



# Sale of Goods Act 1979

## 1979 CHAPTER 54

### PART II

#### FORMATION OF THE CONTRACT

##### *Conditions and warranties*

#### **10 Stipulations about time**

- (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not of the essence of a contract of sale.
- (2) Whether any other stipulation as to time is or is not of the essence of the contract depends on the terms of the contract.
- (3) In a contract of sale " month " prima facie means calendar month.

#### **11 When condition to be treated as warranty**

- (1) Subsections (2) to (4) and (7) below do not apply to Scotland and subsection (5) below applies only to Scotland.
- (2) Where a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.
- (3) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract; and a stipulation may be a condition, though called a warranty in the contract.
- (4) Where a contract of sale is not severable and the buyer has accepted the goods or part of them, the breach of a condition to be fulfilled by the seller can only be treated as a

breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is an express or implied term of the contract to that effect.

- (5) In Scotland, failure by the seller to perform any material part of a contract of sale is a breach of contract, which entitles the buyer either within a reasonable time after delivery to reject the goods and treat the contract as repudiated, or to retain the goods and treat the failure to perform such material part as a breach which may give rise to a claim for compensation or damages.
- (6) Nothing in this section affects a condition or warranty whose fulfilment is excused by law by reason of impossibility or otherwise.
- (7) Paragraph 2 of Schedule 1 below applies in relation to a contract made before 22 April 1967 or (in the application of this Act to Northern Ireland) 28 July 1967.

## **12 Implied terms about title, etc.**

- (1) In a contract of sale, other than one to which subsection (3) below applies, there is an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass.
- (2) In a contract of sale, other than one to which subsection (3) below applies, there is also an implied warranty that—
  - (a) the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made, and
  - (b) the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.
- (3) This subsection applies to a contract of sale in the case of which there appears from the contract or is to be inferred from its circumstances an intention that the seller should transfer only such title as he or a third person may have.
- (4) In a contract to which subsection (3) above applies there is an implied warranty that all charges or encumbrances known to the seller and not known to the buyer have been disclosed to the buyer before the contract is made.
- (5) In a contract to which subsection (3) above applies there is also an implied warranty that none of the following will disturb the buyer's quiet possession of the goods, namely—
  - (a) the seller;
  - (b) in a case where the parties to the contract intend that the seller should transfer only such title as a third person may have, that person;
  - (c) anyone claiming through or under the seller or that third person otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract is made.
- (6) Paragraph 3 of Schedule 1 below applies in relation to a contract made before 18 May 1973.

### **13 Sale by description**

- (1) Where there is a contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description.
- (2) If the sale is by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.
- (3) A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer.
- (4) Paragraph 4 of Schedule 1 below applies in relation to a contract made before 18 May 1973.

### **14 Implied terms about quality or fitness**

- (1) Except as provided by this section and section 15 below and subject to any other enactment, there is no implied condition or warranty about the quality or fitness for any particular purpose of goods supplied under a contract of sale.
- (2) Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality, except that there is no such condition—
  - (a) as regards defects specifically drawn to the buyer's attention before the contract is made; or
  - (b) if the buyer examines the goods before the contract is made, as regards defects which that examination ought to reveal.
- (3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known—
  - (a) to the seller, or
  - (b) where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit-broker to the seller, to that credit-broker,any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit-broker.
- (4) An implied condition or warranty about quality or fitness for a particular purpose may be annexed to a contract of sale by usage.
- (5) The preceding provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.
- (6) Goods of any kind are of merchantable quality within the meaning of subsection (2) above if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances.

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*Status: This is the original version (as it was originally enacted).*

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- (7) Paragraph 5 of Schedule 1 below applies in relation to a contract made on or after 18 May 1973 and before the appointed day, and paragraph 6 in relation to one made before 18 May 1973.
- (8) In subsection (7) above and paragraph 5 of Schedule 1 below references to the appointed day are to the day appointed for the purposes of those provisions by an order of the Secretary of State made by statutory instrument.