

SALE OF GOODS AMENDMENT ACT 2002



**BERMUDA
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SALE OF GOODS AMENDMENT ACT 2002

[Date of Assent: 30 December 2002]

[Operative Date: Notice in Gazette]

WHEREAS it is expedient to amend the Sale of Goods Act 1978; to make provision as to the terms to be implied in certain agreements and for remedies for breach of the terms of those agreements:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Citation

1 This Act, which amends the Sale of Goods Act 1978 ("the principal Act") may be cited as the Sale of Goods Amendment Act 2002.

Amendment of section 1 of principal Act

2 Section 1 of the principal Act is amended—

(a) in subsection (1), by inserting the following in the appropriate alphabetical place—

"consumer contract" means a contract (not being a contract of sale by auction or competitive tender) in which—

(a) one party to the contract deals, and the other party to the contract does not deal or hold himself out as dealing, in the course of a business; and

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(b) the goods are of a type ordinarily supplied for private use or consumption;"

(b) by deleting subsection (6).

Amendment of section 11 of principal Act

3 Section 11 (3) of the principal Act is amended by deleting "Where" and substituting "Subject to section 35A, where".

Amendment of section 14 of principal Act

4 Section 14(2) of the principal Act is repealed and the following is substituted—

" (2) Where the seller sells goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality.

(2A) For the purposes of this Act, 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.

(2B) For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods—

- (a) fitness for all the purposes for which goods of the kind in question are commonly supplied;
- (b) appearance and finish;
- (c) freedom from minor defects;
- (d) safety; and
- (e) durability.

(2C) The term implied by subsection (2) does not extend to any matter making the quality of goods unsatisfactory—

- (a) which is specifically drawn to the buyer's attention before the contract is made;
- (b) where the buyer examines the goods before the contract is made, which that examination ought to reveal; or
- (c) in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample."

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Amendment of section 15 of principal Act

5 Section 15(2)(c) of the principal Act is amended by deleting "rendering them unmerchantable" and substituting "making their quality unsatisfactory".

Insertion of new section 15A in principal Act

6 After section 15 of the principal Act there is inserted the following new section—

"Miscellaneous

Modification of remedies for breach of condition in non-consumer cases

15A (1) Where in the case of a contract of sale—

(a) the buyer would, apart from this subsection, have the right to reject goods by reason of a breach on the part of the seller of a term implied by section 13, 14 or 15; but

(b) the breach is so slight that it would be unreasonable for him to reject them,

then, if the contract of sale is not a consumer contract, 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 seller to show that a breach fell within subsection (1)(b)."

Amendment of section 30 of principal Act

7 Section 30 of the principal Act is amended by deleting subsection (3) and substituting the following—

" (3A) Where the contract of sale is not a consumer contract, the buyer may not—

(a) where the seller delivers a quantity of goods less than he contracted to sell, reject the goods under subsection (1); or

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

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

(3B) It is for the seller to show that a shortfall or excess fell within subsection (3A)."

Repeal and replacement of section 34 of the principal Act

8 Section 34 of the principal Act is repealed and the following is substituted—

"Buyer's right of examining the goods

34 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, and, in the case of a contract for sale by sample, of comparing the bulk with the sample."

Repeal and replacement of section 35 of principal Act

9 Section 35 of the principal Act is repealed and the following is substituted—

"Acceptance

35 (1) Subject to subsection (2), the buyer is deemed to have accepted the goods—

(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) 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 contract of sale is a consumer contract, the buyer cannot lose his right to rely on subsection (2) by agreement, waiver or otherwise.

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(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) 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).

(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.

(8) In this section "commercial unit" means a unit division of which would materially impair the value of the goods or the character of the unit."

Insertion of new section 35A in principal Act

10 After section 35 of the principal Act there is inserted the following new section—

"Right of partial rejection

35A (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 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.

(2) In the case of a buyer having the right to reject instalments of goods, subsection (1) applies as if references to the goods were references to the goods comprised in the instalments.

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(3) For the purposes of subsection (1), 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."

Commencement

11 This Act comes into operation on such date as the Minister responsible for consumer affairs may appoint by notice published in the Gazette.