



# Supply of Goods and Services Act 1982

## 1982 CHAPTER 29

### PART I

#### SUPPLY OF GOODS

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

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

- (1) In this Act 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 which is made by deed and for which there is no consideration other than the presumed consideration imported by the deed;
  - (e) a contract intended to operate by way of mortgage, pledge, charge or other security.
- (3) For the purposes of this Act 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.

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

- (1) In a contract for the transfer of goods, other than one to which subsection (3) below applies, there is an implied condition on the part of the transferor that in the case of a

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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.

- (2) In a contract for the transfer of goods, 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 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 warranty 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 warranty 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.

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

- (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 condition that the goods will correspond with the description.
- (3) If the transferor transfers or agrees to transfer the property in the goods 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.
- (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.

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

- (1) Except as provided by this section and section 5 below and subject to the provisions of 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 for the transfer of goods.

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- (2) Where, under such a contract, the transferor transfers the property in goods in the course of a business, there is (subject to subsection (3) below) an implied condition that the goods supplied under the contract are of merchantable quality.
- (3) There is no such condition as is mentioned in subsection (2) above—
  - (a) as regards defects specifically drawn to the transferee's attention before the contract is made; or
  - (b) if the transferee examines the goods before the contract is made, as regards defects which that examination ought to reveal.
- (4) Subsection (5) 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.
- (5) In that case there is (subject to subsection (6) below) 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.
- (6) Subsection (5) 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.
- (7) An implied condition or warranty about quality or fitness for a particular purpose may be annexed by usage to a contract for the transfer of goods.
- (8) 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 that fact or reasonable steps are taken to bring it to the transferee's notice before the contract concerned is made.
- (9) 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 supplied as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances.

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

- (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 condition—
  - (a) that the bulk will correspond with the sample in quality; and
  - (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, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

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- (3) In subsection (2)(c) above “unmerchantable” is to be construed in accordance with section 4(9) above.
- (4) 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.

VALID FROM 03/01/1995

**[<sup>F1</sup>5A Modification of remedies for breach of statutory condition in non-consumer cases.**

- (1) Where in the case of a contract for the transfer of goods—
  - (a) the transferee would, apart from this subsection, have the right to treat the contract as repudiated by reason of a breach on the part of the transferor of a term implied by section 3, 4 or 5(2)(a) or (c) above, but
  - (b) the breach is so slight that it would be unreasonable for him to do so, then, if the transferee does not deal as consumer, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty.
- (2) This section applies unless a contrary intention appears in, or is to be implied from, the contract.
- (3) It is for the transferor to show that a breach fell within subsection (1)(b) above.]

**Textual Amendments**

**F1** S. 5A inserted (3.1.1995) by 1994 c. 35, ss. 7, 8(2), **Sch. 2 para. 6(5)** (with s. 8(3))

*Contracts for the hire of goods*

VALID FROM 03/01/1995

**6 The contracts concerned.**

- (1) In this Act [<sup>F2</sup>in its application to England and Wales and Northern Ireland] a “contract for the hire of goods” means a contract under which one person bails or agrees to bail goods to another by way of hire, other than an excepted contract.
- (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) bailed in exchange for trading stamps on their redemption.
- (3) For the purposes of this Act [<sup>F2</sup>in its application to England and Wales and Northern Ireland] 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)

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whatever is the nature of the consideration for the bailment or agreement to bail by way of hire.

#### Textual Amendments

**F2** Words in s. 6(1)(3) inserted (3.1.1995) by 1994 c. 35, ss. 7, 8(2), **Sch. 2 para. 6(6)** (with s. 8(3))

### 7 Implied terms about right to transfer possession, etc.

- (1) In a contract for the hire of goods there is an implied condition on the part of the bailor that in the case of a bailment he has a right to transfer possession of the goods by way of hire for the period of the bailment and in the case of an agreement to bail he will have such a right at the time of the bailment.
- (2) In a contract for the hire of goods there is also an implied warranty that the bailee will enjoy quiet possession of the goods for the period of the bailment 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 bailee before the contract is made.
- (3) The preceding provisions of this section do not affect the right of the bailor to repossess the goods under an express or implied term of the contract.

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

- (1) This section applies where, under a contract for the hire of goods, the bailor bails or agrees to bail the goods by description.
- (2) In such a case there is an implied condition that the goods will correspond with the description.
- (3) If under the contract the bailor bails or agrees to bail the goods by reference to a sample as well as a 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 bailee.

### 9 Implied terms about quality or fitness.

- (1) Except as provided by this section and section 10 below and subject to the provisions of any other enactment, there is no implied condition or warranty about the quality or fitness for any particular purpose of goods bailed under a contract for the hire of goods.
- (2) Where, under such a contract, the bailor bails goods in the course of a business, there is (subject to subsection (3) below) an implied condition that the goods supplied under the contract are of merchantable quality.
- (3) There is no such condition as is mentioned in subsection (2) above—
  - (a) as regards defects specifically drawn to the bailee's attention before the contract is made; or
  - (b) if the bailee examines the goods before the contract is made, as regards defects which that examination ought to reveal.

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- (4) Subsection (5) below applies where, under a contract for the hire of goods, the bailor bails goods in the course of a business and the bailee, expressly or by implication, makes known—
- (a) to the bailor 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 bailor before forming the subject matter of the contract,
- any particular purpose for which the goods are being bailed.
- (5) In that case there is (subject to subsection (6) below) 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.
- (6) Subsection (5) above does not apply where the circumstances show that the bailee does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the bailor or credit-broker.
- (7) An implied condition or warranty about quality or fitness for a particular purpose may be annexed by usage to a contract for the hire of goods.
- (8) The preceding provisions of this section apply to a bailment by a person who in the course of a business is acting as agent for another as they apply to a bailment by a principal in the course of a business, except where that other is not bailing in the course of a business and either the bailee knows that fact or reasonable steps are taken to bring it to the bailee's notice before the contract concerned is made.
- (9) 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 supplied as it is reasonable to expect having regard to any description applied to them, the consideration for the bailment (if relevant) and all the other relevant circumstances.

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

- (1) This section applies where, under a contract for the hire of goods, the bailor bails or agrees to bail the goods by reference to a sample.
- (2) In such a case there is an implied condition—
- (a) that the bulk will correspond with the sample in quality; and
  - (b) that the bailee will have a reasonable opportunity of comparing the bulk with the sample; and
  - (c) that the goods will be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.
- (3) In subsection (2)(c) above “unmerchantable” is to be construed in accordance with section 9(9) above.
- (4) For the purposes of this section a bailor bails or agrees to bail goods by reference to a sample where there is an express or implied term to that effect in the contract concerned.

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VALID FROM 03/01/1995

**[<sup>F3</sup>10A Modification of remedies for breach of statutory condition in non-consumer cases.**

- (1) Where in the case of a contract for the hire of goods—
  - (a) the bailee would, apart from this subsection, have the right to treat the contract as repudiated by reason of a breach on the part of the bailor of a term implied by section 8, 9 or 10(2)(a) or (c) above, but
  - (b) the breach is so slight that it would be unreasonable for him to do so, then, if the bailee does not deal as consumer, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty.
- (2) This section applies unless a contrary intention appears in, or is to be implied from, the contract.
- (3) It is for the bailor to show that a breach fell within subsection (1)(b) above.]

**Textual Amendments**

**F3** S. 10A inserted (3.1.1995) by 1994 c. 35, ss. 7, 8(2), Sch. 2 para. 6 (9) (with s. 8(3))

*Exclusion of implied terms, etc.*

**11 Exclusion of implied terms, etc.**

- (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 condition or warranty does not negative a condition or warranty implied by the preceding provisions of this Act unless inconsistent with it.
- (3) Nothing in the preceding provisions of this Act prejudices the operation of any other enactment or any rule of law whereby any condition or warranty (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.

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