

## Table of Contents

Foreword	<i>VII</i>
Our Sponsors	<i>XI</i>
Preface to this volume	<i>XIII</i>
Text of Articles	
English Sales	3
Dutch Koop	16
French Vente	30
German Kauf	44
Italian Vendita	58
Polish Sprzedaży	71
Spanish Compraventa	85

Principles of European Law on  
Sales

General Introduction

A. General	101
B. Importance	101
C. Relation to general contract law (PECL)	101
D. Relation to other international sources	103
E. Relation to other specific contracts	104
F. Other related aspects not dealt with	105
G. Mainly default rules: Some mandatory consumer protection	106
H. Member States investigated	106
I. The structure of these Principles	106

Chapter 1:  
Scope of Application & General Provisions

Section 1: Scope of Application

Article 1:101: Sale of goods

Comments

A. Scope of the Principles	113
B. Definition of sale	113
C. Parties to the sales contract	114
D. Obligation to transfer ownership	114
E. Obligation to pay the price	115
F. Relationship with the Principles of European Contract Law (PECL)	115

Notes

1. Overview of the rules relating to sales law	115
2. Definition of sale	116
3. Analogous application to other contracts	117
4. Mixed contracts	118

Article 1:102: Goods to be manufactured or produced

Comments

A. General	120
B. The substantial part test	121
C. Relevant rules from services contracts by way of analogy	121
D. Consumer transactions	122

Notes	123
1. General regulation of contracts for the supply of goods to be manufactured or produced	123
2. Consumer sales	125
<b>Article 1:103: Barter</b>	
Comments	
A. General	126
B. Application with appropriate adaptations	126
C. Mixed contracts	126
Notes	
1. Barter [exchange] contracts	127
2. Trade-in of used goods	128
<b>Article 1:104: Definition of “goods”</b>	
Comments	
A. Object of sale in general	128
B. Corporeal movables	129
C. Future goods	130
D. Goods extra commercium	131
Notes	
1. Object of sale in general	131
2. Sale of immovable property	132
3. Ships, vessels, aircraft and hovercraft	132
4. Specific rules for the sale of animals	133
5. Specific rules for the sale of human body parts	134
6. The sale of future goods	134
<b>Article 1:105: Application to other assets</b>	
Comments	
A. Application to other assets	136
B. Other assets	136
C. Immovable property	138
Notes	
1. Electricity	138
2. Software	139
3. Rights and receivables [and industrial or other intellectual property rights]	140

**Section 2: General Provisions**

**Article 1:201: Relationship with the Principles of European Contract Law**

Comments

A. General	142
B. Deviations from the Principles of European Contract Law	142
C. Implementation in these Principles	142

Notes

1. Relationship between sales rules and other parts of the Civil Code or the general law of obligations	143
---	-----

**Article 1:202: Definition of consumer sale**

Comments

A. Consumer sales	144
B. The notion of unitary sales law	144
C. Notion of consumer and professional	145
D. Protection of small businesses etc.	147
E. Consumer protection	148
F. Protection of parties other than consumer buyers	148

Notes

1. Overview of the rules on consumer sale	149
2. Difference in substance to the general sales regime	150
3. Definition of 'consumer'	151
4. Definition of 'professional'	153

**Article 1:203: Derogation**

Comments

A. General	154
B. Derogation in a consumer sale	155
C. Direct and indirect derogation	156
D. Violation of mandatory provisions	156
E. Relationship with the Principles of European Contract Law (PECL)	156

Notes

1. Mandatory rules in consumer sales law	157
2. Status of the rules of general sales law	157

## Chapter 2: Obligations of the seller

### Article 2:001: Overview of obligations of the seller

#### Comments

A. Main obligations of the seller	159
B. Obligation to transfer ownership	159
C. Obligation to deliver the goods	160
D. Obligation to transfer documents	161
E. Obligation to ensure conformity with the contract	161
F. Remedies for the buyer	161
G. Relationship with the Principles of European Contract Law (PECL)	162

#### Notes

1. Obligation to transfer ownership	162
2. Obligation to deliver the goods	163
3. Obligation to transfer documents	163
4. Further obligations of the seller	165

### Section 1: Delivery of the Goods

#### Article 2:101: Delivery

#### Comments

A. General	166
B. Functional definition of delivery	166
C. Different modes of delivery	167
D. Carriage of goods	168
E. Delivery to persons other than the buyer	169
F. Consumer sale	169
G. Relationship with the Principles of European Contract Law (PECL)	169

#### Notes

1. Modalities of delivery in general	169
2. Constructive delivery	170

#### Article 2:102: Place and time for delivery

#### Comments

A. General	171
B. Place and time for delivery	171
C. Transfer of documents representing the goods	171
D. Remedies of the buyer in the event of late delivery	172
E. Relationship with the Principles of European Contract Law (PECL)	172

Notes

1. Place for delivery	172
2. Time of delivery	173
3. Cost of delivery	174
4. Deviating consumer regulation	174

**Article 2:103: Cure in case of early delivery**

Comments

A. General	175
B. The seller's right to cure before the time for delivery	175
C. Unreasonable inconvenience or expense	176
D. Buyer's remedies	176
E. Relationship with the Principles of European Contract Law (PECL)	176

Notes

1. Cure in the case of early delivery	177
---------------------------------------	-----

**Article 2:104: Carriage of the goods**

Comments

A. General	178
B. Seller's obligations in the case of carriage	178
C. Remedies of the buyer	179
D. Consumer sale	179

Notes

1. Obligations relating to the carriage of goods	179
--	-----

**Section 2: Conformity of the Goods**

**Article 2:201: Conformity with the contract**

Comments

A. General	181
B. Agreed conformity: the obligation to ensure that the goods are in conformity with the contract	181
C. Quantity, quality and description	182
D. Conformity not limited to goods as such	183
E. The aliud	183
F. Remedies of the buyer	183
G. Relationship with the Principles of European Contract Law (PECL)	184

## Notes

1. The principle of conformity with the contract (Overview)	184
2. Relationship to other instances of non-performance, in particular delay	187
3. The notion of 'aliud'	188
4. Restricted liability for lack of conformity in sales 'as is'	190

**Article 2:202: Fitness for purpose, qualities, packaging**

## Comments

A. General: the notion of 'implied' conformity	191
B. Implied requirements of conformity	193
C. Remedies of the buyer	195

## Notes

1. (Implied) criteria for establishing lack of conformity	195
2. Fitness for normal purpose	195
3. Fitness for particular purpose	197
4. Sample/model	198
5. Packaging	199
6. Accessories and instructions	200
7. Reasonable expectations of the buyer (in particular with respect to the general quality standard)	201
8. Further aspects	203

**Article 2:203: Statements by third persons**

## Comments

A. General	205
B. Statements made by third persons	205
C. Restriction of liability for statements by third persons	206
D. Relationship with the Principles of European Contract Law (PECL)	206

## Notes

1. Liability for (public) statements by third persons	207
---	-----

**Article 2:204: Incorrect installation in a consumer sale**

## Comments

A. General	208
B. Incorrect installation by the seller or under his responsibility	208
C. Incorrect installation by the consumer	209
D. Remedies of the buyer	209

Notes

1. Incorrect installation	210
---------------------------	-----

**Article 2:205: Third party rights or claims in general**

Comments

A. Relation to the notion of conformity	211
B. Third party rights or claims in general	211

Notes

1. Third party rights	212
2. Differences with the conformity regime in general	213

**Article 2:206: Third party rights or claims based on industrial property or other intellectual property**

Comments

A. Third party rights or claims based on industrial property or other intellectual property	214
B. Restriction of seller's liability	214

Notes

1. Industrial or other intellectual property	215
--	-----

**Article 2:207: Buyer's knowledge of lack of conformity**

Comments

A. General	215
B. Knowledge on the part of the buyer	216
C. Exceptions	216
D. Consumer sale	217

Notes

1. Knowledge of the buyer at the time of the conclusion of the contract	217
2. Pre-contractual duty to examine	218

**Article 2:208: Relevant point in time for establishing conformity**

Comments

A. General	219
B. Existence of the lack of conformity	220
C. Reversal of burden of proof in a consumer sale	220



Notes	
1. Point in time of the existence of lack of conformity	221
2. Burden of proof (consumer – other sales)	222
<b>Article 2:209: Limits on derogation in a consumer sale</b>	
Comments	
A. General	224
B. Derogation from the conformity rules in a consumer sale	224
Notes	
1. Exclusion or limitation of the seller's liability	225
<b>Chapter 3: Obligations of the buyer</b>	
<b>Article 3:001: Overview of obligations of the buyer</b>	
Comments	
A. Main obligations of the buyer	227
B. Obligation to pay the price	228
C. Obligation to take delivery of the goods	228
D. Obligation to take delivery of the documents	229
E. Remedies of the seller	229
F. Relationship with the Principles of European Contract Law (PECL)	229
Notes	
1. Determination of price	229
2. Obligation to take delivery	231
<b>Article 3:002: Determination of form, measurement or other features</b>	
Comments	
A. General	231
B. The seller's right to make specifications	232
C. Consumer sale	232
D. Relationship with the Principles of European Contract Law (PECL)	232
Notes	
1. The seller's right to make specifications	233

**Section 1: Payment of the Price**

**Article 3:101: Place and time for payment**

Comments

A. General	234
B. Place and time for payment	234
C. Relationship with the Principles of European Contract Law (PECL)	234

Notes

1. Time of payment	235
2. Place of payment	235

**Article 3:102: Formalities of payment**

**Article 3:103: Currency not expressed**

**Article 3:104: Price fixed by weight**

Comments

A. General	237
B. Formalities of payment	237
C. Currency of payment	237
D. Net-weight price	237
E. Relationship with the Principles of European Contract Law (PECL)	238

Notes

1. Formalities of payment	238
2. Currency Determination	239
3. Net weight price	239

**Section 2: Taking Delivery of the Goods**

**Article 3:201: Taking delivery**

Comments

A. General	240
B. Enabling the seller to deliver	240
C. Taking over the goods or the documents	241
D. Failure to take over the goods or documents	241
E. Relationship with the Principles of European Contract Law (PECL)	242

Notes

1. Enforceability of the obligation to take delivery	242
2. Termination due to refusal to take delivery	243

**Article 3:202: Early delivery and delivery of excess quantity**

## Comments

A. Scope	244
B. Early delivery	244
C. Excess Quantity	244
D. Relationship with the Principles of European Contract Law (PECL)	245

## Notes

1. Early delivery	246
2. Right to refuse excess quantity	247
3. Determination of the price for the excess quantity	247

**Chapter 4:  
Remedies****Section 1: Remedies of the Parties in General****Article 4:101: Application of the Principles of European Contract Law**

## Comments

A. General	249
B. Changes to the regime of remedies provided by the Principles of European Contract Law	249
C. Buyer's remedies in the event of seller's failure to perform his obligations	250
D. Seller's remedies in the event of buyer's failure to perform his obligations	252
E. Consumer sale	253
F. Relationship with the Principles of European Contract Law (PECL)	253

## Notes

1. General vs. sales-specific remedies of the buyer	253
2. Overview of remedies for the seller	254

**Article 4:102: Termination of the contract**

## Comments

A. General	256
B. Termination for delay	256
C. Termination for lack of conformity	257
D. Relationship with the Principles of European Contract Law (PECL)	258

## Notes

1. Limitations to the right to terminate under general contract law	258
2. Termination for delayed performance or no performance at all	259

**Article 4:103: Limits on derogation in a consumer sale**

Comments

- A. General 260
- B. Derogation from the rules on remedies in a consumer sale 260

Notes

- 1. Exclusion or limitation of the seller's liability 260

**Section 2: Remedies of the Buyer for Lack of Conformity**

**Article 4:201: Overview of remedies**

Comments

- A. Scope of this section 262
- B. Overview of remedies for lack of conformity 262
- C. Consumer sale 264
- D. Relationship with the Principles of European Contract Law (PECL) 264

Notes

- 1. Specific remedies for lack of conformity of the goods 264
- 2. Withholding performance 265
- 3. Price reduction 266
- 4. Damages 267

**Article 4:202: Remedying the lack of conformity**

Comments

- A. General 268
- B. Repair, replacement and other similar means to remedy lack of conformity 268
- C. Conditions of exercise 268
- D. Free of charge 269
- E. Buyer could have lack of conformity remedied from another source 270
- F. Cumulation with other remedies 270
- G. Consumer sale 270
- H. Relationship with the Principles of European Contract Law (PECL) 271

Notes

- 1. Right for the buyer to have the lack of conformity remedied in general 271
- 2. Special consumer regulation 272
- 3. Limitations 272
- 4. Costs of remedies 274

**Article 4:203: Seller's opportunity to remedy the lack of conformity**

Comments	
A. General	275
B. Conditions of seller's offer to remedy the lack of conformity	275
C. Buyer's refusal to grant the seller an opportunity to remedy the lack of conformity	276
D. Relationship with the Principles of European Contract Law (PECL)	277
Notes	
1. Existence of the seller's right to cure a lack of conformity	277
2. Prerequisites for cure (limitations)	278
3. Time limitations	278
4. Number of attempts available	279

**Article 4:204: Choice between repair and replacement**

Comments	
A. General	280
B. Seller's choice and restrictions	280
C. Buyer's choice in a consumer sale	281
Notes	
1. Which party may choose the method of bringing the goods into conformity (repair or replacement)?	282
2. Limits to the choice	283

**Article 4:205: Resort to other remedies**

Comments	
A. General	283
B. Hierarchy of remedies	284
C. Requirements for remedying the lack of conformity	285
D. Resort to other remedies	286
E. Damages for loss not remedies by the seller's cure	287
F. Consumer sale	287
G. Relationship with the Principles of European Contract Law (PECL)	288
Notes	
1. Existence of secondary remedies	288
2. Preconditions for obtaining the secondary remedies	289
3. Relationship between damages and other remedies	290

**Article 4:206: Termination**

Comments	
A. General	291
B. General standard of termination	291
C. Termination under a consumer sale	292
D. Partial non-conformity	293
E. Partial termination	293
F. Termination of the entire contract	293
G. Relationship with the Principles of European Contract Law (PECL)	294
Notes	
1. Conditions for terminating the contract due to a lack of conformity	295
2. Regulation of partial conformity [including partial delivery]	296
3. The right to terminate for partial conformity [including partial delivery]	297
4. Damage or destruction of the goods	297

**Article 4:207: Limitation of liability for damages of non-professional sellers**

Comments	
A. General	298
B. Non-professional seller	299
C. Damages limited to the amount of the contract price	299
D. Exception	299
E. Relationship with the Principles of European Contract Law (PECL)	300
Notes	
1. Protection of the non-professional seller against excessive remedies	300

**Section 3: Requirements of Examination and Notification**

**Article 4:301: Examination of the goods**

Comments	
A. General	301
B. Modalities of the obligation to examine the goods	301
C. Failure to examine the goods	302
D. Consumer sale	303
E. Relationship with the Principles of European Contract Law (PECL)	303
Notes	
1. Duty to examine upon handing over the goods	303
2. Speed of examination	305
3. Examination where carriage of goods or sale in transit is involved	305

**Article 4:302: Notification of lack of conformity**

## Comments

A. General	306
B. Modalities of the duty to notify lack of conformity	306
C. Failure to notify a lack of conformity and the consequences thereof	307
D. Absolute time period of two years	308
E. Lack of conformity becoming apparent after the two-year period	309
F. Consumer sale	309
G. Relationship with the Principles of European Contract Law (PECL)	311

## Notes

1. General duty to notify lack of conformity	312
2. Notification under commercial sale	313
3. Notification under consumer sale	314
4. Notification of legal defects	314
5. Modalities of notification	314
6. Legal consequences of a failure to notify	315
7. Fixed time-limits for lack of conformity running from delivery	316
8. Default or mandatory rules	317
9. Related issues: periods of prescription for claims based on lack of conformity	318

**Article 4:303: Notification of partial delivery**

## Comments

A. General	320
B. No notification required	320
C. Consumer sale	321
D. Relationship with the Principles of European Contract Law (PECL)	321

## Notes

1. Notification of partial delivery in relation to notification of lack of conformity	321
---	-----

**Article 4:304: Seller's knowledge of lack of conformity**

## Comments

A. General	322
B. Knowledge of the lack of conformity	323
C. Impact on the buyer's remedies	323
D. Relationship with the Principles of European Contract Law (PECL)	323

## Notes

1. Relevance of seller's knowledge of lack of conformity for the examination and notification requirements	323
--	-----

**Article 4:305: Remedy to be claimed within a reasonable time**

Comments	
A. General	325
B. Notification of certain remedies claimed	325
C. Consumer sale	326
D. Relationship with the Principles of European Contract Law (PECL)	326

Notes	
1. Special notice of remedies necessary	327

**Chapter 5:  
Passing of risk**

**Section 1: General Provisions**

**Article 5:101: Effect of passing of risk**

Comments	
A. General	329
B. Consequences of the passing of risk under these Principles	329
C. Different types of risk in sales	330
D. Act and omission of the seller	330
E. Relationship with the Principles of European Contract Law (PECL)	331

Notes	
1. Events that fall within the notion of risk	331
2. Relation between passing of risk and rules on delivery and conformity	332
3. Connection of burdens and benefits with risk	333

**Article 5:102: Time when risk passes**

Comments	
A. General	334
B. The main rule: taking over the goods or documents	334
C. Lack of conformity and rules on the passing of risk	335
D. Identification of the goods	335
E. Exceptions	336

Notes	
1. Point in time when risk passes from the seller to the buyer	336
2. Identification of the goods	337
3. Special issues	338



**Article 5:103: Passing of risk in a consumer sale**

## Comments

- |   |     |
|---|-----|
| A. General  | 339 |
| B. Goods placed at the consumer's disposal                  | 339 |
| C. Carriage of goods in a consumer sale and passing of risk | 340 |

## Notes

- |   |     |
|---|-----|
| 1. Special risk regulation under consumer sales | 341 |
|---|-----|

**Section 2: Special rules****Article 5:201: Goods placed at buyer's disposal**

## Comments

- |  |     |
|--|-----|
| A. General   | 342 |
| B. Goods made available at the seller's place of business                    | 342 |
| C. Goods made available at a place other than the seller's place of business | 343 |
| D. Consumer sale   | 344 |

## Notes

- |  |     |
|--|-----|
| 1. Passing of risk when the buyer is in default in taking over the goods | 344 |
|--|-----|

**Article 5:202: Carriage of the goods**

## Comments

- |   |     |
|---|-----|
| A. General  | 345 |
| B. Carriage of the goods and passing of the risk        | 346 |
| C. The carrier as an independent entity from the seller | 347 |
| D. Consumer sale  | 347 |

## Notes

- |   |     |
|---|-----|
| 1. Sales contracts involving carriage           | 347 |
| 2. The notion of carrier                        | 348 |
| 3. Passing of risk in a sale involving carriage | 348 |

**Article 5:203: Goods sold in transit**

## Comments

- |   |     |
|---|-----|
| A. General  | 349 |
| B. Sale of goods in transit and the passing of risk                 | 350 |
| C. Exception  | 350 |
| D. Consumer sale  | 350 |
| E. Relationship with the Principles of European Contract Law (PECL) | 350 |

Notes

1. Sale of goods in transit	351
-----------------------------	-----

Chapter 6:

**Consumer goods guarantees**

**Article 6:101: Definition of a consumer goods guarantee**

Comments

A. General	353
B. Choice of terminology	354
C. Undertaking	354
D. Parties related to the consumer goods guarantee	354
E. The content of the consumer goods guarantee	355
F. Associated advertising	356
G. Consumer goods guarantee free of charge and against payment	356

Notes

1. Where are (consumer) guarantees regulated?	357
2. Definition of the guarantee in consumer sales	358
3. Parties to the guarantee	360
4. Legal form of the guarantee	361
5. Guarantee – associated advertising relationship	362
6. Guarantees against payment	363

**Article 6:102: Binding nature of the guarantee**

Comments

A. General	364
B. Transferability of the consumer goods guarantee	364
C. Acceptance requirements	364
D. Relationship with the Principles of European Contract Law (PECL)	365

Notes

1. Binding nature of the guarantee	365
2. Transferability of the guarantee	365

**Article 6:103: Guarantee document**

Comments

A. General	367
B. Consumer goods guarantee in relation to remedies for lack of conformity	368
C. Information necessary for making claims	368
D. Territorial limitations	368

E. Language of the consumer goods guarantee	369
F. The consumer goods guarantee document	369
G. Infringement of the content requirements	370

## Notes

1. The guarantee's form requirement	370
2. Content of the guarantee document	371
3. Language requirements	372
4. Infringement of the form and content requirements	373
5. Extra protection offered by the guarantee	374

**Article 6:104: Coverage of the guarantee**

## Comments

A. General	375
B. Default coverage of the consumer goods guarantee	375

## Notes

1. Duration of the default guarantee	377
2. Default cover of the guarantee: defect and remedies	378
3. Costs of invoking and performing the guarantee	379

**Article 6:105: Guarantee confined to specific parts**

## Comments

A. General	380
B. Effectiveness of the limitation	380

## Notes

1. Guarantee on specific parts only	381
-------------------------------------	-----

**Article 6:106: Maintenance instructions**

## Comments

A. General	382
B. Maintenance instructions	382

## Notes

1. Maintenance instructions	383
-----------------------------	-----

**Article 6:107: Burden of proof**

Comments

A. General	385
B. Burden of proof	385

Notes

1. Reversal of the burden of proof	386
------------------------------------	-----

**Article 6:108: Prolongation of the guarantee period**

Comments

A. General	387
B. Prolongation of the <i>guarantee period</i>	387

Notes

1. Prolongation of the <i>guarantee period</i>	388
--	-----

*Annexes*

Abbreviations	391
---------------	-----

Table of National Legislation	429
-------------------------------	-----

Table of UK Cases	463
-------------------	-----

Table of International Instruments	465
------------------------------------	-----

Table of PECL	467
---------------	-----

Bibliography	469
--------------	-----

Official Documents	479
--------------------	-----

Index	481
-------	-----