

## **DEFAULT RULES ON SALE CONTRACTS**

The English Sale of Goods Act and the Irish Sale of Goods Act are in broadly similar terms. The Sale of Goods legislation sets down certain rules which apply to the Sale of Goods, unless the contract says otherwise.

### **Ownership**

It is implied that the seller is the owner of the items concerned and is entitled to sell them. Title (valid ownership) cannot be sold if they the seller does not have it. Therefore, if a third party maintains a claim against the purchaser of goods, he in turn will have a claim against the seller for breach of the implied promise of valid ownership.

### **Satisfactory Quality**

It is implied that goods are of "satisfactory quality". This gives a purchaser very significant rights. Satisfactory quality is the standard that a reasonable person would regard as satisfactory, taking account of the description, price and all other relevant circumstances. The quality of the goods includes their state and condition, their fitness for the purpose concerned, their appearance and finish, freedom from any defects, safety and durability

### **Compliance with Description**

Where goods are sold by description, there is an implied term that they will correspond with the description. Where goods are sold by sample it is implied that the goods will correspond with the sample.

When the contract provides for sale by sample, the sample should be identified because there is an implied condition that the bulk will correspond with the sample in quality. The

buyer should have a reasonable opportunity to compare the bulk with the sample and that the goods are of satisfactory quality and are free from defects which would not be apparent on an examination of the sample.

### **Passing of Ownership**

The moment of passing of ownership is important in the sale of goods. This is because the owner of goods can sell them and the seller only has a claim for the price. This is significant in the event of the buyer's insolvency as the seller may only be unsecured creditor. For the above reasons, it is important to ensure that ownership of goods passes when the seller desires, preferably, when payment is made.

Ownership passes when it is intended to pass under the terms of the contract. The Sale of Goods Act states certain presumptions about what the parties intend unless otherwise stated in the contract. Where there is an unconditional contract for the sale of specific goods, the ownership passes when the contract is made. This may be surprising as this is likely to be before payment and delivery.

The Sale of Goods legislation distinguishes between specific ascertained goods and unascertained goods. Unascertained goods are those which are yet to be manufactured or grown or are of a generic type or are otherwise yet to be ascertained. Ownership of unascertained goods only passes once they have been ascertained and "appropriated" to the contract.

The importance of ownership of goods is that the owner (e.g. the purchaser) has a right to sell them without the consent of the seller notwithstanding that the seller may not have been paid.

There are certain situations in which a buyer of goods may be able to sell them even if he does not yet have ownership. These include sales by a buyer in possession of the goods, certain private sales of motor vehicles, and certain sales in certain markets.

When a person goes bankrupt or a company goes into insolvent winding up, assets owned by him or it are available for his creditors. "Reservation of title" to goods is frequently provided for in sales contract. This is a useful method of protecting the seller's position against the risk of the buyer's insolvency or default. See our separate note on reservation of title.

It is essential that there is a properly worded retention of title clause in the sale contract. Complications arise when goods become mixed up in other goods. Under these circumstances there are limits to the extent to which it is possible to hold back ownership title. A valid reservation of title clause may make the difference between being paid and not being paid.

### **Risk**

A separate issue to that of ownership is that of who carries the risk of the loss or damage to the goods. This generally lies with the person who has ownership. This position can be displaced and changed by the terms of the sale contract.

Unless otherwise agreed, goods remain at the seller's risk until ownership is transferred to the buyer. Where the ownership passes to the buyer (whether in advance of delivery or not) the risk normally passes as well.

There are a number of exceptions. Where delivery is late because of the fault of the buyer or the seller the risk lies with the party at fault regardless, provided it occurred after such fault. Where goods are to be delivered by the seller at his own risk, he must take the risk of deterioration in the goods necessarily incident.

## **Delivery and Payment**

The Sale of Goods Act states that unless otherwise agreed, delivery of goods and payment are concurrent conditions. This means payment is presumed to be due on delivery. This is a different issue to the issue of when ownership passes.

In the case of complicated goods such as larger plant and equipment, this provision may be totally unsatisfactory. Provisions for advance payments, stage payments and guarantees, etc would be important.

The Sale of Goods Act presumes it is a strict condition of the contract that the seller is to deliver the correct contract quantity. Local trade variations may apply to change this presumption.

There are default rules in relation to the place of delivery, where nothing is stated to the contrary in the contract. It may be desirable to change them. The presumption is that the place of delivery is a seller's place of business except where specific goods are to the knowledge of the parties at some other place, in which case that other place is the place of delivery.

Where there is no specific time for delivery, the seller must send goods within a reasonable time. If the contract specifies the date for delivery, there is a presumption that this is a strict condition so that that failure to comply will give the buyer the right to cancel the contract.

Unless agreed, a buyer is not obliged to accept delivery by installments. Unless otherwise agreed, the expenses and costs of putting goods into a deliverable state must be borne by the seller.

There are special rules in relation to transportation. The buyer must bear the risk of ordinary deterioration. The Sale of Goods Act requires seller to make contract with a carrier on behalf of the buyer as may be reasonable having regard to the nature of the

goods and circumstances.

### **Warranties and Conditions**

The Sale of Goods Act distinguishes between “warranties” and “conditions”. These are different types of terms in the sale contract. Generally, breach of a warranty is less serious than breach of a condition. The consequence of a breach of warranty is that the wronged party is entitled to compensation in money, but may not reject the goods and treat the contract as at an end.

Breach of condition is usually a more serious. Breach of a condition generally entitles the buyer to treat the contract as terminated and to reject the goods. Alternatively, the buyer may “waive” the condition, not terminate the contract, accept the goods and claim for damages. He may simply waive the condition entirely and not claim for damages.

### **Acceptance and Rejection**

In the absence of agreement otherwise, the buyer may reject the goods if they do not satisfy the conditions as to conformity with description, satisfactory quality, conformity with sample as implied by the Sale of Goods Act, provided he has not accepted them. Likewise, if the seller delivers less than the agreed quantity, the buyer may reject the consignment or accept them and pay the contract rate.

The buyer is not obliged to return goods which he has rejected. The buyer is liable in damages if he wrongly rejects conforming goods. The buyer has a right to inspect goods. The buyer who receives non-conforming goods has a right of rejection. However, the right must be exercised quickly. Generally it is desirable to specify the time in which the buyer must reject the goods. A buyer is deemed to accept goods if he does anything inconsistent with the seller’s ownership or after a reasonable time has elapsed or after acceptance is intimated.

### **Buyers Rights and Remedies**

Where a person enters a contract by reason of a misrepresentation (i.e. a misstatement whether innocent careless or fraudulent) he has the right to terminate the contract. Alternatively, under certain circumstances, damages and compensation may be awarded if the contract goods are accepted.

The innocent party will generally be entitled to terminate a contract if there is an express term in the contract that has been breached. If the contract contains nothing specific, the buyer may terminate where the seller's breach of contract is so fundamental that it deprives him of the benefit of the contract. He may also terminate if the seller or provider of the service refuses to perform the contract and repudiates it.

The buyer may have rights to terminate in the event of breach of contract. Where the breach is a very serious breach, the buyer may terminate the contract completely. The buyer may take action for breach of contract for non-delivery or incomplete or imperfect or nonconforming delivery. The buyer has a right of action under Sale of Goods Act for non-delivery. This also applies to goods that are rejected because they do not conform as to quality or quantity.

As set out above, the Sale of Goods Act distinguishes between breach of warranties and breach of conditions. See above.

### **Sellers Rights and Remedies**

The Sale of Goods Act provides a seller with legal rights against the buyer for the unpaid purchase price. The Late Payment of Commercial Debts legislation provides for a right of compensation and interest on late payment of the purchase price. There is provision for a fixed sum of compensation, depending on the value of the goods. There is also a right to interest at a rate laid down by law.

The seller may take legal action for the price if the buyer refuses or neglects to pay. The seller may be entitled to damages for breach of contract. He may have a legal right of action against the buyer for non-payment and non-acceptance of the goods.

Where the ownership of the goods has passed, the unpaid seller has the right to retain the goods so long as he is in possession of them. This is known as an unpaid vendor's lien.

The seller has a right to stop goods if they are in transit and he becomes the aware that the buyer has becomes insolvent after the seller has parted with possession. He has a right of resale of the goods to realise the sale price, even though ownership may already have passed. If the ownership has not passed, he unpaid seller's rights consists of a right to withhold delivery and sell.

The unpaid seller's lien is not affected by the sale of the goods by the buyer to a third party, unless the seller has consented to the sale. If the goods are sold on to a third party who takes them in good faith for a full price, the seller's rights can be terminated.

### **Impossibility**

Where it is impossible to perform the contract certain rules apply. Where the sale of specific goods is agreed and they perish without either party's fault, the contract may be void. However, there may be a clause in the contract that puts the goods at one party's risk.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

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