

## SCHEDULES

### SCHEDULE 1

#### PROVISION EQUIVALENT TO PART I OF SUPPLY OF GOODS AND SERVICES ACT 1982 FOR SCOTLAND

1 After Part I of the <sup>M1</sup>Supply of Goods and Services Act 1982 there is inserted the following Part—

#### “PART IA

#### SUPPLY OF GOODS AS RESPECTS SCOTLAND

#### *Contracts for the transfer of property in goods*

#### **The contracts concerned.**

11A (1) In this Act in its application to Scotland a “contract for the transfer of goods” means a contract under which one person transfers or agrees to transfer to another the property in goods, other than an excepted contract.

(2) For the purposes of this section an excepted contract means any of the following—

- (a) a contract of sale of goods;
- (b) a hire-purchase agreement;
- (c) a contract under which the property in goods is (or is to be) transferred in exchange for trading stamps on their redemption;
- (d) a transfer or agreement to transfer for which there is no consideration;
- (e) a contract intended to operate by way of mortgage, pledge, charge or other security.

(3) For the purposes of this Act in its application to Scotland a contract is a contract for the transfer of goods whether or not services are also provided or to be provided under the contract, and (subject to subsection (2) above) whatever is the nature of the consideration for the transfer or agreement to transfer.

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

11B (1) In a contract for the transfer of goods, other than one to which subsection (3) below applies, there is an implied term on the part of the transferor that in the case of a transfer of the property in the goods he has a right to transfer the property and in the case of an agreement to transfer the property in the goods he will have such a right at the time when the property is to be transferred.

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- (2) In a contract for the transfer of goods, other than one to which subsection (3) below applies, there is also an implied term that—
- (a) the goods are free, and will remain free until the time when the property is to be transferred, from any charge or encumbrance not disclosed or known to the transferee before the contract is made, and
  - (b) the transferee 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 for the transfer of goods in the case of which there appears from the contract or is to be inferred from its circumstances an intention that the transferor 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 term that all charges or encumbrances known to the transferor and not known to the transferee have been disclosed to the transferee before the contract is made.
- (5) In a contract to which subsection (3) above applies there is also an implied term that none of the following will disturb the transferee's quiet possession of the goods, namely—
- (a) the transferor;
  - (b) in a case where the parties to the contract intend that the transferor should transfer only such title as a third person may have, that person;
  - (c) anyone claiming through or under the transferor or that third person otherwise than under a charge or encumbrance disclosed or known to the transferee before the contract is made.
- (6) In section 21 of the 1977 Act after subsection (3) there is inserted the following subsection—
- (3A) Notwithstanding anything in the foregoing provisions of this section, any term of a contract which purports to exclude or restrict liability for breach of the obligations arising under section 11B of the Supply of Goods and Services Act 1982 (implied terms about title, freedom from encumbrances and quiet possession in certain contracts for the transfer of property in goods) shall be void.”

**Implied terms where transfer is by description.**

- 11C (1) This section applies where, under a contract for the transfer of goods, the transferor transfers or agrees to transfer the property in the goods by description.
- (2) In such a case there is an implied term that the goods will correspond with the description.
  - (3) If the transferor transfers or agrees to transfer the property in the goods by reference to a 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.

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- (4) A contract is not prevented from falling within subsection (1) above by reason only that, being exposed for supply, the goods are selected by the transferee.

**Implied terms about quality or fitness.**

- 11D(1) Except as provided by this section and section 11E below and subject to the provisions of any other enactment, there is no implied term about the quality or fitness for any particular purpose of goods supplied under a contract for the transfer of goods.
- (2) Where, under such a contract, the transferor transfers the property in goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality.
- (3) For the purposes of this section and section 11E below, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances.
- (4) The term implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory—
- (a) which is specifically drawn to the transferee's attention before the contract is made,
  - (b) where the transferee examines the goods before the contract is made, which that examination ought to reveal, or
  - (c) where the property in the goods is, or is to be, transferred by reference to a sample, which would have been apparent on a reasonable examination of the sample.
- (5) Subsection (6) below applies where, under a contract for the transfer of goods, the transferor transfers the property in goods in the course of a business and the transferee, expressly or by implication, makes known—
- (a) to the transferor, or
  - (b) where the consideration or part of the consideration for the transfer is a sum payable by instalments and the goods were previously sold by a credit-broker to the transferor, to that credit-broker,
- any particular purpose for which the goods are being acquired.
- (6) In that case there is (subject to subsection (7) below) an implied term that the goods supplied under the contract are reasonably fit for the purpose, whether or not that is a purpose for which such goods are commonly supplied.
- (7) Subsection (6) above does not apply where the circumstances show that the transferee does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the transferor or credit-broker.
- (8) An implied term about quality or fitness for a particular purpose may be annexed by usage to a contract for the transfer of goods.
- (9) The preceding provisions of this section apply to a transfer by a person who in the course of a business is acting as agent for another as they apply to a transfer by a principal in the course of a business, except where that other is not transferring in the course of a business and either the transferee knows

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that fact or reasonable steps are taken to bring it to the transferee's notice before the contract concerned is made.

**Implied terms where transfer is by sample.**

- 11E (1) This section applies where, under a contract for the transfer of goods, the transferor transfers or agrees to transfer the property in the goods by reference to a sample.
- (2) In such a case there is an implied term—
- (a) that the bulk will correspond with the sample in quality;
  - (b) that the transferee will have a reasonable opportunity of comparing the bulk with the sample; and
  - (c) that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.
- (3) For the purposes of this section a transferor transfers or agrees to transfer the property in goods by reference to a sample where there is an express or implied term to that effect in the contract concerned.

**Remedies for breach of contract.**

- 11F (1) Where in a contract for the transfer of goods a transferor is in breach of any term of the contract (express or implied), the other party to the contract (in this section referred to as “the transferee”) shall be entitled—
- (a) to claim damages; and
  - (b) if the breach is material, to reject any goods delivered under the contract and treat it as repudiated.
- (2) Where a contract for the transfer of goods is a consumer contract and the transferee is the consumer, then, for the purposes of subsection (1)(b) above, breach by the transferor of any term (express or implied)—
- (a) as to the quality of the goods or their fitness for a purpose;
  - (b) if the goods are, or are to be, transferred by description, that the goods will correspond with the description;
  - (c) if the goods are, or are to be, transferred by reference to a sample, that the bulk will correspond with the sample in quality,
- shall be deemed to be a material breach.
- (3) In subsection (2) above, “consumer contract” has the same meaning as in section 25(1) of the 1977 Act; and for the purposes of that subsection the onus of proving that a contract is not to be regarded as a consumer contract shall lie on the transferor.

*Contracts for the hire of goods*

**The contracts concerned.**

- 11G (1) In this Act in its application to Scotland a “contract for the hire of goods” means a contract under which one person (“the supplier”) hires or agrees to hire goods to another, other than an excepted contract.

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- (2) For the purposes of this section, an excepted contract means any of the following—
  - (a) a hire-purchase agreement;
  - (b) a contract under which goods are (or are to be) hired in exchange for trading stamps on their redemption.
- (3) For the purposes of this Act in its application to Scotland a contract is a contract for the hire of goods whether or not services are also provided or to be provided under the contract, and (subject to subsection (2) above) whatever is the nature of the consideration for the hire or agreement to hire.

#### **Implied terms about right to transfer possession etc.**

- 11H (1) In a contract for the hire of goods there is an implied term on the part of the supplier that—
- (a) in the case of a hire, he has a right to transfer possession of the goods by way of hire for the period of the hire; and
  - (b) in the case of an agreement to hire, he will have such a right at the time of commencement of the period of the hire.
- (2) In a contract for the hire of goods there is also an implied term that the person to whom the goods are hired will enjoy quiet possession of the goods for the period of the hire except so far as the possession may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance disclosed or known to the person to whom the goods are hired before the contract is made.
- (3) The preceding provisions of this section do not affect the right of the supplier to repossess the goods under an express or implied term of the contract.

#### **Implied terms where hire is by description.**

- 11I (1) This section applies where, under a contract for the hire of goods, the supplier hires or agrees to hire the goods by description.
- (2) In such a case there is an implied term that the goods will correspond with the description.
  - (3) If under the contract the supplier hires or agrees to hire the goods by reference to a 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.
  - (4) A contract is not prevented from falling within subsection (1) above by reason only that, being exposed for supply, the goods are selected by the person to whom the goods are hired.

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

- 11J (1) Except as provided by this section and section 11K below and subject to the provisions of any other enactment, there is no implied term about the quality or fitness for any particular purpose of goods hired under a contract for the hire of goods.

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- (2) Where, under such a contract, the supplier hires goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality.
- (3) For the purposes of this section and section 11K below, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the consideration for the hire (if relevant) and all the other relevant circumstances.
- (4) The term implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory—
  - (a) which is specifically drawn to the attention of the person to whom the goods are hired before the contract is made, or
  - (b) where that person examines the goods before the contract is made, which that examination ought to reveal; or
  - (c) where the goods are hired by reference to a sample, which would have been apparent on reasonable examination of the sample.
- (5) Subsection (6) below applies where, under a contract for the hire of goods, the supplier hires goods in the course of a business and the person to whom the goods are hired, expressly or by implication, makes known—
  - (a) to the supplier in the course of negotiations conducted by him in relation to the making of the contract; or
  - (b) to a credit-broker in the course of negotiations conducted by that broker in relation to goods sold by him to the supplier before forming the subject matter of the contract,
any particular purpose for which the goods are being hired.
- (6) In that case there is (subject to subsection (7) below) an implied term 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.
- (7) Subsection (6) above does not apply where the circumstances show that the person to whom the goods are hired does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the hirer or credit-broker.
- (8) An implied term about quality or fitness for a particular purpose may be annexed by usage to a contract for the hire of goods.
- (9) The preceding provisions of this section apply to a hire by a person who in the course of a business is acting as agent for another as they apply to a hire by a principal in the course of a business, except where that other is not hiring in the course of a business and either the person to whom the goods are hired knows that fact or reasonable steps are taken to bring it to that person's notice before the contract concerned is made.

**Implied terms where hire is by sample.**

- 11K (1) This section applies where, under a contract for the hire of goods, the supplier hires or agrees to hire the goods by reference to a sample.
- (2) In such a case there is an implied term—
    - (a) that the bulk will correspond with the sample in quality; and

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- (b) that the person to whom the goods are hired will have a reasonable opportunity of comparing the bulk with the sample; and
  - (c) that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.
- (3) For the purposes of this section a supplier hires or agrees to hire goods by reference to a sample where there is an express or implied term to that effect in the contract concerned.

*Exclusion of implied terms, etc.*

**Exclusion of implied terms etc.**

- 11L (1) Where a right, duty or liability would arise under a contract for the transfer of goods or a contract for the hire of goods by implication of law, it may (subject to subsection (2) below and the 1977 Act) 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.
- (2) An express term does not negative a term implied by the preceding provisions of this Part of this Act unless inconsistent with it.
- (3) Nothing in the preceding provisions of this Part of this Act prejudices the operation of any other enactment or any rule of law whereby any term (other than one relating to quality or fitness) is to be implied in a contract for the transfer of goods or a contract for the hire of goods.”

**Marginal Citations**

**M1** 1982 c. 29.

**Changes to legislation:**

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