



# Sale of Goods Act 1979

## 1979 CHAPTER 54

### PART IV

#### PERFORMANCE OF THE CONTRACT

**27 Duties of seller and buyer.**

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

**28 Payment and delivery are concurrent conditions.**

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

**29 Rules about delivery.**

- (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.
- (2) Apart from any such contract, express or implied, the place of delivery is the seller's place of business if he has one, and if not, his residence; except that, if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.
- (3) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
- (4) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until the third person acknowledges to the buyer

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*Changes to legislation: There are currently no known outstanding effects for the Sale of Goods Act 1979, Part IV. (See end of Document for details)*

that he holds the goods on his behalf; but nothing in this section affects the operation of the issue or transfer of any document of title to goods.

- (5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour; and what is a reasonable hour is a question of fact.
- (6) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

### **30 Delivery of wrong quantity.**

- (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.
- (2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole.

[<sup>F1</sup>(2A) A buyer who does not deal as consumer may not—

- (a) where the seller delivers a quantity of goods less than he contracted to sell, reject the goods under subsection (1) above, or
- (b) where the seller delivers a quantity of goods larger than he contracted to sell, reject the whole under subsection (2) above,

if the shortfall or, as the case may be, excess is so slight that it would be unreasonable for him to do so.

(2B) It is for the seller to show that a shortfall or excess fell within subsection (2A) above.

(2C) Subsections (2A) and (2B) above do not apply to Scotland.]

[<sup>F2</sup>(2D) Where the seller delivers a quantity of goods—

- (a) less than he contracted to sell, the buyer shall not be entitled to reject the goods under subsection (1) above,
- (b) larger than he contracted to sell, the buyer shall not be entitled to reject the whole under subsection (2) above,

unless the shortfall or excess is material.

(2E) Subsection (2D) above applies to Scotland only.]

- (3) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell and the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

<sup>F3</sup>(4) . . . . .

- (5) This section is subject to any usage of trade, special agreement, or course of dealing between the parties.

#### **Textual Amendments**

**F1** S. 30(2A)-(2C) inserted (3.1.1995) by 1994 c. 35, ss. 4(2), 8(2) (with s. 8(3)).

**F2** S. 30(2D)(2E) inserted (3.1.1995) by 1994 c. 35, ss. 5(2), 8(2) (with s. 8(3)).

**F3** S. 30(4) repealed (3.1.1995) by 1994 c. 35, ss. 3(3), 7(2), 8(2), Sch.3 (with s. 8(3)).

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### **31 Instalment deliveries.**

- (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery of them by instalments.
- (2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

### **32 Delivery to carrier.**

- (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier (whether named by the buyer or not) for the purpose of transmission to the buyer is prima facie deemed to be a delivery of the goods to the buyer.
- (2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case; and if the seller omits to do so, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages.
- (3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit; and if the seller fails to do so, the goods are at his risk during such sea transit.

### **33 Risk where goods are delivered at distant place.**

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless (unless otherwise agreed) take any risk of deterioration in the goods necessarily incident to the course of transit.

### **34 Buyer's right of examining the goods.**

<sup>F4</sup>

Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract [<sup>F5</sup>and, in the case of a contract for sale by sample, of comparing the bulk with the sample.].

#### **Textual Amendments**

**F4** Words in s. 34 repealed (3.1.1995) by 1994 c. 35, ss. 2(2)(a), 7(2), 8(2), **Sch.3** (with s. 8(3)).

**F5** Words in s. 34 inserted (3.1.1995) by 1994 c. 35, **ss. 2(2)(b), 8(2)** (with s. 8(3)).

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### 35 **Acceptance.**

- (1) The buyer is deemed to have accepted the goods [<sup>F6</sup>subject to subsection (2) below—
  - (a) when he intimates to the seller that he has accepted them, or
  - (b) when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller.
- (2) Where goods are delivered to the buyer, and he has not previously examined them, he is not deemed to have accepted them under subsection (1) above until he has had a reasonable opportunity of examining them for the purpose—
  - (a) of ascertaining whether they are in conformity with the contract, and
  - (b) in the case of a contract for sale by sample, of comparing the bulk with the sample.
- (3) Where the buyer deals as consumer or (in Scotland) the contract of sale is a consumer contract, the buyer cannot lose his right to rely on subsection (2) above by agreement, waiver or otherwise.
- (4) The buyer is also deemed to have accepted the goods when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.
- (5) The questions that are material in determining for the purposes of subsection (4) above whether a reasonable time has elapsed include whether the buyer has had a reasonable opportunity of examining the goods for the purpose mentioned in subsection (2) above.
- (6) The buyer is not by virtue of this section deemed to have accepted the goods merely because—
  - (a) he asks for, or agrees to, their repair by or under an arrangement with the seller, or
  - (b) the goods are delivered to another under a sub-sale or other disposition.
- (7) Where the contract is for the sale of goods making one or more commercial units, a buyer accepting any goods included in a unit is deemed to have accepted all the goods making the unit; and in this subsection “commercial unit” means a unit division of which would materially impair the value of the goods or the character of the unit.
- (8) Paragraph 10 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.

#### **Textual Amendments**

**F6** Words in s. 35 substituted (3.1.1995) by 1994 c. 35, ss. 2(1), 8(2) (with s. 8(3)).

### [<sup>F7</sup>35A **Right of partial rejection.**

- (1) If the buyer—
  - (a) has the right to reject the goods by reason of a breach on the part of the seller that affects some or all of them, but
  - (b) accepts some of the goods, including, where there are any goods unaffected by the breach, all such goods,
 he does not by accepting them lose his right to reject the rest.

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- (2) In the case of a buyer having the right to reject an instalment of goods, subsection (1) above applies as if references to the goods were references to the goods comprised in the instalment.
- (3) For the purposes of subsection (1) above, goods are affected by a breach if by reason of the breach they are not in conformity with the contract.
- (4) This section applies unless a contrary intention appears in, or is to be implied from, the contract.]

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**Textual Amendments**

**F7** S. 35A inserted (3.1.1995) by 1994 c. 35, ss. 3(1), 8(2) (with s. 8(3)).

**36 Buyer not bound to return rejected goods.**

Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right to do so, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

**37 Buyer's liability for not taking delivery of goods.**

- (1) When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.
- (2) Nothing in this section affects the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

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