

Uganda

## Sale of Goods and Supply of Services Act, 2018

### Act 10 of 2018

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## Uganda

# Sale of Goods and Supply of Services Act, 2018

## Act 10 of 2018

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**Assented to on 20 December 2018**

**Commenced on 17 August 2018**

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**An Act to provide for the formation, effect, obligations and performance of contracts for the sale of goods and supply of services; to provide for remedies of the parties under those contracts; to provide for consumer protection; and for related matters.**

BE IT ENACTED by Parliament as follows:

### Part I – Preliminary

#### 1. Interpretation

(1) In this Act, unless the context otherwise requires—

“**action**” includes a counter-claim and a set-off;

“**ascertained goods**” means goods which have become identified subsequent to the formation of the contract;

“**bill of lading**” means a receipt for goods delivered to and received by a ship, evidencing the terms of the contract under which the goods are delivered and received, and signed by the person who has contracted to carry them, or his or her agent;

“**bulk**” means a mass or collection of goods of the same kind which—

- (a) is contained in a defined space or area; and
- (b) is such that any goods in the bulk are interchangeable with any other goods of the same number or quantity;

“**buyer**” means a person who buys or agrees to buy goods or who procures or agrees to procure services;

“**computer software**” means—

- (a) computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and
- (b) recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled;

“**condition**” means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such a contract, the breach of which gives rise to a right to reject the goods and treat the contract as repudiated;

“**consumer**” means a person who purchases goods or services for final use or ownership rather than for resale or use in production;

#### 4. Capacity to contract

- (1) A person has capacity to buy and sell goods or supply services where that person is—
  - (a) eighteen years or above;
  - (b) of sound mind; and
  - (c) not disqualified from contracting by any law.
- (2) Notwithstanding this section, a person of sixteen years or above has the capacity to contract as provided under article 34 (4) and (5) of the Constitution.
- (3) Where necessaries are sold and delivered to a person under eighteen years, or to a person who, by reason of mental incapacity or drunkenness is incompetent to enter into a contract, he or she must pay a reasonable price for the necessaries.
- (4) In this section, “necessaries” means goods or services suitable to the condition in life of a person under eighteen or other person, and to his or her actual requirements at the time of the sale and delivery.

#### Formalities of a contract

#### 5. Making a contract of sale or supply of services

- (1) A contract of sale or supply of services may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or in the form of a data message, or may be implied from the conduct of the parties.
- (2) This section shall not affect a contract entered into under any other law requiring a contract to be made in a specific manner.

#### Subject matter of a contract

#### 6. Existing or future goods

- (1) The goods which form the subject of a contract of sale may be existing goods owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called “future goods”.
- (2) A contract for sale of goods may be made where, the acquisition of such goods by the seller depends upon a contingency which may or may not happen.
- (3) Where the seller in a contract of sale of goods or supplier in a contract for the supply of services purports to effect a present sale of future goods or to supply future services, the contract operates as an agreement to sell the goods or supply of services.
- (4) A contract for the supply of services may be made where, the acquisition of such service by the supplier depends upon a contingency which may or may not happen.

#### 7. Goods which have perished

Where there is a contract for the sale of specific goods, and the goods, without the knowledge of the seller have perished at the time when the contract is entered into, the contract is void.

## 8. Goods perishing after agreement to sell

Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is void.

## The price

### 9. Ascertainment of price

- (1) The price in a contract of sale of goods or supply of services may be fixed by the contract, or may be left to be determined in a manner agreed by the contract, or may be determined by the course of dealing between the parties.
- (2) Where the price is not determined in accordance with subsection (1), the buyer shall pay a reasonable price.
- (3) For the purposes of this section, reasonable price is a question of fact dependent on the circumstances of each case and may include a consideration of the prevailing market price.

### 10. Agreement to sell goods or supply services at valuation

- (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and the third party cannot or does not make the valuation, the agreement is voidable except that if the goods or any part of them have been delivered to and appropriated by the buyer he or she shall pay a reasonable price for the appropriated goods.
- (2) Where there is an agreement for the supply of services on the terms that the price is to be fixed by the valuation of a third party and the third party cannot or does not make the valuation, the agreement is voidable except that if the service is partially performed, the buyer shall pay a reasonable price for the service.
- (3) Where a third party is prevented from making the valuation by the fault of any party to a contract, the party who is not at fault may bring an action for damages against the party at fault.

## Conditions and warranties

### 11. Stipulations as to time

- (1) Unless a contrary intention appears from the terms of the contract, stipulations as to time of payment are not taken to be of the essence of a contract of sale or supply of services.
- (2) Whether any other stipulation as to time is of the essence of the contract depends on the terms of the contract.
- (3) Where, under a contract for the supply of services by a supplier acting in the course of business, the time for the services to be carried out is not fixed by the contract, but is left to be fixed in a manner agreed by the contract or determined by the course of dealing between the parties, there is an implied term that the supplier will carry out the service within a reasonable time, and what is a reasonable time is a question of fact.

### 12. When condition to be treated as warranty

- (1) Where a contract of sale or supply of a service is subject to any condition to be fulfilled by the seller or supplier, the buyer may waive the condition, or may elect to treat the breach of that condition as a breach of warranty, and not as a ground for treating the contract as repudiated.

- (2) Whether a stipulation in a contract of sale or supply of services is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or as a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods or services and treat the contract as repudiated, depends in each case on the construction of the contract.
- (3) A stipulation may be a condition, whether or not it is called a warranty in the contract.
- (4) Where a contract of sale or supply of services is—
  - (a) not severable and the buyer has accepted the goods or services or part of the goods or services; or
  - (b) for specific goods, the property in which has passed to the buyer,the breach of any condition to be fulfilled by the seller or supplier shall only be treated as a breach of warranty and not as a ground for rejecting the goods or services and treating the contract as repudiated, unless there is a term of the contract, express or implied, to the effect that the goods or services may be rejected and the contract treated as repudiated.
- (5) This section shall not affect any condition or warranty, the fulfilment of which is excused by law by reason of impossibility or otherwise.

### 13. Implied terms as to title

- (1) In a contract of sale, other than one to which subsection (3) applies, there is an implied term on the part of the seller that in the case of a sale, he or she has a right to sell the goods, and in the case of an agreement to sell he or she will have such a right at the time when the property is to pass.
- (2) In a contract of sale, other than one to which subsection (3) 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 pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made; and
  - (b) the buyer 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 to the buyer.
- (3) Subsection (1) shall not apply to a contract of sale in the case of which there appears from the contract or there is to be inferred from its circumstances an intention that the seller should transfer only such title as he or she or a third party may have.
- (4) In a contract to which subsection (3) applies, there is an implied term that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.
- (5) In a contract to which subsection (3) applies, there is an implied term that none of the following will disturb the buyer's quiet possession of the goods—
  - (a) the seller;
  - (b) in a case where the parties to the contract intend that the seller should transfer only such title as a third party may have, that third person; or
  - (c) any one claiming through or under the seller or a third person otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract is made.

### 14. Sale by description

- (1) Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description.

- (2) Where the sale is by sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.
- (3) A sale of goods is not prevented from being a sale by description by reason only that, the goods being exposed for sale are selected by the buyer.
- (4) This section applies to sales to consumers as well as sales to persons who are not consumers.

### **15. Implied undertaking as to quality and fitness for purpose**

- (1) Subject to this Act or any other law, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.
- (2) There is an implied condition that the goods supplied under a contract are reasonably fit for that purpose, where—
  - (a) the seller sells goods of a description which it is in the course of the seller's business to supply; and
  - (b) the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the skill or judgement of the seller, whether the seller is the manufacturer or not,unless the circumstances show that the buyer in fact does not rely, or that it is unreasonable for the buyer to rely on the seller's skill and judgement.
- (3) Where the seller sells goods in the course of business, there is an implied condition that the goods supplied under the contract are of satisfactory quality.
- (4) Subsection (3) does not apply to any matter which makes the quality of the goods unsatisfactory—
  - (a) which is specifically brought to the attention of the buyer 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.
- (5) For the purposes of this Act, goods are of satisfactory quality if they meet the standards that a reasonable person would regard as satisfactory, taking into account any description of the goods, the price and all the other relevant circumstances.
- (6) For the purposes of this Act, the quality of goods includes—
  - (a) their state, condition, appearance and finish;
  - (b) their fitness for all the purposes for which goods of the kind in question are commonly supplied;
  - (c) safety; and
  - (d) durability.
- (7) A warranty or condition as to quality or fitness for a particular purpose may be implied in a contract by the usage of trade or custom.

### **16. Implied term as to quality of materials used in a contract for the supply of services**

Where materials are used under a contract for the supply of services, there is an implied term that the materials will be sound and reasonably fit for the purpose for which they are required.

## Sale by sample

### 17. Sale by sample

- (1) A contract of sale is a sale by sample where there is a term in the contract, express or implied, to the effect that the contract is a sale by sample.
- (2) In the case of a contract for sale by sample, there is an implied condition that—
  - (a) the quality of the bulk shall correspond with the quality of the sample;
  - (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample; and
  - (c) the goods shall be free from any defect, rendering their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.

### 18. Implied terms as to care and skill in supply of services contract

In a contract for the supply of services where the supplier is acting in the course of business, there is an implied term that the supplier will carry out the services with reasonable care and skill.

### 19. Express terms not negative implied terms under this Act

An express warranty or condition shall not replace a warranty or condition implied by this Act.

### 20. Modification of remedies for breach of condition in certain cases

- (1) Where, in the case of a contract of sale, the buyer is not a consumer with the right to reject the goods by reason of a breach on the part of the seller of a condition implied by this Act, but the breach is so minor that it would not be reasonable for the buyer to reject the goods, the breach shall be treated as a breach of a warranty.
- (2) It is for the seller to show under subsection (1) that a breach is so minor that it would not be reasonable for the buyer to reject the goods.
- (3) This section applies to all contracts of sale except where parties expressly indicate a contrary intention, or a contrary intention is implied from the contract.

### 21. Infringement of warranty

Unless otherwise agreed, where a seller who is a merchant ordinarily dealing in goods of the kind warrants that the goods shall be delivered free from any rightful claim of any third party by way of infringement of intellectual property rights, a buyer who furnishes specifications to the seller shall free the seller from any such claim which arises out of compliance with the specifications.

## Part III – Effects of contract of sale

### Passing of property between seller and buyer

### 22. Property in unascertained goods

Where there is a contract for the sale of unascertained goods, property in the goods shall not pass to the buyer until the goods are ascertained.

### 23. Undivided shares in goods forming part of a bulk

- (1) This section applies to a contract for the sale of a specified quantity of unascertained goods where the following conditions are met—
  - (a) the goods or any of them form part of a bulk which is identified in the contract or by subsequent agreement between the parties; and
  - (b) the buyer has paid the price for some or all of the goods which are the subject of the contract and which form part of the bulk.
- (2) Where this section applies, unless the parties agree otherwise, as soon as the conditions specified in subsection (1) are met, or at such later time as the parties may agree—
  - (a) property in an undivided share in the bulk shall pass to the buyer; and
  - (b) the buyer shall become an owner in common of the bulk.
- (3) Subject to subsection (4), for the purposes of this section, the undivided share of a buyer in a bulk at any time shall be such shares as the quantity of goods paid for and due to the buyer out of the bulk bears to the quantity of goods in the bulk at that time.
- (4) Where the total of the undivided shares of buyers in a bulk determined under subsection (3) would, at any time exceed the whole of the bulk at that time, the undivided share in the bulk of each buyer shall be reduced proportionately so that the total of the undivided shares is equal to the whole bulk.
- (5) For the purposes of this section—
  - (a) where a buyer has paid the price for only some of the goods due to him or her out of a bulk, any delivery to the buyer out of the bulk shall be ascribed in the first place to the goods in respect of which payment has been made; and
  - (b) payment of part of the price for any goods shall be treated as payment for a corresponding part of the goods.

### 24. Presumption of consent by co-owner to dealings in bulk goods

- (1) A person who has become an owner in common of a bulk by virtue of [section 23](#) shall be taken to have consented to—
  - (a) any delivery of goods out of the bulk to any other owner in common of the bulk, being goods which are due to him or her under his or her contract; or
  - (b) any dealing with or removal, delivery or disposal of goods in the bulk by any other person who is an owner in common of the bulk in so far as the goods fall within that co-owner's undivided share in the bulk at the time of the dealing, removal, delivery or disposal.
- (2) A person has no right of action against another person who has acted in accordance with subsection (1) in reliance on any consent taken to have been given under that subsection.
- (3) This section and [section 23](#) shall not—
  - (a) impose an obligation on a buyer of goods out of a bulk to compensate any other buyer of goods out of that bulk for any shortfall in the goods received by that other buyer;
  - (b) affect any contractual arrangement between buyers of goods out of a bulk for adjustments between themselves; or
  - (c) affect the rights of any buyer under his or her contract.

**25. Property in specific or ascertained goods passes when intended to pass**

- (1) Where there is a contract for the sale of specific or ascertained goods, the property in the goods passes to the buyer at such time as the parties to the contract intend it to pass.
- (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

**26. Rules for ascertaining intention as to time when property passes**

Unless a contrary intention appears, the following are the rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer—

- (a) where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both are postponed;
- (b) where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property shall not pass until that thing is done, and the buyer has notice of it;
- (c) where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until that act or thing is done, and the buyer has notice of it;
- (d) when goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property in the goods shall pass to the buyer—
  - (i) when he or she signifies his or her approval or acceptance to the seller or does any other act adopting the transaction; or
  - (ii) if he or she does not signify his or her approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of that time, and if no time has been fixed, on the expiration of a reasonable time;
- (e) where there is a contract for the sale of unascertained or future goods by description, and goods of that description, and in a deliverable state, are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods passes to the buyer and any such assent may be express or implied and may be given before or after the appropriation is made;
- (f) where, under the contract, the seller delivers the goods to the buyer or to a carrier or other bailee whether named by the buyer or not, for the purpose of transmission to the buyer, and does not reserve the right of disposal, he or she is taken to have unconditionally appropriated the goods to the contract;
- (g) where there is a contract for the sale of a specified quantity of unascertained goods in a deliverable state forming part of a bulk which is identified in the contract or by subsequent agreement between the parties and the bulk is reduced to, less than that quantity, if the buyer under that contract is the only buyer to whom goods are due out of the bulk, the remaining goods shall be taken as appropriated to that contract at the time when the bulk is reduced and the property in those goods shall pass to that buyer;
- (h) paragraph (g) applies also, with necessary modifications where a bulk is reduced to, or to less than the total of the quantities due to a single buyer under separate contracts relating to that single buyer and he or she is the only one to whom goods are then due out of that bulk.

**27. Risk *prima facie* passes with property**

- (1) Unless otherwise agreed, the goods remain at the seller's risk until the property in the goods is transferred to the buyer.
- (2) Where the property in the goods is transferred to the buyer under subsection (1), the goods are at the buyer's risk whether delivery has been made or not.
- (3) Notwithstanding subsection (1), the risk of loss shall not pass from the seller to the buyer unless the actions of the seller conform with all the conditions imposed upon the seller under the contract.
- (4) Where a delivery has been delayed through the fault of the buyer or the seller, the goods are at the risk of the party at fault as regards any loss, which might not have occurred, but for that fault.
- (5) This section shall not affect the duties or liabilities of the seller or the buyer as a bailee of the goods of the other party.
- (6) Where an aggrieved party in case of breach of contract, is in control of goods and those goods are not covered by his or her insurance, the party in breach is liable for any loss or damage as a result of the breach caused to the aggrieved party.

**28. Reservation of right of disposal**

- (1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled.
- (2) Where the seller reserves the right of disposal of the goods under subsection (1), then, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purposes of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.
- (3) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his or her agent, the seller is *prima facie* taken to reserve the right of disposal.
- (4) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange—
  - (a) the buyer is bound to return the bill of lading if he or she does not honour the bill of exchange; and
  - (b) where the buyer wrongfully retains the bill of lading, the property in the goods does not pass to him or her.

**Transfer of title****29. Sale by person not the owner**

- (1) Subject to this Act, where goods are sold by a person who is not the owner of the goods, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his or her conduct precluded from denying the seller's authority to sell.
- (2) This Act shall not affect—
  - (a) any enactment enabling the apparent owner of goods to dispose of them as if he or she were the true owner of the goods;
  - (b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

### **30. Sale under voidable title**

When the seller of goods has a voidable title to the goods, but his or her title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, if he or she buys them in good faith and without notice of the seller's defect in title.

### **31. Effect of theft or fraud on title of owner of converted goods**

- (1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the stolen goods reverts to the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them.
- (2) Where after the theft the owner loses possession of the goods, the owner or his or her personal representative may by order of the trial court, recover possession of the goods from any person for the time being in possession of the goods.
- (3) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in the goods shall not revert in the person who was the owner of the goods, or his or her personal representative, by reason only of the conviction of the offender.

### **32. Seller or buyer in possession after sale**

- (1) Where a person who has sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him or her, of the goods or documents of title under any sale, pledge, or other disposition of the goods, to any person receiving them in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the delivery or transfer.
- (2) Where a person who has bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him or her, of the goods or documents of title, under any sale, pledge, or other disposition of them, to any person receiving them in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have the same effect as if the person making the delivery or transfer were an agent in possession of the goods or documents of title with the consent of the owner.
- (3) In this section "agent" means a person having, in the ordinary course of his or her business as such an agent, authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.

### **33. Effect of warrant of attachment or execution**

- (1) A warrant of attachment or other warrant of execution against goods shall bind the property in the goods of the execution debtor as from the time when the warrant is delivered to the bailiff to be executed.
- (2) For the better manifestation of that time under subsection (1), it shall be the duty of the bailiff without fee, upon the receipt of a warrant, to endorse upon the back of the warrant, the hour, day, month, and year when he or she received the warrant.
- (3) A warrant shall not prejudice the title to the goods referred to in subsection (1) acquired by any person in good faith and for valuable consideration, unless that person had at the time when he or she acquired his or her title, notice that the warrant or any other warrant by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the bailiff.

## Part IV – Performance of contract of sale and supply of services

### 34. Duties of seller, supplier and buyer

- (1) It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for the goods, in accordance with the terms of the contract of sale.
- (2) It is the duty of the supplier of a service to perform the service and of the buyer to accept and pay for the service in accordance with the terms of the contract of supply of services.

### 35. Payment and delivery are concurrent conditions

- (1) Unless otherwise agreed, delivery of goods and payment of the price are concurrent conditions, namely that, 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.
- (2) This section applies to sales by instalments in accordance with the agreement of the parties.
- (3) Unless otherwise agreed, supply of a service and payment of the price are concurrent conditions.

### 36. Rules as to 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) Where there is no contract, express or implied, as to place of delivery, the place of delivery is the seller's place of business, if the seller has one, and if not, the seller's residence.
- (3) Where 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 shall be the place of delivery.
- (4) 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.
- (5) Where the goods at the time of sale are in the possession of a third party, there is no delivery by the seller to the buyer until the third party acknowledges to the buyer that he or she holds the goods on behalf of the buyer.
- (6) 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.
- (7) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.
- (8) This section shall not affect the operation of the issue or transfer of any document of title to goods.

### 37. Delivery of wrong quantity or description

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

- (3) Where the seller delivers to the buyer the goods the seller contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods, which are in accordance with the contract and reject the rest, or the buyer may reject the whole.
- (4) Notwithstanding subsections (1), (2), and (3) a buyer who is not a consumer may not—
  - (a) reject the goods, where the seller delivers a quantity of goods less than the seller contracted to sell; or
  - (b) reject all the goods where the seller delivers a quantity of goods larger than the seller contracted to sell,  
  
if the shortfall or, as the case may be, the excess, is so minor that it would be unreasonable for the buyer to do so.
- (5) It is for the seller to show under subsection (4) that a shortfall or excess is so minor.
- (6) The shortfall or excess may be due to a mixture of the goods as referred to in subsection (3).
- (7) This section is subject to any usage of trade, special agreement or course of dealing between the parties.

### 38. Partial rejection of goods

- (1) Where the buyer rejects goods by reason of a breach on the part of the seller which affects some or all of the goods but the buyer accepts some of the goods including any goods not affected by the breach, the buyer does not by accepting some of the goods affected by the breach and goods not affected by the breach lose his or her right to reject the rest of the goods.
- (2) In the case of a buyer having the right to reject an instalment of goods, subsection (1) applies as if references to the goods were references to the goods comprised in the instalment.
- (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.

### 39. Delivery by instalments

- (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery of the goods by instalments.
- (2) Where there is a contract for the sale of goods to be delivered by stated instalments and to be separately paid 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.

### 40. Delivery to carrier

- (1) Where, under 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* taken to be a delivery of the goods to the buyer.
- (2) Unless otherwise authorised by the buyer, the seller shall make a contract with the carrier on behalf of the buyer that is reasonable, having regard to the nature of the goods and the other circumstances of the case.
- (3) Where the seller omits to make a contract with the carrier on behalf of the buyer that is reasonable under subsection (2) and the goods are lost or damaged in the course of transit, the buyer may

decline to treat the delivery to the carrier as a delivery to himself or herself or may hold the seller responsible in damages.

- (4) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him or her to insure them during their sea transit.
- (5) Where the seller fails to give notice to the buyer under subsection (4), the goods shall be deemed to be at his or her risk during that sea transit.
- (6) Where a contract requires or authorises the seller to ship the goods by a carrier but the contract does not require the seller to deliver the goods at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier and where the contract requires the seller to deliver them at a particular destination and the goods are duly tendered at that destination while in the possession of the carrier, the risk of loss passes to the buyer when the goods are duly tendered at that destination to enable the buyer to take delivery.

#### **41. Risk where goods are delivered elsewhere than at place of sale**

Where the seller of goods agrees to deliver them at the seller's own risk at a place other than that where they are when sold, the seller shall, unless otherwise agreed, take any risk of deterioration in the goods necessarily incidental to the course of transit.

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

- (1) Where goods are delivered to the buyer, which he or she has not previously examined, the buyer shall not be taken to have accepted them until he or she has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.
- (2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, the seller 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.

#### **43. Acceptance**

- (1) The buyer is taken to have accepted the goods—
  - (a) when the buyer intimates to the seller that the buyer has accepted them;
  - (b) when the goods have been delivered to the buyer and the buyer does any act in relation to the goods which is inconsistent with the ownership of the seller; or
  - (c) when, after the lapse of a reasonable time, the buyer retains the goods without intimating to the seller that he or she has rejected them.
- (2) The questions that are material in determining, for the purposes of subsection (1), whether a reasonable time has elapsed include whether the buyer has had a reasonable opportunity of examining the goods.
- (3) The buyer shall not by virtue of this section be taken to have accepted the goods merely because the buyer asks for, or agrees to their repair by or under an arrangement with the seller or the goods are delivered to another person under a sub-sale or other disposition.
- (4) Where the contract is for the sale of goods making one or more commercial units of sale, a buyer accepting any goods included in a unit is taken to have accepted all the goods making the unit.
- (5) In subsection (4) "commercial unit" means a unit, division of which would materially impair the value of the goods or the character of the unit.

#### 44. Buyer not bound to return rejected goods

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

#### 45. Liability of buyer for neglecting or refusing to take delivery of goods

- (1) Where the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not take delivery within a reasonable time after the request to take delivery of the goods, the buyer is liable to the seller for any loss occasioned by his or her neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.
- (2) Subsection (1) shall not affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

#### 46. Implied term as to time for performance of services

Where, under a contract for the supply of services by a supplier acting in the course of business, the time for the services to be carried out is not fixed by the contract, but is left to be fixed in a manner agreed by the contract or determined by the course of dealing between the parties, there is an implied term that the supplier will carry out the service within a reasonable time, and what is a reasonable time is a question of fact.

### Part V – Rights of buyer in respect of damaged goods

#### 47. Right to repair or replace goods

- (1) Where the goods do not conform to the contract, the buyer may require the seller to replace or repair the goods.
- (2) Where the buyer requires the seller to replace or repair goods, the seller shall—
  - (a) repair or as the case may be, replace the goods within a reasonable time but without causing significant inconvenience to the buyer; and
  - (b) bear any necessary costs incurred in doing so, including in particular, the cost of any labour, material or postage.
- (3) The buyer shall not require the seller to repair or replace the damaged goods if that remedy is—
  - (a) impossible;
  - (b) disproportionate in comparison to the other remedies available; or
  - (c) disproportionate in comparison to an appropriate reduction in the purchase price under [section 48](#).
- (4) A remedy is disproportionate in comparison to the other remedies where it imposes costs on the seller which, in comparison to those imposed on him or her by the other remedies, are unreasonable, taking into account—
  - (a) the value which the goods would have if they conformed to the contract of sale;
  - (b) the significance of the lack of conformity; and
  - (c) whether the other remedy could be effected without significant inconvenience to the buyer.
- (5) A question as to what is a reasonable time or significant inconvenience is to be determined by reference to the nature of the goods and the purpose for which the goods are acquired.

**48. Right to reduce purchase price or rescind contract**

- (1) Where goods under a contract of sale do not conform to the contract, the buyer may require the seller to reduce the purchase price of the goods in question by an appropriate amount or rescind the contract with regard to those goods if the condition in subsection (2) is satisfied.
- (2) The condition is that—
  - (a) it is impossible for the seller to repair or replace the goods, or it is disproportionate to repair or replace the goods in comparison to other remedies available or it is disproportionate in comparison to an appropriate reduction in the purchase price; or
  - (b) the buyer has required the seller to repair or replace the goods, but the seller neglects or refuses to do so within a reasonable time and without significant inconvenience to the buyer.
- (3) For the purposes of this section, if the buyer rescinds the contract, any reimbursement to the buyer may be reduced to take into account the use the buyer has had of the goods since they were delivered to him or her.

**49. Relation to other remedies**

Where the buyer requires the seller to repair or replace the goods, the buyer shall not reject the goods and terminate the contract for breach of condition until he or she has given the seller a reasonable time in which to repair or replace the goods.

**Part VI – Rights of unpaid seller against the goods****50. Unpaid seller defined**

- (1) A seller of goods is an “unpaid seller” within the meaning of this Act—
  - (a) when the whole of the price has not been paid or tendered; or
  - (b) when a bill of exchange is received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.
- (2) In this Part “seller” includes any person who is in the position of a seller, such as, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself or herself paid, or is directly responsible for, the price.

**51. Rights of unpaid seller**

- (1) Subject to this Act or any other law, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, has by implication of law—
  - (a) a lien on the goods or right to retain them for the price while he or she is in possession of the goods;
  - (b) in the case of the insolvency of the buyer, a right of stopping the goods in transit after he or she has parted with the possession of the goods;
  - (c) a right of re-sale as limited by this Act.
- (2) Where the property in the goods has not passed to the buyer, the unpaid seller has, in addition to his or her other remedies, a right of withholding delivery similar to and co-existent with his or her rights of lien and stoppage in transit where the property has passed to the buyer.

## Unpaid seller's lien

### 52. Unpaid seller's lien

- (1) Subject to this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of the goods until payment or tender of the price where—
  - (a) the goods have been sold without any stipulation as to credit;
  - (b) the goods have been sold on credit, but the term of credit has expired; or
  - (c) the buyer becomes insolvent.
- (2) The seller may exercise his or her right of lien, notwithstanding that he or she is in possession of the goods as agent or bailee for the buyer.

### 53. Lien after part delivery

Where an unpaid seller has made part delivery of the goods, he or she may exercise his or her right of lien or retention on the remainder unless the part delivery has been made in such circumstances as to show an agreement by the seller of the goods to waive the lien or right of retention.

### 54. Termination of lien

- (1) This section is subject to any usage of trade, special agreement or course of dealing between the parties.
- (2) The unpaid seller of goods shall lose his or her lien or right of retention on the goods—
  - (a) when he or she delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
  - (b) when the buyer or his or her agent lawfully obtains possession of the goods; or
  - (c) by waiver of the lien or right of retention.
- (3) The unpaid seller of goods having a lien or right of retention on the goods does not lose his or her lien or right of retention by reason only that he or she has obtained a judgment or decree for the price of the goods.

## Stoppage in transit

### 55. Right of stoppage in transit

Subject to this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit and resuming possession of the goods as long as they are in the course of transit and may retain them until payment or tender of the price.

### 56. Duration of transit

- (1) Goods are taken to be in the course of transit from the time when they are delivered to a carrier by land, air or water, or other bailee for the purpose of transmission to the buyer, until the buyer or his or her agent for the purpose takes delivery of them from that carrier or other bailee.
- (2) The transit shall end if the buyer or his or her agent obtains delivery of the goods before their arrival at the appointed destination.
- (3) The transit shall end, if, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer, or his or her agent, that he or she holds the goods on his or

her behalf and continues in possession of them as bailee for the buyer, or his or her agent, and it is immaterial that a further destination for the goods has been indicated by the buyer.

- (4) The transit shall not be taken to be at an end, if the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.
- (5) When the goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.
- (6) Transit shall be taken to have ended where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, or the buyer's agent for the purpose.
- (7) Where part delivery of the goods has been made to the buyer, or the buyer's agent for the purpose, the remainder of the goods may be stopped in transit, unless that part delivery has been made in such circumstances as to show an agreement to give up possession of the whole of the goods.

### **57. Mode of stopping goods in transit**

- (1) The unpaid seller may exercise his or her right of stopping goods in transit either by taking actual possession of the goods, or by giving notice of his or her claim to the carrier or other bailee in whose possession the goods are.
- (2) The notice under subsection (1) may be given either to the person in actual possession of the goods or to his or her principal.
- (3) In the case of notice to the principal, to be effectual, it must be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his or her servant or agent in time to prevent a delivery to the buyer.
- (4) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he or she must re-deliver the goods to, or according to the directions of, the seller and the expenses of the re-delivery shall be borne by the seller.

## **Resale by buyer or seller**

### **58. Effect of sub-sale or pledge by buyer**

- (1) Subject to this Act, the unpaid seller's right of lien or retention or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer has made, unless the seller has assented to it.
- (2) The unpaid seller's right of lien or retention or stoppage in transit shall be defeated where a document of title to goods has been lawfully transferred to any person as a buyer or owner and that person, by way of sale transfers the document to a person who takes the document in good faith and for valuable consideration.
- (3) Where under subsection (2) the transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transit can only be exercised subject to the rights of the transferee.

### **59. Sale not generally rescinded by lien or stopping goods in transit**

- (1) Subject to this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his or her right of lien or retention or stopping goods in transit.
- (2) Where an unpaid seller who has exercised his or her right of lien or retention or stoppage in transit re-sells the goods, the buyer acquires a good title to the goods as against the original buyer.

- (3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his or her intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer, damages for any loss occasioned by his or her breach of contract.
- (4) Where the seller expressly reserves a right of re-sale if the buyer makes default, and on the buyer making default re-sells the goods, the original contract of sale is rescinded, but without prejudice to any claim the seller may have for damages.

## **Part VII – Actions for breach of contract of sale and supply of services**

### **Remedies of seller and supplier**

#### **60. Action for the price**

- (1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may bring an action against the buyer for the price of the goods, together with any incidental damages.
- (2) Where under a contract of sale, the price is payable on an agreed date irrespective of delivery, and the buyer wrongfully neglects or refuses to pay that price, the seller may bring an action against the buyer for the price, together with any incidental damages, although the property in the goods has not passed, and the goods have not been appropriated to the contract.
- (3) Where, under a contract for supply of services, the service has been supplied, and the buyer wrongfully neglects or refuses to pay for the service according to the terms of the contract, the supplier may bring an action against the buyer for the price of the service, together with any incidental damages.

#### **61. Action for non-acceptance**

- (1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may bring an action against the buyer for damages for non-acceptance.
- (2) The measure of damages is the difference between the contract price and the market or current price at the time when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.
- (3) Where the measure of damages provided in subsection (2) is inadequate to put the seller in as good a position as performance would have done, then the measure of damages is the profit, including reasonable overhead, which the seller would have made from full performance by the buyer, together with any incidental damages, due allowance being made for reasonably incurred and due credit being given for payments or proceeds of resale.
- (4) Where the buyer wrongfully neglects or refuses to accept and pay for the service, the suppliers may bring an action against the buyer for damages for non-acceptance.

### **Remedies of buyer**

#### **62. Action for non-delivery of goods or failure to supply services**

- (1) Where the seller or supplier wrongfully neglects or refuses to deliver the goods or supply services to the buyer, the buyer may maintain an action against the seller or supplier for damages for non-delivery of the goods or failure to supply services.

- (2) The measure of damages is the difference between the contract price and the market or current price at the time or times when the goods ought to have been delivered or supplied the services, or, if no time was fixed, then at the time of the refusal to deliver or supply.
- (3) In the case of a breach by the seller or supplier, the buyer may—
  - (a) in good faith and without unreasonable delay, make any reasonable purchase of or contract to purchase goods in substitution for those due from the seller; and
  - (b) recover from the seller as damages, the difference between the cost of the new purchase price and the contract price, together with any incidental or consequential damages, but less the expenses saved in consequence of the seller's breach.

### 63. Right to specific performance

- (1) In an action for breach of contract to deliver specific or ascertained goods or services, the court may, on the application of the plaintiff, by its judgement or decree, direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.
- (2) The judgement or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as the court may consider just, and the application by the plaintiff may be made at any time before delivery of judgement or decree.

### 64. Remedy for breach of warranty

- (1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of that breach of warranty entitled to reject the goods, but the buyer may—
  - (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
  - (b) bring an action against the seller for damages for the breach of warranty.
- (2) This section is subject to any usage of trade, special agreement or course of dealing between the parties.
- (3) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.
- (4) In the case of breach of warranty of quality, the loss is *prima facie* unless the contrary is proved, the difference between the value of the goods at the time of delivery to the buyer and the value the goods would have had if they had answered to the warranty.
- (5) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent the buyer from maintaining an action for the same breach of warranty if he or she has suffered further damage.

### 65. Incidental and consequential damages

- (1) Incidental damages resulting from the buyer's breach include any—
  - (a) commercially reasonable charges, expenses or commission incurred in stopping delivery, in the transportation; or
  - (b) care and custody of goods after the buyer's breach, in connection with the return or re-sale of the goods or otherwise resulting from the breach.
- (2) Incidental damages resulting from the seller's breach include—
  - (a) expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected;

- (b) any commercially reasonable charges;
  - (c) expenses or commissions in connection with effecting insurance cover; and
  - (d) any other reasonable expenses incidental to the delay or other breach.
- (3) Consequential damages resulting from the sellers breach include—
- (a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by insurance cover or otherwise; and
  - (b) injury to person or property proximately resulting from any breach of warranty.

## 66. Interest and special damages

This Act shall not affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

## Part VII – Miscellaneous

### 67. Variation of implied rights

Where any right, duty or liability would arise under a contract of sale or supply of services by implication of law, it shall not be negated or varied by express agreement or by the course of dealing between the parties, or by usage.

### 68. Reasonable time

Where, by this Act, any reference is made to a reasonable time, the question of what is a reasonable time is a matter of fact.

### 69. Rights enforceable by action

Where any right, duty or liability is declared by this Act, it may, unless otherwise provided by this Act, be enforced by action.

### 70. Auction sales

- (1) In the case of sale by auction—
- (a) where goods are put up for sale by auction in lots, each lot is *prima facie* taken to be the subject of a separate contract of sale;
  - (b) a sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and until that announcement is made, any bidder may retract his or her bid;
  - (c) where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it is lawful for the seller to bid himself or herself or to employ any person to bid at that sale, or for the auctioneer knowingly to take any bid from the seller or any such person, and any sale that contravenes that rule may be treated as fraudulent by the buyer and
  - (d) a sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.
- (2) Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

**71. Power of Minister to amend Schedule**

The Minister may by statutory instrument with the approval of Cabinet, amend the Schedule to this Act.

**72. Repeal**

The Sale of Goods Act, [Cap. 82](#) and the Bulk Sales Act, Cap. 69, are repealed.

**73. Savings**

The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

**Schedule (Section 2)****Currency point**

One currency point is equivalent to twenty thousand shillings.