

New Hungarian Civil Code – EXCERPTS

translation by Wolters Kluwer, Budapest, in 2013

The new Code entered into force on 15 March 2014)

To be noted in particular - Chapter XXXIV on "Types of sales contracts", Sections 6:232 and 6:233 - Chapter XXXVII on "Works contracts", Section 6:255, "Agricultural services contract".

PART THREE

EXPRESS CONTRACTS

TITLE XIV

TITLE-TRANSFER CONTRACTS

Chapter XXXIV

Types of Sales Contracts

Section 6:231 [*Forward transactions for the sale of things defined by type and quantity*]

(1) If the seller undertakes an obligation for the supply in the future of things defined by type and quantity, and the parties stipulate the range of discrepancy as to quantity by which the seller may deviate from the quantity fixed in the contract to either direction, the buyer shall pay the purchase price for the quantity actually supplied.

(2) If the seller supplies below the minimum prescribed quantity, the consequences for such non-performance shall be determined in due account of the contracted quantity.

(3) If the seller undertakes an obligation for the supply of things defined by type and quantity in the future, the buyer shall have the right to withdraw from the contract until such time as the seller's offer for the delivery of supplies; if the seller is to perform the contract in segments, and already offered to deliver a part of the services contracted, the buyer shall have the right to withdraw from the contract with respect to the part not yet offered. The buyer shall be held liable for damages caused to the seller through exercising the right of withdrawal or the right to terminate.

Section 6:232 [*Sales contracts for the supply of own produced agricultural goods*]

(1) If the seller undertakes an obligation for the supply of agricultural goods and/or produce of his own production or livestock that he himself has raised at a future date, he shall be entitled to perform ten per cent below the quantity stipulated in the contract.

(2) The seller shall also be entitled to effect performance of the contract referred to in Subsection (1) before the stipulated delivery date, provided that the buyer is notified in advance of commencement of performance while ample time is provided to him to make the necessary preparations.

Section 6:233 [*Sales contracts for the supply of agricultural goods produced with the buyer's involvement*]

If the seller undertakes an obligation for the supply of agricultural goods and/or produce of his own production or livestock that he himself has raised at a future date, and based on the parties' agreement the buyer is required to provide assistance to facilitate performance, and to provide information to the seller in that

context, the seller shall cooperate in the provision of such service by following the instructions communicated. The seller shall pay the contracted price for the buyer's service provided to facilitate performance, and shall repay the part of any production advance received from the buyer that is not covered by the purchase price even if the production result is insufficient to cover such payments.

TITLE XV

CONTRACTS FOR PROFESSIONAL SERVICES

Chapter XXXVII

Works contracts

1. General provisions on works contracts

<p>Section 6:238 [<i>Works contracts</i>] Under a works contract the contractor undertakes to perform activities to achieve the result agreed upon (hereinafter referred to as "works") and the customer undertakes to accept delivery of and pay the contracted fees for such works.</p>
<p>Section 6:239 [<i>Organization of activities</i>] (1) The contractor shall arrange the conditions for carrying out the activity so as to ensure that the works will be completed safely and professionally in due time, in a manner that is economically viable. (2) Any material that is required for completion of the works shall be obtained by the contractor.</p>
<p>Section 6:240 [<i>Customer's right to give instructions</i>] (1) The contractor shall act in accordance with the customers' instructions. No instructions shall be given for the organization of work and they shall not render performance more burdensome. (2) If a customer gives unreasonable or unprofessional instructions, the contractor shall be obliged to warn him thereof. If the customer insists on his instructions in spite of the warning, the contractor shall be entitled to withdraw from the contract or may carry out the works according to the customer's instructions, at the customer's risk. The contractor shall refuse to comply with such instructions if compliance would constitute an infringement of the law or any administrative decision, or it would jeopardize the safety or property of others.</p>
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(2) If a customer gives unreasonable or unprofessional instructions, the contractor shall be obliged to warn him thereof. If the customer insists on his instructions in spite of the warning, the contractor shall be entitled to withdraw from the contract or may carry out the works according to the customer's instructions, at the customer's risk. The contractor shall refuse to comply with such instructions if compliance would constitute an infringement of the law or any administrative decision, or it would jeopardize the safety or property of others.

Section 6:241 [Place of works]

(1) If the work is to be performed at a work site designated by the customer, the customer shall make the site available to the contractor in a condition as appropriate for carrying out the activity.

(2) The contractor shall be entitled to refuse to commence work until the work site is rendered suitable for carrying out the activity. If the customer fails to make available the work site in spite of being asked to do so by the contractor, the contractor shall be entitled to withdraw from the contract and demand compensation for damages.

(3) If by agreement of the parties the responsibility for rendering the site suitable for carrying out the activity lies with the contractor, the customer shall be liable to cover the costs thereof.

Section 6:242 [Customer's right of inspection]

(1) The customer may at any time inspect the work and check the materials used.

(2) The contractor shall not be relieved of the consequences of non-performance if the customer failed to inspect the contractor's activity or did so inadequately.

Section 6:243 [Coordination of works]

If two or more contractors are working at the same work site simultaneously or successively, the customer shall provide for the necessary conditions for carrying out the work efficiently and in concert.

Section 6:244 [Additional work. Extra work]

(1) The contractor shall perform the work covered by the works contract but not taken into consideration for the calculation of the contract price, as well as the work that is considered essential for the completion of the works in a condition proper for use or the intended purpose (additional work).

(2) The contractor shall perform works ordered subsequently, prompted, in particular, by changes in the plans or designs, if carrying out such works is unlikely to impose unreasonable burden upon the contractor (extra work).

Section 6:245 [Contract price]

(1) If the parties agreed on a fixed sum, the contractor shall have the right to charge for extra works only in addition to the fee agreed upon, and shall not be entitled to charge for additional works. However, the customer shall reimburse the contractor's expenses incurred in connection with carrying out additional works, which could not have been foreseen at the time of conclusion of the contract.

(2) If the contract price is to be paid according to progress, the contractor shall be entitled to invoice for the work phases completed.

(3) The contract price shall be payable upon contractual performance.

Section 6:246 [Statutory lien]

The contractor shall be entitled to statutory lien up to the contract price and expenses on the property of which the customer gains possession in consequence of the works contract.

Section 6:247 [Acceptance or verification of services]

(1) The contractor shall deliver the works within the framework of a procedure of acceptance or verification. During the procedure the parties shall perform the checks and tests commonplace in the given sector, which are deemed necessary to verify whether performance is in conformity with the contract.

(2) The contractor shall be deemed to have performed in due time if the procedure of acceptance or verification begins within the contracted delivery period.

(3) Acceptance shall not be refused on the grounds of any defect in the works that, in the event of repair or replacement, does not prevent proper use.

(4) If the customer fails to carry out the procedure of acceptance or verification, the legal effects of performance shall take effect upon the actual transfer of possession.

(5) If performance of the contract requires the contractor to transfer ownership of a thing, ownership shall pass to the customer when the thing is delivered and when the price is paid in full.

Section 6:248 [Nullification of contracts]

(1) If performance becomes impossible for a reason that cannot be attributed to either party and:

a) the cause of impossibility has occurred within the control of the contractor, he shall not be entitled to demand remuneration;

b) the cause of impossibility has occurred within the control of the customer, the contractor shall be entitled to remuneration, but the customer shall be entitled to deduct the amount that the contractor had saved in expenses because of impossibility and the amount that the contractor had earned or could, without great difficulty, have earned elsewhere in the time gained;

c) the cause of impossibility has occurred within or beyond the control of both parties, the contractor shall be entitled to a proportionate amount of the remuneration for the work done and for his expenses.

(2) In the event of nullification, the customer shall be entitled to demand the contractor to deliver any works in progress, which are not yet finished, in which case the provisions on unjust enrichment shall apply.

Section 6:249 [Withdrawal, termination]

(1) The customer shall be entitled to withdraw from the contract at any time before the beginning of performance, and shall then be able to terminate the contract before performance.

(2) In the event of withdrawal or termination by the customer, the customer shall pay the commensurate part of the contract price and shall pay compensation to the contractor for damages, with the proviso that the amount of compensation may not exceed the contract price.

Section 6:250 [Gratuitous works contracts]

(1) The provisions of this Chapter shall apply to works contracts where the customer is not required to provide any compensation.

(2) If the contractor agrees to provide services without any compensation, the customer shall be required to cover the contractor's related expenses.

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6. Agricultural services contract

Section 6:255 [Agricultural services contracts]

(1) Under an agricultural services contract the contractor undertakes to keep the customer's animals and to grow crops on the customer's land, and the customer undertakes to pay the contracted fees for such services.

(2) In the event of nullification of the contract due to any disease of the animals or plants, the contractor shall not be held liable if such disease has occurred in consequence of unavoidable circumstances beyond his control. In that case the contractor shall be entitled to commensurate remuneration.

(3) The producer shall not be entitled to refuse the repayment of services performed by the customer on account or as prepayment on the grounds that such repayments cannot be covered by the results of production.