal proceedings irrespective of the nationality of the parties.

2. Rules of private international law shall be excluded for the purposes of this law.

## ARTICLE 3

Definition of "a contract of international sale of goods"

### INTERPRETATION OF THE LAW

## ARTICLE 4

1. In interpreting and applying the provisions of this law, regard shall be had to its international character and to the need to promote uniformity in its interpretation and application.

2. In this law:

"Buyer" and "seller" mean persons who buy or sell, or agree to buy or sell, goods, their successors and assigns, and persons who guarantee their performance, and "party" and "parties" shall be construed accordingly;

"Creditor" means a party seeking to enforce a claim, whether or not such claim is for a debt or other liquidated sum of money; "debtor" means a party against whom the creditor seeks to enforce such a claim;

"Legal proceedings" includes judicial and administrative and arbitration proceedings;

"Person" includes any corporation, company, or legal entity; "year" means calendar year.

3. In this law, a claim shall be deemed to arise from a contract of sale of goods even though one of the parties alleges that no contract exists or that the contract is void or otherwise unenforceable.

#### THE LIMITATION PERIOD

##### ARTICLE 5

1. The limitation period shall be three five years.
2. For the purpose of calculating the limitation period, the day in the course of which the limitation period commences to run shall be excluded, but the day in the course of which it expires shall be included.

#### COMMENCEMENT OF THE LIMITATION PERIOD

##### ARTICLE 6

1. Subject to the provisions of paragraphs 3 to 7 of this article, the limitation period in respect of any claim arising out of a breach of the contract of sale shall commence on the date on which such breach of contract occurred.
2. Where one party is required as a condition for the acquisition or enforcement of such a claim to give notice to the other party, the commencement of the limitation period shall not be postponed by reason of such requirement of notice.
3. Subject to the provisions of paragraph 4 of this article, the limitation period in respect of claims relying on a lack of conformity of the goods shall commence on the date on which the goods are placed at the disposition of the buyer in the manner stipulated in the contract of sale, irrespective of the date on which such lack of conformity is discovered or damage therefrom ensues.
4. Where the contract of sale contemplates that the goods sold are at the time of the conclusion of the contract in the course of carriage or will be carried to the buyer by a carrier, the limitation period in respect of claims relying on a lack of conformity of the goods shall commence on the date on which the goods are handed over to the buyer by the carrier.
5. Where, as a result of a breach by one party before performance is due, the other party thereby becomes entitled to and does elect to treat the contract as discharged, the limitation period shall commence on the date on which such breach

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of contract occurred, irrespective of any subsequent failure by the party in default to perform on the date when performance is due.

6. Where, as a result of a breach by one party of a contract for the delivery of or payment for goods by instalments the other party thereby becomes entitled to and does elect to treat the contract as discharged, the limitation period shall commence on the date on which such breach of contract occurred, irrespective of any other breach of the contract in relation to prior or subsequent instalments; otherwise the limitation period shall commence on the date on which the particular breach or breaches complained of occurred.

7. Where the contract of sale or any contract collateral thereto contains an express guarantee on the part of the seller relating to the goods and such guarantee is stated to have effect for a period of time, whether expressed in terms of a specific period of time or otherwise, the limitation period in respect of a claim relating to any matter covered by the guarantee shall commence on the date on which the buyer first notified the seller of such claim; provided that the limitation period shall in any event expire [three] [five] years after the expiration of the period of the guarantee.

#### ARTICLE 7

Where any obligation or duty arises out of a contract of sale or arises in connexion with the conclusion of, or failure to conclude, a contract of sale, but does not arise out of a breach of the contract, the limitation period shall commence on the date on which performance of the obligation or duty first became due.

#### INTERRUPTION OF THE LIMITATION PERIOD

#### ARTICLE 8

1. The limitation period shall be interrupted when the creditor performs any act recognized under the law of the jurisdiction where such act is performed as instituting judicial or administrative proceedings for the purpose of obtaining satisfaction of his claim.

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2. For the purposes of this article, any act performed for the purpose of obtaining satisfaction of a claim by way of set-off or counter-claim shall be deemed to have been performed on the same date as the act performed in relation to the claim against which the set-off or counter-claim is raised.

#### ARTICLE 9

1. The limitation period shall be interrupted when either party to the contract of sale commences arbitration proceedings in respect of the claim in dispute.

2. For the purposes of this article, arbitration proceedings shall be deemed to be commenced when one party serves a notice on the other party requiring him to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where an arbitration clause or agreement provides that the reference shall be to a person designated in the clause or agreement, requiring him to submit the dispute to the person so designated.

3. Service of the notice shall be made in the manner provided for in the arbitration clause or agreement. In the absence of any such provision, the notice shall be in writing and service shall be effected by delivering or sending the notice to the party to be served at his habitual or last-known residence or place of business.

4. A notice sent by post shall be deemed to be served on the date on which the letter containing the notice is posted.

5. The provisions of this article shall apply notwithstanding any term in the arbitration clause or agreement to the effect that no claim shall arise until an arbitration award has been made.

#### ARTICLE 10

1. The provisions of this article shall apply where any legal act or process is commenced in any of the following circumstances:

- (a) In relation to the death or incapacity of the debtor;
- (b) In relation to the bankruptcy or insolvency of the debtor;
- (c) Where the debtor is a corporation, company or other legal entity, in relation to the dissolution of the debtor as such corporation, company or legal entity;

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(d) In relation to the sequestration, arrest, expropriation, seizure or transfer of the whole or part of the assets of the debtor.

2. The limitation period shall be interrupted when the creditor performs any act recognized under the law of the jurisdiction where such act is performed as the filing of a claim admissible under that law for the purpose of obtaining satisfaction of his claim.

3. Except as provided in this article, the running of the limitation period shall not be interrupted or in any other way affected by the death or incapacity of the creditor or the debtor, or by the commencement of any other legal act or process in relation to the creditor or debtor.

#### EXTENSION OF THE LIMITATION PERIOD

##### ARTICLE 11

Where the last day of the limitation period falls on a public holiday or other dies non in the jurisdiction where the creditor intends to institute judicial or administrative proceedings as envisaged in article 8 or to file a claim as envisaged in article 10, the limitation period shall be extended so as not to expire until the end of the first day following that public holiday or dies non on which such proceedings could be instituted or on which such a claim could be filed in that jurisdiction.

##### ARTICLE 12

1. Where, owing to circumstances of force majeure, the creditor is prevented

(a) From instituting judicial or administrative proceedings in accordance with article 8,

(b) From commencing arbitration proceedings in accordance with article 9,

(c) From filing a claim in accordance with article 10,

the limitation period shall be extended so as not to expire before the expiration of one year from the date on which the relevant circumstances ceased to exist.

2. In this article, "force majeure" means war, riot or civil commotion, closure of the courts, closure of frontiers, interruption of communications or other similar events for which the creditor is not responsible and which it is impossible for him reasonably to foresee, provided that such events are not merely temporary or intermittent.

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#### ARTICLE 13

Where, by reason of the debtor's intentional misrepresentation or concealment of his identity or address, the creditor is prevented

(a) From instituting judicial or administrative proceedings in accordance with article 8,

(b) From commencing arbitration proceedings in accordance with article 9,

(c) From filing a claim in accordance with article 10,

the limitation period shall be extended so as not to expire before the expiration of one year from the date on which the creditor discovered the fact misrepresented or concealed or could with reasonable diligence have discovered it.

#### ARTICLE 14

1. Where the creditor has instituted judicial or administrative proceedings in accordance with article 8, but the court or administrative tribunal has declared itself or been declared incompetent to adjudicate upon the claim of the creditor, the limitation period shall not be interrupted and shall be extended so as not to expire before the expiry of one year from the date on which such declaration was made.

2. Where an arbitration has been commenced in accordance with article 9, but the arbitrator has declared himself incompetent to arbitrate upon the claim in dispute or it has been ordered that the arbitration shall cease to have effect or that the award made by the arbitrator shall be set aside, the limitation period shall not be interrupted and shall be extended so as not to expire before the expiry of one year from the date on which such declaration or order was made.

#### ACKNOWLEDGEMENT AND PART PAYMENT

#### ARTICLE 15

1. Where the debtor acknowledges in writing to the creditor that the creditor's claim is well-founded in substance and in amount, a new limitation period of [three] [five] years shall commence to run from the date of such acknowledgement.

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2. Part payment of a debt by the debtor to the creditor shall have the same effect as an acknowledgement if it can reasonably be inferred from such payment that the debtor acknowledges his obligation to pay the balance of the debt.
3. Payment of interest shall be treated as payment in respect of the principal debt.
4. An acknowledgement or part payment made by or to the duly authorized agent of the debtor or creditor shall be deemed to be made by or to the debtor or creditor himself.
5. An acknowledgement or part payment by one of several joint debtors shall bind only that debtor.
6. The provisions of this article shall apply whether or not the limitation period prescribed by article 5 has expired.

#### MODIFICATION OF THE LIMITATION PERIOD

##### ARTICLE 16

1. The parties to a contract of sale shall be free to extend or shorten by express agreement the period of limitation prescribed in article 5. Such an agreement need not be evidenced by writing and shall not be subject to any other requirements as to form.
2. The debtor may at any time declare to the creditor that he will not invoke limitation as a defence to a particular claim or in particular proceedings or at all. Provided that such declaration is in writing and signed by or on behalf of the debtor, it shall be binding on the debtor.

#### EFFECT OF THE EXPIRATION OF THE LIMITATION PERIOD

##### ARTICLE 17

1. Expiration of the limitation period shall only be taken into consideration in any legal proceedings at the request of the debtor.
  2. Subject to the provisions of articles 15 and 16 and of paragraph 1 of this article, no claim arising out of a contract of sale or arising in connexion with the conclusion of, or failure to conclude a contract of sale shall be recognized or enforced in any legal proceedings after the expiration of the limitation period in respect of such claim.
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3. Subject to the provisions of paragraph 2 of article 8, a claim made by way of set-off or counter-claim shall be deemed to be a separate claim and shall not be recognized or enforced in any legal proceedings after the expiration of the limitation period in respect of such claim.

#### ARTICLE 18

1. Where the debtor performs his obligation after the expiration of the limitation period, he shall not be entitled to recover or in any way claim restitution of the performance thus made even if he did not know at the date of such performance that the limitation period had expired.

2. Unless the debtor expressly or impliedly appropriates any payment made by him to satisfaction of a particular debt or obligation due to the creditor, the creditor shall be entitled to appropriate any payment made by the debtor to the satisfaction of his claim notwithstanding that the limitation period has expired.

#### ARTICLE 19

/Effect of the expiration of the limitation period and/or acknowledgement etc. on liability to pay interest on a principal sum of money/

#### ARTICLE 20

/Effect of the expiration of the limitation period on liens, guarantees and other security interests/

#### PRESERVATION OF EXISTING RIGHTS

#### ARTICLE 21

1. No claim made in any legal proceedings in any jurisdiction shall be held to have become barred by reason of the operation of this law if the limitation period prescribed in article 5 commenced to run before the commencement of this law in that jurisdiction.

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2. Nothing in this law shall revive any claim barred before the commencement of this law in the jurisdiction where such claim is sought to be enforced, except in so far as a claim may be revived by an acknowledgement or part payment made in accordance with the provisions of article 15.

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