

# Supply of Goods (Implied Terms) Act 1973

## Chapter 13

### *Hire-purchase agreements*

#### **8 Implied terms as to title**

- (1) In every hire-purchase agreement, other than one to which subsection (2) below applies, there is—
  - (a) an implied term on the part of the creditor that he will have a right to sell the goods at the time when the property is to pass; and
  - (b) an implied term that—
    - (i) 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 person to whom the goods are bailed before the agreement is made; and
    - (ii) that person will enjoy quiet possession of the goods except so far as it may be disturbed by any person entitled to the benefit of any charge or encumbrance so disclosed or known.
- (2) In a hire-purchase agreement, in the case of which there appears from the agreement or is to be inferred from the circumstances of the agreement an intention that the creditor should transfer only such title as he or a third person may have, there is—
  - (a) an implied term that all charges or encumbrances known to the creditor and not known to the person to whom the goods are bailed have been disclosed to that person before the agreement is made; and
  - (b) an implied term that neither—
    - (i) the creditor; nor
    - (ii) in a case where the parties to the agreement intend that any title which may be transferred shall be only such title as a third person may have, that person; nor
    - (iii) anyone claiming through or under the creditor or that third person otherwise than under a charge or encumbrance disclosed or known to the person to whom the goods are bailed, before the agreement is made,will disturb the quiet possession of the person to whom the goods are bailed.
- (3) The term implied by subsection (1)(a) above is a condition and the terms implied by subsections (1)(b), (2)(a) and (2)(b) above are warranties.

#### **9 Bailing or hiring by description**

- (1) Where under a hire-purchase agreement goods are bailed by description, there is an

implied term that the goods will correspond with the description, and if under the agreement the goods are bailed 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.

- (1A) The term implied by subsection (1) above is a condition.
- (2) Goods shall not be prevented from being bailed by description by reason only that, being exposed for sale, bailment, they are selected by the person to whom they are bailed.

## **10 Implied undertakings as to quality or fitness**

- (1) Except as provided by this section and section 11 below and subject to the provisions of any other enactment, there is no implied term as to the quality or fitness for any particular purpose of goods bailed under a hire-purchase agreement.
- (2) Where the creditor bails goods under a hire purchase agreement in the course of a business, there is an implied term that the goods supplied under the agreement 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) above does not extend to any matter making the quality of goods unsatisfactory—
  - (a) which is specifically drawn to the attention of the person to whom the goods are bailed before the agreement is made;
  - (b) where that person examines the goods before the agreement is made, which that examination ought to reveal; or
  - (c) where the goods are bailed by reference to a sample, which would have been apparent on a reasonable examination of the sample.
- (2D) If the person to whom the goods are bailed deals as consumer, the relevant

circumstances mentioned in subsection (2A) above include any public statements on the specific characteristics of the goods made about them by the creditor, the producer or his representative, particularly in advertising or on labelling.

- (2E) A public statement is not by virtue of subsection (2D) above a relevant circumstance for the purposes of subsection (2A) above in the case of a contract of hire-purchase, if the creditor shows that—
- (a) at the time the contract was made, he was not, and could not reasonably have been, aware of the statement;
  - (b) before the contract was made, the statement had been withdrawn in public or, to the extent that it contained anything which was incorrect or misleading, it had been corrected in public; or
  - (c) the decision to acquire the goods could not have been influenced by the statement.
- (2F) Subsections (2D) and (2E) above do not prevent any public statement from being a relevant circumstance for the purposes of subsection (2A) above (whether or not the person to whom the goods are bailed deals as consumer if the statement would have been such a circumstance apart from those subsections).
- (3) Where the creditor bails goods under a hire-purchase agreement in the course of a business and the person to whom the goods are bailed, expressly or by implication, makes known—
- (a) to the creditor in the course of negotiations conducted by the creditor in relation to the making of the hire-purchase agreement; or
  - (b) to a credit-broker in the course of negotiations conducted by that broker in relation to goods sold by him to the creditor before forming the subject matter of the hire-purchase agreement,
- any particular purpose for which the goods are being bailed, there is an implied term that the goods supplied under the agreement are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the person to whom the goods are bailed does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the creditor or credit-broker.
- (4) An implied term as to quality or fitness for a particular purpose may be annexed to a hire-purchase agreement by usage.
- (5) The preceding provisions of this section apply to a hire-purchase agreement made by a person who in the course of a business is acting as agent for the creditor as they apply to an agreement made by the creditor in the course of a business, except where the creditor is not bailing in the course of a business and either the person to whom the goods are bailed knows that fact or reasonable steps are taken to bring it to the notice of that person before the agreement is made.
- (6) In subsection (3) above and this subsection—

- (a) “credit-broker” means a person acting in the course of a business of credit brokerage.
  - (b) “credit brokerage” means the effecting of introductions of individuals desiring to obtain credit—
    - (i) to persons carrying on any business so far as it relates to the provision of credit; or
    - (ii) to other persons engaged in credit brokerage.
- (7) The terms implied by subsections (2) and (3) above are conditions.

## **11 Samples**

- (1) Where under a hire-purchase agreement goods are bailed by reference to a sample, there is an implied term—
- (a) that the bulk will correspond with the sample in quality; and
  - (b) that the person to whom the goods are bailed will have a reasonable opportunity of comparing the bulk with the sample; and
  - (c) that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.
- (2) The term implied by subsection (1) above is a condition.

## **11A Modification of remedies for breach of statutory condition in non-consumer cases**

- (1) Where in the case of a hire purchase agreement—
- (a) the person to whom goods are bailed would, apart from this subsection, have the right to reject them by reason of a breach on the part of the creditor of a term implied by section 9, 10 or 11(1)(a) or (c) above; but
  - (b) the breach is so slight that it would be unreasonable for him to reject them,
- then, if the person to whom the goods are bailed 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 agreement.
- (3) It is for the creditor to show—
- (a) that a breach fell within subsection (1)(b) above; and
  - (b) that the person to whom the goods were bailed did not deal as consumer.

- (4) The references in this section to dealing as consumer are to be construed in accordance with Part I of the Unfair Contract Terms Act 1977.

## **12 Exclusion of implied terms**

An express term does not negative a term implied by this Act unless inconsistent with it.

## **14 Special provisions as to conditional sale agreements**

- (1) Section 11(4) of the Sale of Goods Act 1979 (whereby in certain circumstances a breach of a condition in a contract of sale is treated only as a breach of warranty) shall not apply to a conditional sale agreement where the buyer deals as consumer within Part I of the Unfair Contract Terms Act 1977.
- (2) A breach of a condition (whether express or implied) to be fulfilled by the seller under any such agreement shall be treated as a breach of warranty, and not as grounds for rejecting the goods and treating the agreement as repudiated, if (but only if) it would have fallen to be so treated had the condition been contained or implied in a corresponding hire-purchase agreement as a condition to be fulfilled by the creditor.

## **15 Supplementary**

- (1) In sections 8 to 14 above and this section—

“business” includes a profession and the activities of any government department, or local or public authority;

“buyer” and “seller” includes a person to whom rights and duties under a conditional sale agreement have passed by assignment or operation of law;

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

“creditor” means the person by whom the goods are bailed under a hire-purchase agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law; and

“hire-purchase agreement” means an agreement, other than a conditional sale agreement, under which—

- (a) goods are bailed in return for periodical payments by the person to whom they are bailed; and
- (b) the property in the goods will pass to that person if the terms of the agreements are complied with and one or more of the following occurs—
  - (i) the exercise of an option to purchase by that person;
  - (ii) the doing of any other specified act by any party to the

agreement;

(iii) the happening of any other specified event;

“producer” means the manufacturer of goods, the importer of goods or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods.

- (3) In section 14(2) above “corresponding hire-purchase agreement” means, in relation to a conditional sale agreement, a hire-purchase agreement relating to the same goods as the conditional sale agreement and made between the same parties and at the same time and in the same circumstances and, as nearly as may be, in the same terms as the conditional sale agreement.
- (4) Nothing in sections 8 to 13 above shall prejudice the operation of any other enactment or any rule of law whereby any term, other than one relating to quality or fitness, is to be implied in any hire-purchase agreement.

*Miscellaneous*

**18 Short title, citation, interpretation, commencement, repeal and saving**

- (1) This Act may be cited as the Supply of Goods (Implied Terms) Act 1973.