Contract Law of the People's Republic of China

Chapter 1 - General Provisions

Article 4
The parties shall have the rights to be voluntary to enter into a contract in accordance with the law. No unit or individual may illegally interfere.

Article 6

The parties must act in accordance with the principle of good faith, no matter in exercising rights or in performing obligations.

Article 8

As soon as a contract is established in accordance with the law, it shall be legally binding on the parties. The parties shall perform their respective obligations in accordance with the terms of the contract. Neither party may unilaterally modify or rescind the contract.

The contract established according to law shall be under the protection of law.

Chapter 2 - Conclusion of Contracts

Article 9

In concluding a contract, the parties shall have appropriate civil capacity of right and civil capacity of conduct.

The parties may conclude a contract through an agent in accordance with the law.

Article 10

The parties may conclude a contract in written, oral or other forms.

Where the laws or administrative regulations require a contract to be concluded in written form, the contract shall be in written form. If the parties agree to do so, the contract shall be concluded in written form.

Article 11

The written forms mean the forms which can show the described contents visibly, such as a written contractual agreement, letters, and data-telex (including telegram, telex, fax, EDI and e-mails).

Article 22

Except that it is based on transaction practices or that the offer indicates an acceptance may be made by performing an act, the acceptance shall be made by means of notice.

Article 41

If a dispute over the understanding of the standard terms occurs, it shall be interpreted according to general understanding. Where there are two or more kinds of interpretation, an interpretation unfavourable to the party supplying the standard terms shall be preferred. Where the standard terms are inconsistent with non-standard terms, the latter shall be adopted.

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

1. disguising and pretending to conclude a contract, and negotiating in bad faith;
2. concealing deliberately the important facts relating to the conclusion of the contract or providing deliberately false information;
3. performing other acts which violate the principle of good faith.
Chapter 3 - Effectiveness of Contracts

Article 48

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

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

Article 49

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

Article 52

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

1. A contract is concluded through the use of fraud or coercion by one party to damage the interests of the State;
2. Malicious collusion is conducted to damage the interests of the State, a collective or a third party;
3. An illegitimate purpose is concealed under the guise of legitimate acts;
4. Damaging the public interests;
5. Violating the compulsory provisions of the laws and administrative regulations.

Chapter 4 - Performance of Contracts

Article 60

The parties shall perform their obligations thoroughly according to the terms of the contract.

The parties shall abide by the principle of good faith and perform the obligations of notice, assistance and maintaining confidentiality, etc. based on the character and purpose of the contract or the transaction practices.

Article 62

If the relevant terms of a contract are unclear, nor can it be determined according to the provisions of Article 61 of this Law, the provisions below shall be applied

1. If quality requirements are unclear, the State standards or trade standards shall be applied; if there are no State standards or trade standards, generally held standards or specific standards in conformity with the purpose of the contract shall be applied.
2. If the price or remuneration is unclear, the market price of the place of performance at the time concluding the contract shall be applied; if the government-fixed price or government-directed price shall be followed in accordance with the law, the provisions of the law shall be applied.
3. If the place of performance is unclear, and the payment is currency, the performance shall be effected at the place of location of the party receiving the payment; if real estate is to be delivered, the performance shall be effected at the place of location of the real estate; in case of other contract objects, the performance shall be effected at the place of location of the party fulfilling the obligations.
4. If the time limit for performance is unclear, the obligor may at any time fulfill the obligations towards the obligee; the obligee may also demand at any time that the obligor performs the obligations, but a time period for necessary preparation shall be given to the obligor.
5. If the method of performance is unclear, the method which is advantageous to realize the purpose of the contract shall be adopted.
6. If the burden of the expenses of performance is unclear, the cost shall be assumed by the obligor.
Article 66

If both parties have obligations towards each other and there is no order of priority in respect of the performance of obligations, the parties shall perform the obligations simultaneously. One party has the right to reject the other party's request for performance before the other party's performance. One party has the right to reject the other party's corresponding request for performance if the other party's performance does not meet the terms of the contract.

Article 69

One party to a contract which suspends its performance of the contract in accordance with the provisions of Article 68 of this Law, shall promptly inform the other party of such suspension. It shall resume its performance of the contract when the other party provides a sure guarantee. After the suspension of the performance, if the other party does not reinstate its capacity of performance and does not provide with a sure guarantee, the party suspending performance of the contract may rescind the contract.

Article 70

If the obligee does not notify the obligor its separation, merger or a change of its domicile so as to make it difficult for the obligor to perform the obligations, the obligor may suspend the performance of the contract or have the object deposited.

Chapter 5 - Modification and Assignment of Contracts

Article 77

A contract may be modified if the parties reach a consensus through consultation. If the laws or administrative regulations stipulate that a contract shall be modified through the procedures of approval or registration, such provisions shall be followed.

Article 79

The obligee may assign, wholly or in part, its rights under the contract to a third party, except for the following circumstances

1. The rights under the contract may not be assigned according to the character of the contract;
2. The rights under the contract may not be assigned according to the agreement between the parties;
3. The rights under the contract may not be assigned according to the provisions of the laws.

Article 80

An obligee assigning its rights shall notify the obligor. Without notifying the obligor, the assignment shall not become effective to the obligor. The notice of assignment of rights may not be revoked, unless the assignee agrees thereupon.

Article 81

If the obligee assigns its rights, the assignee shall acquire the collateral rights relating to the principal rights, except that the collateral rights exclusively belong to the obligee.

Article 82

After the obligor receives the notice of assignment of the creditor's rights, it may claim its demur in respect of the assignor to the assignee.

Article 83

When the obligor receives the notice of assignment of the creditor's rights, and the obligor has due creditor's rights to the assign or, and the creditor's rights of the obligor are due in priority to the assigned creditor's rights or due at the same time, the obligor may claim to offset each other to the assignee.
Chapter 6 - Termination of the Rights and Obligations of Contracts

Article 99
Where the parties to a contract have debts due mutually and the category and character of the debts are the same, any party may offset his debt against the other's one, except that the debts may not be offset according to the provisions of the laws or to the character of the contract.

Any party advancing to offset the debts shall make a notice to the other party. Such notice shall be effective upon the arrival at the other party. The offset may not be accompanied by any conditions or time limit.

Article 100
Where the parties to a contract have debts due mutually and the category and character of the debts are different, the debts may be offset against each other if both parties have reached a consensus through consultation.

Chapter 7 - Liability for Breach of Contracts

Article 112
Where one party to a contract fails to perform the contract obligations or its performance fails to satisfy the terms of the contract, the party shall, after performing its obligations or taking remedial measures, compensate for the losses, if the other party suffers from other losses.

Article 113
Where one party to a contract fails to perform the contract obligations or its performance fails to satisfy the terms of the contract and causes losses to the other party, the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, provided not exceeding the probable losses caused by the breach of contract which has been foreseen or ought to be foreseen when the party in breach concludes the contract.

The business operator who commits default activities in providing to the consumer any goods or service shall be liable for paying compensation for damages in accordance with the Law of the People’s Republic of China on the Protection of Consumer Rights and Interests.

Article 114
The parties to a contract may agree that one party shall, when violating the contract, pay breach of contract damages of a certain amount in light of the breach, or may agree upon the calculating method of compensation for losses resulting from the breach of contract.

If the agreed breach of contract damages are lower than the losses caused, any party may request the people's court or an arbitration institution to increase it; if it is excessively higher than the losses caused, any party may request the people's court or an arbitration institution to make an appropriate reduction. If the parties to a contract agree upon breach of contract damages in respect to the delay in performance, the party in breach shall perform the debt obligations after paying the breach of contract damages.

Article 117
In case that a contract is not able to be performed because of force majeure, the liabilities shall be exempted in part or wholly in light of the effects of force majeure, except as otherwise stipulated by law. If the force majeure occurs after one party has delayed in performance, the liability may not be exempted. Force majeure as referred to in this Law means the objective circumstances that are unforeseeable, unavoidable and insurmountable.

Article 119
After one party violates a contract, the other party shall take proper measures to prevent from the enlargement of losses; if the other party fails to take proper measures so that the losses are enlarged, it may not claim any compensation as to the enlarged losses. The reasonable expenses paid by the party to prevent from the enlargement of losses shall be borne by the party in breach.

Chapter 8 - Miscellaneous Provisions

Article 125

With regard to disputes between the parties to a contract arising from the understanding of any clause of the contract, the true intention of such clause shall be determined according to the teens and expressions used in the contract, the contents of the relevant clauses of the contract, the purpose for concluding the contract, the transaction practices and the principle of good faith.

Where two or more languages are adopted in the text of a contract and it is agreed that both texts are equally authentic, it shall be presumed that the terms and expressions in various versions have the same meaning. In case that the terms and expressions in different versions are inconsistent, they shall be interpreted according to the purpose of the contract.

Article 126

The parties to a contract involving foreign interests may choose the law applicable to the settlement of their contract disputes, except as otherwise stipulated by law. If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

The contracts for Chinese-foreign equity joint ventures, for Chinese-foreign contractual joint ventures and for Chinese-foreign cooperative exploration and development of natural resources to be performed within the territory of the People's Republic of China shall apply the laws of the People's Republic of China.

Referring Principles:

I.1.1 - Good faith and fair dealing in international trade
II.1 - Prerequisites and effects of agency
II.3 - Agent acting without or outside his authority
II.4 - Agency by estoppel / apparent authority
III.1 - Set-off
III.2 - Assignment of claim
IV.1.1 - Freedom of contract
IV.1.2 - Sanctity of contracts
IV.2.2 - Silence by offeree
IV.4.1 - Freedom of form
IV.5.1 - Intentions of the parties
IV.5.4 - Interpretation against the party that supplied the term
IV.5.2 - Context-oriented interpretation
IV.6.2 - Subsequent fixing of contract price
IV.6.9 - Duty to notify / to cooperate
IV.7.1 - Invalidity of contract that violates good morals ("<em>boni mores"</em>)