

## SCHEDULES

### SCHEDULE 1

#### MODIFICATION OF ACT FOR CERTAIN CONTRACTS

##### *Section 55: exclusion of implied terms (i)*

- 11 In relation to a contract made on or after 18 May 1973 and before 1 February 1978 substitute the following for section 55: —

##### **“55 Exclusion of implied terms.**

- (1) Where a right, duty or liability would arise under a contract of sale of goods by implication of law, it may be negated or varied by express agreement, or by the course of dealing between the parties, or by such usage as binds both parties to the contract, but the preceding provision has effect subject to the following provisions of this section.
- (2) An express condition or warranty does not negative a condition or warranty implied by this Act unless inconsistent with it.
- (3) In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of the provisions of section 12 above is void.
- (4) In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of the provisions of section 13, 14 or 15 above is void in the case of a consumer sale and is, in any other case, not enforceable to the extent that it is shown that it would not be fair or reasonable to allow reliance on the term.
- (5) In determining for the purposes of subsection (4) above whether or not reliance on any such term would be fair or reasonable regard shall be had to all the circumstances of the case and in particular to the following matters—
  - (a) the strength of the bargaining positions of the seller and buyer relative to each other, taking into account, among other things, the availability of suitable alternative products and sources of supply ;
  - (b) whether the buyer received an inducement to agree to the term or in accepting it had an opportunity of buying the goods or suitable alternatives without it from any source of supply;
  - (c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties) ;
  - (d) where the term exempts from all or any of the provisions of section 13, 14 or 15 above if some condition is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable;

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

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- (e) whether the goods were manufactured, processed, or adapted to the special order of the buyer.
- (6) Subsection (5) above does not prevent the court from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any of the provisions of section 13, 14 or 15 above is not a term of the contract.
- (7) In this section " consumer sale " means a sale of goods (other than a sale by auction or by competitive tender) by a seller in the course of a business where the goods—
  - (a) are of a type ordinarily bought for private use or consumption ; and
  - (b) are sold to a person who does not buy or hold himself out as buying them in the course of a business.
- (8) The onus of proving that a sale falls to be treated for the purposes of this section as not being a consumer sale lies on the party so contending.
- (9) Any reference in this section to a term exempting from all or any of the provisions of any section of this Act is a reference to a term which purports to exclude or restrict, or has the effect of excluding or restricting the operation of all or any of the provisions of that section, or the exercise of a right conferred by any provision of that section, or any liability of the seller for breach of a condition or warranty implied by any provision of that section.
- (10) It is hereby declared that any reference in this section to a term of a contract includes a reference to a term which although not contained in a contract is incorporated in the contract by another term of the contract.
- (11) Nothing in this section prevents the parties to a contract for the international sale of goods from negating or varying any right, duty or liability which would otherwise arise by implication of law under sections 12 to 15 above.
- (12) In subsection (11) above "contract for the international sale of goods " means a contract of sale of goods made by parties whose places of business (or, if they have none, habitual residences) are in the territories of different States (the Channel Islands and the Isle of Man being treated for this purpose as different States from the United Kingdom) and in the case of which one of the following conditions is satisfied:—
  - (a) the contract involves the sale of goods which are at the time of the conclusion of the contract in the course of carriage or will be carried from the territory of one State to the territory of another ; or
  - (b) the acts constituting the offer and acceptance have been effected in the territories of different States ; or
  - (c) delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance have been effected.”