

STATES OF JERSEY



DRAFT SUPPLY OF GOODS AND SERVICES (JERSEY) LAW 200

**Lodged au Greffe on 23rd May 2008
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT SUPPLY OF GOODS AND SERVICES (JERSEY) LAW 200

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development the provisions of the Draft Supply of Goods and Services (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

Introduction

1. The 'Review of Consumer Protection in Jersey' published in 2001 made a total of 14 recommendations three of which related to the introduction of specific legislation. The first piece of legislation involved controls on general product safety and this was implemented in 2006 with the introduction of the Consumer Safety (Jersey) Law. The second piece of legislation was needed to introduce consumer rights when buying goods on the internet and to protect the Island's international reputation in a growing online retail industry. The States passed the Distance Selling (Jersey) Law in 2007 and it came into force in March 2008. The draft Supply of Goods and Services (Jersey) Law 200- will implement the last of the recommendations on legislation and is probably the most significant advancement in providing clarity of consumer contractual rights in Jersey's history.

Background

2. It is appropriate to look back some 15 years or so when the chairman of the National Consumer Council at the time, Lady Judith Wilcox, was invited to Jersey along with the legal adviser, Guy Dehn, to assess consumer protection needs in the Island. The forward to the review was provided by Lady Wilcox who stated –

“What Jersey wants and needs is a law that ensures that consumers do not have to put up with business practices that were ruled out of court decades ago in the United Kingdom and Europe. The Islanders deserve – and its tourists expect – no less”.

3. As a result of the subsequent review, a Fair Trading Law was drafted and re-drafted by Mr. Dehn. However, it eventually became clear that the proposals to combine contractual rights, business malpractices and a trading malpractices tribunal in one Law was not feasible under Jersey's legal system and the draft was shelved and never lodged by the relevant Committee at the time.
4. When the Industries Committee (which subsequently became the Economic Development Committee) was formed in late 1999, it decided to wipe the slate clean as it were and commissioned Mark Boleat, a UK-based Jerseyman and recognised expert on consumer affairs, to carry out a new review of consumer protection in Jersey. The legislation strategy formulated from the recommendations in the review has indeed proved very successful and found strong support from the States Assembly as mentioned in the introduction.

The Draft Law

5. Jersey customary law – notably, where the law of contract is concerned – is different in certain fundamental respects from the common law of England and Wales. It can at times be rather obscure to the average consumer. The intention behind the draft Law is to achieve the policy objectives described above and to clarify the respective rights of buyers and sellers in a way that is consistent with the underlying concepts of the Jersey Law of contract.
6. The draft Law is the culmination of extensive development work drawing on expertise within the local legal profession in providing comprehensive drafting instructions. A lengthy consultation carried out in 2007 produced relatively few responses; but those which originated from legal firms, perhaps not surprisingly, focussed on the wording and detail of the Articles. Also, in developing the draft law, specialist expertise and advice was provided by the Law Officers.
7. Inevitably, in seeking to clarify contractual rights and responsibilities in statutory form, attention has been given to sale of goods legislation in force in the United Kingdom (*i.e.* in England and Wales – and the sometimes varying provisions that apply in Scotland). The vast majority of imported goods originate from United Kingdom suppliers. Many high street retail outlets are branches of United Kingdom stores which follow trading practices based on sale of goods Laws in England and Wales or, alternatively, in Scotland, even referring in some instances to consumer 'statutory rights'. In reality, whilst the consumer in Jersey does enjoy a number of rights at customary law – not all of which were enjoyed by the consumer at English common law – the Jersey consumer still does not have 'statutory rights' in the strict sense in which the consumer now does in the United Kingdom. This Law, if passed by the States, will set out the

full extent of such statutory rights and provide a clear framework for the benefit of both consumers and traders.

8. In producing the draft Law, regard has been had to the following Acts of the United Kingdom Parliament –
 - Supply of Goods (Implied Terms) Act 1973
 - Sale of Goods Act 1979
 - Supply of Goods and Services Act 1982
 - Sale and Supply of Goods Act 1994
 - Sale and Supply of Goods to Consumers Regulations 2002.
9. The **Explanatory Note** provided by the Law Draftsman gives detailed information on the individual *Articles*. However, the following – which is not to be taken as an authoritative legal statement of the Law – is intended to give an indication, for the most part, in layman’s terms, of how the Law will apply to everyday contracts and, in particular, those concluded between consumers and traders. It should, of course, be remembered that numerous transactions take place daily where nothing ever goes wrong but, on occasions when disputes arise, this Law will make it much easier for consumers (as well as sellers) to identify their basic contractual rights and remedies.
10. It should also be noted that this Law will apply to all contracts for the sale of goods or supply of services (as defined in the Law) which includes, for example, business to business contracts. However, the Law provides extra protection in circumstances where, clearly, one party to the contract is a trader and the other is a consumer.

Forming a contract

11. As already mentioned, this Law is concerned with contracts for the sale of goods and/or services. Contracts of sale will always consist of various terms. Some of them will have been expressly agreed between the parties whilst others, although not negotiated or specifically agreed, will automatically be assumed to form part of the contract.
12. Express terms will usually include terms about the price, the description of the goods or an agreed delivery date (if possession is not immediate). Terms that are an automatic part of any contract of sale include guarantees on the part of the seller about quality or fitness for purpose (*e.g.* under existing Jersey law, the seller is normally taken to warrant that what he/she is selling is free from hidden defects).
13. Failure to comply with the terms of a contract is referred to as a breach of contract, and this normally results in the supplier having to remedy the breach in some way. In order for an express term to be binding, it must clearly be part of the contract and be legal. Terms given to a buyer after the contract is made are not part of the contract and therefore, they have no effect.

How is a contract concluded?

14. Very basically, a contract of sale consists of an offer by one party and an acceptance of that offer by the other. Take the display of goods at a supermarket. The customer’s selection of the goods, followed by presentation of them at the checkout, is an offer; the cashier’s action amounts to an acceptance.
15. Under the Jersey law of contract, when it comes to price, there is (unlike in English law) no formal requirement of ‘consideration’. However, the draft Law is concerned with contracts of sale – which automatically involve payment of some sort. Such contracts are referred to in Jersey law as ‘onerous’ (the technical term is *contrat à titre onéreux*) and this is reflected in the draft Law.

What happens when the buyer changes his/her mind?

16. Normally, a buyer has no automatic right to change his/her mind and cancel a contract, so, if this happens, the buyer is in breach of contract. There is, however, an automatic right to cancel in some special cases where contracts are made at a distance (mail order, Internet, etc.) and these are specified in the Distance Selling (Jersey) Law 2007.
17. If a buyer withdraws from a contract when there is no right, the seller may not be able to recover the lost sale. If the seller has already accepted a part-payment (deposit) when the buyer changes his/her mind, the seller will need to consider whether it covers the losses he/she is entitled to claim. If it does not, the seller can claim the extra from the buyer. In practice, the seller usually just keeps the deposit paid by the buyer.

Guarantees given by the seller and remedies for breach

18. The draft Law provides that, in every transaction for the sale and supply of goods, including hire-purchase, the seller automatically warrants certain basic things as far as the item sold is concerned. The equivalent of such automatic warranties in English law, are known as “implied terms”.

19. The person transferring or selling the goods must have the right to do so and the goods must –

- **Correspond with the description.** Many transactions involve a description of some kind. When goods are supplied and the buyer relies on such a description, the goods must be ‘as described’.
- **Be of satisfactory quality – if the goods are sold in the course of a business.** Goods must be of a standard that a reasonable person would regard as satisfactory, having regard to any description applied to them, the price and all other relevant circumstances. Quality is a general term which covers a number of matters including –
 - appearance and finish
 - freedom from minor defects
 - safety
 - durability

In assessing quality, all relevant circumstances must be considered, including, as mentioned, price and description. In business to consumer contracts, the manufacturer’s claims for the product can also be taken into account. It should be noted here that the implied term of satisfactory quality does *not* apply to contracts between persons acting as private individuals.

- **Be fit for their intended purpose – if the goods are sold in the course of a business.** When a buyer **indicates** that goods are required for a particular purpose or where it is obvious that goods are intended for a particular purpose, and a business seller supplies them to meet that requirement, the goods should be fit for that specified purpose. Again, this does *not* apply to contracts between private individuals.

Buyer’s remedy for breach

20. A buyer can reject the goods provided that he/she is not deemed to have accepted them, which will depend on individual circumstances. When a buyer rejects goods he/she can claim compensation for losses. In most circumstances, this will amount to a full refund by the seller unless the buyer has already had substantial use from the goods.

What is acceptance?

21. When acceptance takes place, the buyer loses the right to reject the goods, although he/she may still retain a right to compensation or some other remedy.

22. Acceptance applies only in contracts for the sale of goods and examples of acceptance are as follows –

- The buyer telling the seller that he/she has accepted the goods. (This does not include merely signing a delivery note.)
- Altering the goods in some way.
- Keeping the goods for more than a reasonable time without notifying the seller of faults or defects (this time period will vary depending on the nature of the goods).
- Using the goods after notification of defects.

23. A buyer is not considered to have accepted the goods just because he/she has let the seller attempt a repair. Also, a buyer must have a reasonable opportunity to examine the goods to check that they conform with the contract, before he/she is deemed to have accepted the goods.

Remedies where the buyer cannot reject the goods

24. When there is a breach of contract, but the buyer has lost his/her right to reject the goods, he/she will be entitled to claim compensation from the seller. The amount of compensation will be the sum required to put right the breach. Usually, this will be the cost of repair or replacement, or a part refund, and perhaps compensation for any other losses suffered. If a repair or replacement would put the breach right, and the

seller offers this to the buyer, he/she would normally be expected to accept it.

Additional remedies for consumer buyers

25. There are additional remedies in the draft Law where the buyer is clearly acting as a consumer in contracts for the sale or supply of goods. In these circumstances, the consumer may be able to demand any of the following –
- A repair or replacement
 - A price reduction to an appropriate amount taking the defect into account
 - Rescission of the contract (i.e. the return of the goods, part or full refund, and compensation, if appropriate).
26. If the consumer chooses one of these remedies, and if the defect is discovered within 6 months of delivery, it is automatically assumed that the fault was there at the time of delivery, unless the trader can prove otherwise. If more than 6 months have passed, the consumer has to prove that the defect was there at the time of delivery, even if it was not apparent at the time.
27. If the consumer chooses the option of a repair or replacement, the trader must do this within a reasonable time and also pay all the relevant costs, for example labour, postage, etc.
28. Where a consumer demands a repair but that remedy would be disproportionate, then the trader would be entitled to offer one of the other remedies. For example, if a consumer demands a repair, but it would be cheaper to replace the item than repair it, then it would be reasonable for a trader to offer only a replacement. The consumer can only require a price reduction or rescission where the cost of repair or replacement is disproportionate.

Exceptions – When the buyer cannot claim

29. A buyer has no rights in respect of defects that are brought to his/her attention before a sale or if he/she examines the goods before purchase and any defects could easily have been identified. Also, a buyer cannot claim for damage he/she causes to the goods or if he/she simply has a change of mind about wanting the goods. A buyer cannot claim if he/she chooses the product for a purpose which is neither obvious nor made known to the seller, and then finds that the item is simply unsuitable for that purpose.

Supply of Services: automatic guarantees

30. The draft Law clarifies what a consumer can expect when he/she enters into a contract with a supplier to provide a service. The basic protection provided is that, if the supplier is acting in the course of a business, the service must be carried out with reasonable care and skill. In most instances, the timescale for that service will be agreed between the consumer and supplier but, where the time for the service to be carried out is not –
- fixed by the contract,
 - left to be fixed by agreement, or
 - determined in the course of dealing between the parties,
- the service must be carried out within a reasonable time. Similarly, the price to be paid for a service is usually agreed before it is carried out. However, where the price is not –
- determined by the contract,
 - left to be determined in a manner agreed by the parties, or
 - determined by the course of dealing between the parties,
- the service must be carried out for a reasonable charge.

Protection for innocent buyer of a motor vehicle still on finance

31. It is unfortunate but, occasionally, motor vehicles are sold that are still subject to either a hire-purchase or conditional sale agreement and innocent purchasers have suffered losses when the vehicle has been repossessed. The Law gives protection to consumers who, without knowledge, buy vehicles that are subject to such agreements. If the debt has not been fully discharged, the title of the goods, namely ownership of the vehicle will still pass to the unsuspecting buyer. This is a significant improvement to the current situation in Jersey. However it is open to the former owner to take action against the unauthorised

seller to recover a debt or to seek compensation.

Guidance on the Law

32. It should be clearly understood that the draft deals only with civil contractual rights and remedies. It does not create any criminal offences and there are no enforcement powers or duties to be undertaken by any particular body. In the event of contractual disputes which are unable to be resolved through negotiations, redress will be sought through an action in the Courts. The Court will then base decisions on the facts presented which will be unique in every case.
33. The Trading Standards Service has provided a free, confidential consumer advice service for many years which assists not just consumers, but also traders, in resolving such disputes which arise over the sale of goods and services. The Citizens Advice Bureau also provides a level of consumer advice and indeed regularly passes more difficult cases on to Trading Standards. This Law will help to clarify the rights of consumers involved in disputes. It is intended that, if the Law is passed, Trading Standards will publish guidance booklets to ensure that consumers can be confident they know their rights and traders are aware of their responsibilities when supplying goods and services.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this Draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 20th May 2008 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Supply of Goods and Services (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Part 1 (Articles 1 to 10) sets out a number of terms used in the Law and defines or explains their use in the Law.

Article 9 makes it clear that the Law will only apply to contracts made on or after the date when the Article comes into force.

Article 10 applies the Law to the Crown and to the States.

Part 2 (Articles 11 to 19) deals with certain fundamentals of contracts of sale of goods.

Article 11 defines a contract of sale of goods and defines some of its parameters. In this Law, the term includes a conditional sale agreement, but not a hire purchase agreement (which is dealt with separately in this Law).

Article 12 ensures that the existing law about capacity to enter contracts still operates. The Article also deals with contracts made with minors.

Article 13 makes it clear that a contract of sale of goods may come into being by writing, speech or even conduct.

Article 14 makes it clear that a contract may concern future goods.

Articles 15 and 16 deal with what happens if goods perish (at different moments in relation to a contract for their sale).

The price of goods may be established in one of a number of ways (*Article 17*), including on the basis of a future valuation. *Article 18* deals with the situation where such a valuation does not occur.

Time is not usually of the essence: *Article 19*

Part 3 (Articles 20 to 25) sets out a number of statutory warranties (equivalent to implied terms under English law) for the protection of the buyer in a sale of goods: that the goods are of satisfactory quality (*Articles 20 and 23*), that the seller has a right to sell the goods (*Article 21*), and that the goods correspond with the description of them in the contract where this is appropriate (*Article 22*).

Though there is no general warranty as to quality or fitness, such a warranty may arise in certain cases: *Article 23* Defects are warranted to have been disclosed (*Article 24*) and a bulk is warranted to correspond with its sample (*Article 25*).

Part 4 (Articles 26 to 30) deals with a number of statutory warranties where a contract is for the supply of services. *Article 26* defines such a contract. Under *Articles 26 and 27*, certain services are excluded from the operation of this Part.

Services are warranted to be provided with a certain degree of care and skill (*Article 28*), on time (*Article 29*) and, if the contract is silent about the price, at a reasonable price (*Article 30*).

Part 5 (Articles 31 to 35) deals with a number of warranties in the case of hire purchase: that the goods are of satisfactory quality (*Article 31 and 34*), that the seller will have a right to sell the goods at the appropriate time (*Article 32*), that the goods correspond with their description where this is appropriate (*Article 33*).

Though there is no general warranty as to the quality or fitness of hire-purchase goods, such a warranty may arise in certain cases (*Article 34*). A bulk is warranted to correspond with its sample (*Article 35*).

Part 6 (Articles 36 to 51) deals with the passing of property in goods that are sold and with the legal consequences of a purported sale of goods by a person who does not have a right to sell the goods.

Property in goods cannot pass to a buyer unless the goods are ascertained: *Article 36* It passes according to the intention of the parties to the contract: *Article 37*

Articles 38-43 set out a series of rules for ascertaining that intention in a number of circumstances:

Rule 1, the standard situation;

Rule 2, where the seller has to do something to the goods to make them deliverable;

Rule 3, where the goods have to be measured etc to decide the price;

Rule 4, where goods are delivered on approval;

Rule 5, where goods are at first unascertained and the seller then appropriates them to the contract.

However, a seller may reserve the right to dispose of goods: *Article 44*

Article 45 provides that the risk associated with goods normally passes when property in the goods passes.

Under *Articles 46 and 47* various rules are set out for a sale of a portion of bulk goods.

Article 48 sets out the basic rule where a seller of goods is not in fact their owner: that the buyer does not get better title than the owner, unless certain conduct has occurred on the part of the owner.

Under *Article 49* however, a buyer can get good title even if the seller's title was voidable.

Under *Article 50* rights may pass in certain circumstances where the seller remains in possession of goods after their sale, and then delivers the goods to someone else. Under *Article 51*, rights may pass in certain circumstances where the buyer has possession of goods but no property in them and nevertheless delivers them to someone else.

Part 7 (Articles 52 to 54) sets out some special rules where motor vehicles on hire-purchase or under conditional sale are wrongfully disposed of to another person.

Part 8 (Articles 55 to 67) sets out rules dealing with the performance of contracts of sale of goods.

Delivery, acceptance and payment are the essential acts (*Article 56*), and, generally, delivery and payment must be concurrent (*Article 57*).

Article 58 sets out detailed rules about delivery.

Article 59 deals with the consequences of delivering the wrong quantity of goods.

Under *Article 60* delivery in instalments is possible, but only by agreement.

Under *Article 61*, delivery to a carrier may amount to delivery to the buyer. The Article also deals with certain duties of the seller when carriage is involved.

Article 62 deals with risk-sharing in certain cases where a seller delivers to a place different from the place where the goods are sold.

The buyer normally has a right to examine the goods when the seller tenders delivery of the goods: *Article 63*

Article 64 sets out the rules for determining what constitutes acceptance of goods and when it occurs. Partial rejection is possible in certain circumstances: *Article 65*

A buyer is not normally bound to return rejected goods if the buyer had the right to reject them: *Article 66*

A buyer is liable for the seller's losses that result from the buyer's wrongful refusal to take delivery of goods: *Article 67*

Part 9 (Articles 68 to 77) details what an unpaid seller of goods (defined in *Article 68*) can do: he or she may retain the goods (*Articles 69, 70, 71 and 72*), stop them in transit (*Articles 69, 73, 74 and 75*) or resell them (*Articles 69 and 77*).

The right to retain goods or to stop them in transit is not affected by a buyer's reselling the goods unless the buyer has done that with the approval of the seller: *Article 76*

Part 10 (Articles 78 to 83) sets out some flexible remedies that a buyer of goods who is a consumer may invoke if the goods do not conform to the contract (*Article 79*), that is, repair or replacement (*Article 80*) or reducing the price or rescinding the contract with regard to the goods (under *Article 81*).

Once the consumer has opted for repair or replacement of goods, he or she cannot then demand replacement or repair, or indeed reject the goods, until the seller has had a reasonable time to carry out the repair or replacement: *Article 82*

A court may make orders with regard to the remedies under this Part: *Article 83*

Part 11 (Articles 84 to 90) sets out various actions for breach of any contract to which the Law applies (that is, a contract of sale of goods, a contract for the supply of services or a hire-purchase agreement).

As far as goods are concerned, action may be brought to recover their price from the buyer (*Article 84*), or for damages for a buyer's wrongful non-acceptance of the goods (*Article 85*) or for a seller's non-delivery of the goods (*Article 86*). Specific performance may be sought of a contract of sale of goods: *Article 87*.

Article 88 sets out remedies where the seller is in breach of a term of a contract, or in breach of a warranty set out in this Law.

The measure of damages for a seller's breach of a contract of sale of goods or of a hire-purchase agreement is set out in *Article 89*

Nothing in this Part affects the recovery of interest or special damages: *Article 90*

Part 12(*Articles 91 to 96*) sets out various other provisions.

Article 91 makes it clear that the provisions of this Law or customary law as to rights, duties and liabilities under contracts may be overridden by the express agreement of the parties.

Article 92 sets out some basic rules about auction sales.

Article 93 makes it clear that reasonableness under the Law is to be treated as a question of fact.

Article 94 enables Regulations to be made in aid of the Law. The Regulations may, among other things, set out what is to count as an unfair contractual term, set out what happens if a contract contains an unfair term, and may override the operation of *Article 91*.

Article 95 preserves the operation of certain other rules of customary and statutory law.

Article 96 sets out the name of the Law and provides for its commencement.



Jersey

DRAFT SUPPLY OF GOODS AND SERVICES (JERSEY) LAW 200

Arrangement

Article

PART 1

PRELIMINARY

- 1 Interpretation
- 2 Dealing as consumer
- 3 Knowledge
- 4 Quality
- 5 Good faith
- 6 Insolvency
- 7 Deliverable state
- 8 Sale or hire purchase by sample
- 9 Application of this Law
- 10 Law to bind the Crown and any public administration

PART 2

FORMATION OF CONTRACT OF SALE OF GOODS

- 11 Scope
- 12 Capacity to buy and sell
- 13 How contract of sale is made
- 14 Existing or future goods
- 15 Goods that have perished
- 16 Goods perishing before sale but after agreement to sell
- 17 Ascertainment of price
- 18 Agreement to sell at valuation
- 19 Time

PART 3

WARRANTIES IN SALE OF GOODS

- 20 Satisfactory quality
- 21 Warranty as to title
- 22 Warranty as to description
- 23 Warranty as to quality or fitness
- 24 Warranty as to disclosure of certain defects
- 25 Warranty about sale by sample

PART 4

SUPPLY OF SERVICES

- 26 Scope
- 27 Exemptions
- 28 Warranty about care and skill
- 29 Warranty about time for performance
- 30 Unstated price

PART 5

WARRANTIES IN HIRE-PURCHASE

- 31 Satisfactory quality
- 32 Warranty as to title
- 33 Hire-purchase by description
- 34 Warranty as to quality or fitness
- 35 Warranty about supply by sample

PART 6

EFFECTS OF CONTRACT OF SALE OF GOODS

- 36 Goods must be ascertained
- 37 Property passes when intended to pass
- 38 Rules for ascertaining intention
- 39 Rule 1
- 40 Rule 2
- 41 Rule 3
- 42 Rule 4
- 43 Rule 5
- 44 Reservation of right of disposal
- 45 Passing of risk
- 46 Undivided shares in goods forming part of a bulk
- 47 Deemed consent by co-owner to dealings in bulk goods
- 48 Sale by person not the owner
- 49 Seller with voidable title
- 50 Seller in possession after sale
- 51 Buyer in possession after sale

PART 7

EFFECTS OF CERTAIN CONTRACTS RELATING TO MOTOR VEHICLES

- 52 Interpretation
- 53 Protection if motor vehicle disposed of
- 54 Presumptions relating to dealings with motor vehicles

PART 8

PERFORMANCE OF CONTRACT OF SALE OF GOODS

- 55 Application of this Part
- 56 Duties of seller and buyer
- 57 Payment and delivery are concurrent conditions
- 58 Rules about delivery

<u>59</u>	<u>Delivery of wrong quantity</u>
<u>60</u>	<u>Instalment deliveries</u>
<u>61</u>	<u>Delivery to carrier</u>
<u>62</u>	<u>Risk if goods are delivered at distant place</u>
<u>63</u>	<u>Buyer's right to examine goods</u>
<u>64</u>	<u>Acceptance</u>
<u>65</u>	<u>Right of partial rejection</u>
<u>66</u>	<u>Buyer not bound to return rejected goods</u>
<u>67</u>	<u>Buyer's liability for not taking delivery of goods</u>

PART 9

RIGHTS OF UNPAID SELLER AGAINST GOODS

<u>68</u>	<u>Unpaid seller defined</u>
<u>69</u>	<u>Unpaid seller's rights</u>
<u>70</u>	<u>Right of retention</u>
<u>71</u>	<u>Part-delivery</u>
<u>72</u>	<u>Termination of right of retention</u>
<u>73</u>	<u>Right of stoppage in transit</u>
<u>74</u>	<u>Duration of transit</u>
<u>75</u>	<u>How stoppage in transit is effected</u>
<u>76</u>	<u>Effect of sub-sale, etc. by buyer</u>
<u>77</u>	<u>Rescission and re-sale by seller</u>

PART 10

ADDITIONAL RIGHTS OF BUYER OF GOODS IN CONSUMER CASES

<u>78</u>	<u>Interpretation</u>
<u>79</u>	<u>Consumer remedies if goods do not conform</u>
<u>80</u>	<u>Repair or replacement of the goods</u>
<u>81</u>	<u>Reduction of price or rescission of contract</u>
<u>82</u>	<u>Seller to have time to repair or replace</u>
<u>83</u>	<u>Powers of the court</u>

PART 11

ACTIONS FOR BREACH OF CONTRACT

<u>84</u>	<u>Action for price of goods</u>
<u>85</u>	<u>Damages for non-acceptance of goods</u>
<u>86</u>	<u>Damages for non-delivery of goods</u>
<u>87</u>	<u>Specific performance of contract of sale of goods</u>
<u>88</u>	<u>Remedy for breach of contract</u>
<u>89</u>	<u>Measure of damages: supply of goods</u>
<u>90</u>	<u>Interest, special damages and recovery of money paid</u>

PART 12

MISCELLANEOUS

<u>91</u>	<u>Exclusion of rights, duties or liabilities</u>
<u>92</u>	<u>Auction sales</u>
<u>93</u>	<u>Reasonableness a question of fact</u>

<u>94</u>	<u>Regulations</u>
<u>95</u>	<u>Savings: rules of law</u>
<u>96</u>	<u>Citation and commencement</u>



Jersey

DRAFT SUPPLY OF GOODS AND SERVICES (JERSEY) LAW 200

A LAW to set out formalities and rights in relation to the supply of goods and services; and for related purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

PRELIMINARY

1 Interpretation

In this Law –

“action” includes counterclaim and set-off;

“agreement to sell goods” is defined in Article 11(5);

“bulk” means a mass or collection of goods of the same kind, being a mass or collection that is –

- (a) contained in a defined or identifiable space or area; and
- (b) such that any quantity of goods in the mass or collection is interchangeable with an equal quantity of other goods in the mass or collection;

“business” extends to include a profession and the activities of any public administration;

“buyer” means a person who buys or agrees to buy goods;

“bill of exchange” means a bill of exchange or promissory note;

“conditional sale agreement” means a contract of sale of goods under which the 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 contract are fulfilled;

“consumer” shall be construed in accordance with Article 2;

“contract for the supply of a service” is defined in Article 26;

“contract of sale of goods” is defined in Article 11;

“country” includes any state, territory, province, or other part of a country;

“credit broker” means a person acting in the course of a business of credit brokerage, that is, the business of introducing individuals who wish to obtain credit directly to persons carrying on any business so far as it relates to the provision of credit or by one or more intermediaries to such persons;

“deal as a consumer” shall be construed in accordance with Article 2;

“deliverable state” shall be construed in accordance with Article 7;

“delivery” means –

- (a) in every case, voluntary transfer of possession from one person to another; and
- (b) in relation to Articles 46 and 47, includes such appropriation of goods to the contract as results in property in the goods being transferred to the buyer;

“disposition” means any sale or contract of sale (including a conditional sale agreement), any letting under a hire-purchase agreement and any transfer of the property in goods in pursuance of a provision contained in a hire-purchase agreement, and includes any transaction purporting to be a disposition (as so defined);

“fault” means wrongful act or default;

“future goods” means goods to be manufactured or acquired by the seller after the making of a contract of sale of the goods;

“good faith” shall be construed in accordance with Article 5;

“goods” includes –

- (a) corporeal movables except money;
- (b) industrial growing crops, and things attached to or forming part of land that are agreed to be severed before sale or under a contract of sale; and
- (c) an undivided share in goods;

“hire-purchase agreement” means a contract, other than a conditional sale agreement, under which –

- (a) goods are let in return for periodical payments by the person to whom they are let; and
- (b) the property in the goods will pass to that person if the terms of the agreement 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 act by any party to the agreement, being an act specified in the agreement,
 - (iii) the happening of any other event, being an event specified in the agreement;

“hirer” means the person to whom goods are let under a hire-purchase agreement;

“insolvent” shall be construed in accordance with Article 6;

“knowledge” shall be construed in accordance with Article 3;

“mercantile agent” means an agent having in the customary course of his or her business, as such agent, authority –

- (a) to sell goods;
- (b) to consign goods for the purpose of sale;
- (c) to buy goods; or
- (d) to raise money on the security of goods;

“Minister” means the Minister for Economic Development;

“money” means currency authorized as a medium of exchange by the law of Jersey or of any other country;

“motor vehicle” has the same meaning as in the Motor Traffic (Jersey) Law 1935^[1];

“negotiable instrument” means –

- (a) a bill of exchange or promissory note;
- (b) any other writing that evidences a right to payment of money and is of a kind that, in the ordinary course of business, is transferred by delivery with any necessary endorsement or assignment; or
- (c) a letter of credit, if the letter of credit states on it that it must be presented on claiming payment,

but does not include a document of title or an investment security;

“onerous contract” means a *contrat à titre onéreux*;

“plaintiff” includes a defendant counter-claiming;

“private purchaser” means, in relation to a disposition, a purchaser who is not a trade or finance purchaser;

“producer” means, in relation to goods, the manufacturer of the goods, the importer of the goods into the customs territory of the European Community or any person purporting to be the producer of the goods by placing his or her name, trade mark or other distinctive sign on the goods;

“property” means, in relation to goods, the general property in the goods, and not merely a special property in the goods;

“public administration” means any of the 12 parishes, an administration of the States (including any department of the States), or any body having functions under an enactment;

“quality” shall be construed in accordance with Article 4;

“quantity” includes number;

“repair” means, in a case where there is a lack of conformity in goods for the purposes of Part 10 of this Law, to bring the goods into conformity with the contract;

“sale” includes a bargain and sale as well as a sale and delivery;

“sale of goods” is defined in Article 11(4);

“sample”, in respect of a contract of sale of goods, or a hire purchase agreement, shall be construed in accordance with Article 8;

“seller” means a person who sells or agrees to sell goods;

“specific goods” means goods identified and agreed on when a contract of sale is made, and includes an undivided share, specified as a fraction or percentage, of goods identified and agreed on when a contract of sale is made;

“supplier” –

- (a) in Part 4, has the meaning set out in Article 26(1);
- (b) in Parts 5 and 7, means the person who lets goods under a hire-purchase agreement;

“trade or finance purchaser” means, in relation to the disposition of a motor vehicle, a purchaser to whom the disposition is made and who, at the time of the disposition, carries on a business consisting wholly or partly of –

- (a) purchasing motor vehicles for the purpose of offering or exposing them for sale; or
- (b) providing finance by purchasing motor vehicles for the purpose of letting them under hire-purchase agreements or agreeing to sell them under conditional sale agreements;

“warranty” means *garantie* in accordance with customary law.

2 Dealing as consumer

- (1) For the purposes of this Law, one party to a contract of sale of goods or to a hire-purchase agreement deals as consumer in relation to another party to the contract or agreement if –
 - (a) the other party enters the contract or agreement in the course of a business; and
 - (b) the one party neither enters the contract or agreement in the course of a business nor holds himself or herself out as doing so,and the goods under the contract or agreement are of a type ordinarily supplied for private use or consumption.
- (2) However, on a sale by auction or by competitive tender the buyer is not in any circumstances to be regarded as dealing as consumer for the purposes of this Law.
- (3) Except in the case referred to in paragraph (2), it is for those claiming that a party does not deal as consumer to show that that party does not so deal.

3 Knowledge

- (1) For the purposes of this Law, an individual knows or has knowledge of a fact in relation to a particular transaction when that person has actual knowledge of the fact or receives a notice stating the fact.
- (2) For the purposes of this Law, an organization other than a public administration knows or has knowledge of a fact in relation to a particular transaction when –
 - (a) the person within the organization with responsibility for matters to which the transaction relates has actual knowledge of the fact;
 - (b) the organization receives a notice stating the fact; or
 - (c) the fact is communicated to the organization in such a way that it would have been brought to the attention of the person with responsibility for matters to which the transaction relates if the organization had exercised reasonable care.
- (3) For the purposes of this Law, a public administration knows or has knowledge of a fact in relation to a particular transaction when that fact has been brought to the attention of a senior employee of the administration with responsibility for the matters to which the fact relates, in circumstances in which a reasonable person would take cognizance of it.

4 Quality

For the purposes of this Law, the quality of goods includes their state and condition and the following matters (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;
- (e) durability.

5 Good faith

A thing is taken to be done in good faith for the purposes of this Law when it is in fact done honestly, whether it is done negligently or not.

6 Insolvency

A person is taken to be insolvent for the purposes of this Law if he or she has either ceased to pay his or her debts in the ordinary course of business or he or she cannot pay his or her debts as they become due.

7 Deliverable state

Goods under a contract of sale of goods are in a deliverable state for the purposes of this Law when they are in such a state that the buyer would under the contract be bound to take delivery of them.

8 Sale or hire purchase by sample

- (1) A contract of sale of goods is for the purposes of this Law a contract of sale of goods by sample if that is expressed or implied in the contract.
- (2) A hire purchase agreement is for the purposes of this Law an agreement for hire purchase by sample if that is expressed or implied in the agreement.

9 Application of this Law

- (1) This Law shall not apply to or in respect of a contract, agreement, or other transaction, made or entered into before the day on which this Article comes into force.
- (2) A reference in this Law to a contract, agreement or other transaction is a reference only to a contract, agreement, or other transaction, made or entered into on or after the day on which this Article comes into force.

10 Law to bind the Crown and any public administration

- (1) This Law applies to the States, a Minister of the States and any public administration.
- (2) Subject to this Article, this Law shall bind the Crown.
- (3) No contravention by the Crown of any provision of this Law shall make the Crown criminally liable.
- (4) However –
 - (a) the Court may, on the application of the Minister, declare unlawful any act or omission of the Crown that contravenes a provision of this Law; and
 - (b) the provisions of this Law apply in any event to persons in the public service of the Crown as they apply to other persons.
- (5) This Law does not apply to Her Majesty in her private capacity.

PART 2

FORMATION OF CONTRACT OF SALE OF GOODS

11 Scope

- (1) For the purposes of this Law, a contract of sale of goods is an onerous contract by which the seller transfers or agrees to transfer the property in the goods to the buyer.
- (2) There may be a contract of sale of goods between one part-owner of the goods and another part-owner of the goods.

- (3) A contract of sale of goods may be absolute or conditional, but does not include a hire-purchase agreement.
- (4) If under a contract of sale of goods the property in the goods is transferred from the seller to the buyer the contract is called a sale of goods for the purposes of this Law.
- (5) If under a contract of sale of goods the transfer of the property in the goods is to take place at a future time, or subject to conditions later to be fulfilled, the contract is called an agreement to sell goods for the purposes of this Law.
- (6) An agreement to sell goods becomes a sale of goods when the time arrives at which, or the conditions are fulfilled subject to which, the property in the goods is to be transferred.

12 Capacity to buy and sell

- (1) Nothing in this Law shall affect any enactment, or rule of customary law, concerning capacity to contract or to transfer or acquire property.
- (2) If necessaries are sold and delivered to a minor, and there was a duty so to sell and deliver them, the minor shall pay a reasonable price for them.
- (3) If necessaries are sold and delivered to a person who by reason of drunkenness or any other form of intoxication, or by reason of mental incapacity, is incompetent to contract, the person shall pay a reasonable price for them.
- (4) In this Article, “necessaries” means goods suitable to the condition in life of the minor or other person concerned and to his or her actual requirements at the time of the sale and delivery.

13 How contract of sale is made

- (1) A contract of sale of goods may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.
- (2) Nothing in this Article affects the operation of any law that applies to a company or other body corporate.

14 Existing or future goods

- (1) The goods that form the subject of a contract of sale of goods may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract.
- (2) There may be a contract of sale of goods the acquisition of which by the seller depends on a contingency that may or may not happen.
- (3) Where by a contract of sale of goods the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

15 Goods that have perished

If there is a contract of sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void ab initio.

16 Goods perishing before sale but after agreement to sell

If, after an agreement to sell specific goods is made, the goods, without any fault on the part of the seller or

buyer, perish before the risk in the goods passes to the buyer, the agreement becomes void from the time when the goods perish.

17 Ascertainment of price

- (1) The price under a contract of sale of goods may be fixed by the contract, or may be left to be fixed in a manner specified in the contract, or may be determined by the course of dealing between the parties.
- (2) If the price is not determined as mentioned in paragraph (1) the buyer shall pay a reasonable price.
- (3) The price may in any case be based on money factors or on other factors (such as the delivery of goods by the buyer) or on both money factors and other factors.
- (4) For the purposes of paragraph (2), what is a reasonable price is a question of fact dependent on the circumstances of each case.

18 Agreement to sell at valuation

- (1) If 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 avoided.
- (2) However, if the goods or any part of them have been delivered to and appropriated by the buyer, the buyer shall pay a reasonable price for them.
- (3) If the third party is prevented from making the valuation by the fault of the seller or buyer, the party not at fault shall have a right of action for damages against the party at fault.

19 Time

- (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not of the essence of a contract of sale of goods.
- (2) Whether any other stipulation as to time in a contract of sale of goods is or is not of the essence of the contract depends on the terms of the contract.
- (3) In a contract of sale of goods, "month" prima facie means calendar month.

PART 3

WARRANTIES IN SALE OF GOODS

20 Satisfactory quality

- (1) For the purposes of this Part, 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 for them (if relevant) and all other relevant circumstances.
- (2) If a buyer deals as consumer under a contract of sale of goods, those circumstances include any public statements (in advertising, on labelling, or otherwise) on the specific characteristics of the goods, being statements made about them by or on behalf of the seller of the goods or the producer of the goods.
- (3) A public statement shall not by virtue of paragraph (2) be included in relevant circumstances for the purposes of paragraph (1) in the case of a contract of sale of goods if the seller shows that—
 - (a) at the time the contract was made, the seller 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 any element that was incorrect or misleading, being an element that was capable of being included in relevant circumstances for the purposes of paragraph (1), had been corrected in public; or
 - (c) the decision to buy the goods could not have been influenced by the statement.
- (4) Neither paragraph (2) nor paragraph (3) prevents a public statement from being a relevant circumstance for the purposes of paragraph (1), whether or not the relevant buyer deals as consumer if the statement would have been such a circumstance without the operation of paragraph (2).

21 Warranty as to title

- (1) Under a contract of sale of goods the seller warrants –
- (a) in the case of a sale, that the seller has a right to sell the goods; or
 - (b) in the case of an agreement to sell, that the seller will have such a right at the time when the property in the goods is to pass.
- (2) Under a contract of sale of goods the seller also warrants –
- (a) that the goods are free, and will remain free until the time when the property in the goods is to pass, from any charge or encumbrance other than a charge or encumbrance disclosed or known to the buyer before the contract is made; and
 - (b) that the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner, or another person, entitled to the benefit of any charge or encumbrance so disclosed or known.
- (3) However, paragraphs (1) and (2) do not apply to a contract of sale in the case where 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 the seller or a third person may have.
- (4) In the case referred to in paragraph (3), the seller warrants that all charges, and encumbrances, known to the seller and not known to the buyer have been disclosed to the buyer before the contract is made.
- (5) In the case referred to in paragraph (3), the seller also warrants that none of the following will disturb the buyer's quiet possession of the goods –
- (a) the seller;
 - (b) anyone claiming through or under the seller otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract is made.
- (6) In the case referred to in paragraph (3), being the case where the parties to the contract intend that the seller should transfer only such title as a third person may have, the seller also warrants that none of the following will disturb the buyer's quiet possession of the goods –
- (a) the third person;
 - (b) anyone claiming through or under the third person otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract is made.

22 Warranty as to description

- (1) Under a contract of sale of goods by description, the seller warrants that the goods will correspond with the description.
- (2) If the sale is by sample as well as by description the warranty is not satisfied unless the bulk of the goods corresponds with the sample and the goods correspond with the description.
- (3) A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, the goods are selected by the buyer.

23 Warranty as to quality or fitness

- (1) There is no warranty about the quality or fitness for any particular purpose of the goods supplied under a contract of sale of goods.
- (2) Paragraph (1) shall have effect –
 - (a) despite any rule of customary law;
 - (b) except as provided by this Article and Articles 24 and 25; and
 - (c) subject to any other enactment.
- (3) If the seller supplies goods under a contract of sale of goods in the course of a business, the seller warrants that the goods supplied under the contract are of satisfactory quality.
- (4) The warranty referred to in paragraph (3) does not extend to any matter making the quality of goods unsatisfactory –
 - (a) in every case, that is specifically drawn to the buyer's attention before the contract is made;
 - (b) in the case where the buyer examines the goods before the contract is made, that the examination ought to reveal; or
 - (c) in the case of a contract of sale by sample, that would have been apparent on a reasonable examination of the sample.
- (5) If the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to a person any particular purpose for which the goods are being bought, and the person is –
 - (a) in any case, the seller; or
 - (b) if the price or part of it is payable by instalments and the goods were previously sold by a credit-broker to the seller, the credit-broker,the person warrants that the goods supplied under the relevant contract of sale of goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except if the circumstances show that the buyer does not rely, or that it is unreasonable for the buyer to rely, on the skill or judgment of the person in respect of that fitness.
- (6) A warranty about quality or fitness for a particular purpose may be annexed to a contract of sale of goods by usage.
- (7) This Article applies to a sale by a person who in the course of a business is acting as agent for another person in the same way as it applies to a sale by a principal in the course of a business, except if the other person is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.

24 Warranty as to disclosure of certain defects

- (1) If the seller sells goods under a contract of sale of goods otherwise than in the course of a business, the seller warrants that the seller has disclosed to the buyer all defects in the goods that render the goods not of satisfactory quality, being defects of which the seller is aware.
- (2) Paragraph (1) applies only to the extent that, if Article 23(3) applied to the contract of sale of good and the defects were present in the goods, there would be a breach of the warranty referred to in Article 23(3).

25 Warranty about sale by sample

In the case of a contract of sale of goods by sample the seller warrants –

- (a) that the bulk will correspond with the sample in quality; and

- (b) that the goods will be free from any defect, making their quality unsatisfactory, that would not be apparent on reasonable examination of the sample.

PART 4

SUPPLY OF SERVICES

26 Scope

- (1) For the purposes of this Law, a contract for the supply of a service is an onerous contract by which a person, referred to in this Part as the “supplier”, agrees to carry out a service.
- (2) For the purposes of this Article –
 - (a) a contract of employment or apprenticeship is not a contract for the supply of a service;
 - (b) whether or not goods are or are to be transferred, or are or are to be the subject of a lease, under a contract that relates to a service has no bearing on whether the contract is a contract for the supply of a service; and
 - (c) the nature of the price under a contract has no bearing on whether the contract is a contract for the supply of a service.

27 Exemptions

The States may, by Regulations, provide that one or more provisions of this Part shall not apply to such contracts as are specified in the Regulations.

28 Warranty about care and skill

In a contract for the supply of a service, if the supplier is acting in the course of a business, the supplier warrants that he or she will carry out the service with reasonable care and skill.

29 Warranty about time for performance

If, under a contract for the supply of a service by a supplier acting in the course of a business, the time for the service to be carried out is not –

- (a) fixed by the contract;
- (b) left to be fixed in a manner agreed by the parties to the contract; or
- (c) determined by the course of dealing between the parties,

the supplier warrants that he or she will carry out the service within a reasonable time.

30 Unstated price

If, under a contract for the supply of a service, the price for the service is not –

- (a) determined by the contract;
- (b) left to be determined in a manner agreed by the parties to the contract; or
- (c) determined by the course of dealing between the parties,

the party contracting with the supplier shall be bound to pay a reasonable price.

PART 5

WARRANTIES IN HIRE-PURCHASE

31 Satisfactory quality

- (1) For the purposes of this Part, goods under a hire-purchase agreement 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 charges for them (if relevant) and all other relevant circumstances.
- (2) If a hirer deals as consumer under a hire-purchase agreement in respect of goods, those circumstances include any public statements (in advertising, on labelling, or otherwise) on the specific characteristics of the goods, being statements made about them by or on behalf of the supplier of the goods or the producer of the goods.
- (3) A public statement shall not by virtue of paragraph (2) be included in relevant circumstances for the purposes of paragraph (1) in the case of a hire-purchase agreement if the supplier shows that –
 - (a) at the time the contract was made, the supplier 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 any element that was incorrect or misleading, being an element that was capable of being included in relevant circumstances for the purposes of paragraph (1), had been corrected in public; or
 - (c) the decision to hire the goods could not have been influenced by the statement.
- (4) Nothing in paragraph (3) prevents a public statement from being included in relevant circumstances for the purposes of paragraph (1) if the statement would have been included in those circumstances even if paragraph (2) had not been in force.

32 Warranty as to title

- (1) Under a hire-purchase agreement the supplier of the goods let under the agreement warrants that he or she will have the right to sell the goods at the time when the property in the goods is to pass.
- (2) Under a hire-purchase agreement the supplier of the goods let under the agreement also warrants –
 - (a) that the goods are free, and will remain free until the time when the property in the goods is to pass, from any charge or encumbrance other than a charge or encumbrance disclosed or known to the hirer before the agreement is made; and
 - (b) that the hirer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner, or another person, entitled to the benefit of any charge or encumbrance so disclosed or known.
- (3) However, paragraphs (1) and (2) do not apply to a hire-purchase agreement in the case where there appears from the agreement or there is to be inferred from its circumstances an intention that the supplier should transfer only such title as the supplier or a third person may have.
- (4) In the case referred to in paragraph (3), the supplier warrants that all charges, and encumbrances known to the supplier and not known to the hirer have been disclosed to the hirer before the agreement is made.
- (5) In the case referred to in paragraph (3), the supplier also warrants that none of the following will disturb the hirer's quiet possession of the goods –
 - (a) the supplier;
 - (b) anyone claiming through or under the supplier otherwise than under a charge or encumbrance

disclosed or known to the hirer before the agreement is made.

- (6) In the case referred to in paragraph (3), being the case where the parties to the agreement intend that the supplier should transfer only such title as a third person may have, the supplier also warrants that none of the following will disturb the hirer's quiet possession of the goods –
 - (a) the third person;
 - (b) anyone claiming through or under the third person otherwise than under a charge or encumbrance disclosed or known to the hirer before the agreement is made.

33 Hire-purchase by description

- (1) Under an agreement for hire-purchase by description, the supplier warrants that the goods under the agreement will correspond with the description.
- (2) If the hire-purchase is by sample as well as by description the warranty is not satisfied unless the bulk of the goods corresponds with the sample and the goods correspond with the description.
- (3) Hire-purchase is not prevented from being hire-purchase by description by reason only that, being exposed for sale or hire, the goods under the hire purchase are selected by the hirer.

34 Warranty as to quality or fitness

- (1) Under a hire-purchase agreement, there is no warranty about the quality or fitness for any particular purpose of the goods supplied under the agreement.
- (2) Paragraph (1) shall have effect –
 - (a) despite any rule of customary law;
 - (b) except as provided by this Article and Article 35; and
 - (c) subject to any other enactment.
- (3) If a supplier supplies goods under a hire-purchase agreement in the course of a business, the supplier warrants that the goods are of satisfactory quality.
- (4) The warranty referred to in paragraph (3) does not extend to any matter making the quality of goods unsatisfactory –
 - (a) in every case, that is specifically drawn to the hirer's attention before the agreement is made;
 - (b) in the case where the hirer examines the goods before the agreement is made, that the examination ought to reveal; or
 - (c) in the case of an agreement for hire-purchase by sample, that would have been apparent on reasonable examination of the sample.
- (5) If the supplier supplies goods in the course of a business and the hirer, expressly or by implication, makes any particular purpose for which the goods are being hired known –
 - (a) to the supplier in the course of negotiations conducted by the supplier in relation to the making of the hire-purchase agreement; or
 - (b) to a credit-broker in the course of negotiations conducted by the credit-broker in relation to goods sold by the credit-broker to the supplier before they formed the subject-matter of the hire-purchase agreement,

the supplier or, as the case requires, the credit-broker warrants 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 if the circumstances show that the hirer does not rely, or that it is unreasonable for the hirer to rely, in respect of that fitness on the skill or judgment of the supplier or credit-broker, as the case requires.

- (6) A warranty about quality or fitness for a particular purpose may be annexed to a hire-purchase

agreement by usage.

- (7) This Article applies to a hire-purchase agreement made by a person who in the course of a business is acting as agent for the supplier in the same way as it applies to a hire-purchase agreement made by the supplier in the course of a business, except if the supplier is not, under the agreement, supplying in the course of a business and either the hirer knows that fact or reasonable steps are taken to bring it to the notice of the hirer before the agreement is made.

35 Warranty about supply by sample

If a supplier supplies goods under a hire-purchase agreement by sample the supplier warrants –

- (a) that the bulk will correspond with the sample in quality;
- (b) that the hirer 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, that would not be apparent on reasonable examination of the sample.

PART 6

EFFECTS OF CONTRACT OF SALE OF GOODS

36 Goods must be ascertained

Subject to Article 46 if there is a contract of sale of unascertained goods no property in the goods is transferred to the buyer until the goods are ascertained.

37 Property passes when intended to pass

- (1) In the case of a contract of sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
- (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.

38 Rules for ascertaining intention

Unless a different intention appears, the rules in Articles 39 to 43 shall be taken into account in ascertaining the intention of the parties to a contract of sale of goods as to the time at which the property in the goods is to pass to the buyer.

39 Rule 1

In the case of an unconditional contract of sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and any postponement of payment or delivery, or of both, has no bearing.

40 Rule 2

In the case of a contract of sale of specific goods where the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until the thing is done and the buyer has notice that it has been done.

41 Rule 3

In the case of a contract of sale of specific goods in a deliverable state where 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 the weighing, measuring or testing, or act or thing, is done and the buyer has notice that it has been done.

42 Rule 4

If goods are delivered to the buyer on approval, or on a sale-or-return basis, or other similar terms, the property in the goods passes to the buyer –

- (a) if, at any time before the time specified in paragraph (b), the buyer signifies approval or acceptance to the seller, or does any other act adopting the transaction, at the time when the buyer does so;
- (b) if the buyer retains the goods without giving notice of rejection, on the expiration of the time fixed under the contract of sale of goods for the return of the goods or, if no such time has been so fixed, on the expiration of a reasonable time.

43 Rule 5

- (1) In the case of a contract of sale of unascertained or future goods by description, if goods of that description and in a deliverable state are unconditionally appropriated to the contract, whether by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods then passes to the buyer.
- (2) For the purposes of paragraph (1), assent may be express or implied, and may be given either before or after the appropriation is made.
- (3) For the purposes of paragraph (1), if, in pursuance of the contract, the seller delivers the goods to the buyer (or to a carrier or deposittee, whether or not the carrier or deposittee is specified by the buyer, for the purpose of transmission to the buyer) and does not reserve the right of disposal, the seller is to be taken to have unconditionally appropriated the goods to the contract.
- (4) In the case of a contract of sale of a specified quantity of unascertained goods in a deliverable state forming part of a bulk that is identified either in the contract or by subsequent agreement between the parties and the bulk is reduced to (or to less than) that quantity, then, if the buyer under that contract is the only buyer to whom goods are then due out of the bulk –
 - (a) the remaining goods are to be taken to be appropriated to that contract at the time when the bulk is so reduced; and
 - (b) the property in those goods then passes to that buyer.
- (5) Paragraph (4) applies also (with the necessary modifications) if a bulk is reduced to (or to less than) the aggregate of the quantities due to a single buyer under separate contracts relating to that bulk and the buyer is the only buyer to whom goods are then due out of that bulk.

44 Reservation of right of disposal

- (1) A seller may, by the terms of a contract of sale of specific goods or by the terms of a subsequent appropriation of goods to a contract of sale of specific goods, reserve the right of disposal of the goods until certain conditions are fulfilled.
- (2) In that case, notwithstanding the delivery of the goods to the buyer (or to a carrier or deposittee for the purpose 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) If goods are shipped under a contract of sale of goods, and by the bill of lading the goods are deliverable to the order of the seller or the seller's agent, the seller is prima facie to be taken to reserve the right of disposal.
- (4) If the seller draws on the buyer for the price under a contract of sale of goods, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if the buyer does not honour the bill of exchange.
- (5) If, however, the buyer wrongfully retains the bill of lading the property in the goods does not pass to the buyer.

45 Passing of risk

- (1) Unless otherwise agreed under or in relation to a contract of sale of goods, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.
- (2) However, if delivery has been delayed through the fault of either the buyer or the seller, the goods are at the risk of the party at fault as regards any loss that might not have occurred but for that fault.
- (3) Nothing in this Article affects the duties or liabilities of the seller, or buyer, as depositary of the goods of the other party.
- (4) However, if a buyer deals as consumer under a contract of sale of goods, paragraphs (1) to (3) shall not have any effect in relation to the contract or the parties to the contract and the goods shall remain at the seller's risk until they are delivered to the buyer.

46 Undivided shares in goods forming part of a bulk

- (1) This Article applies to a contract of sale of a specified quantity of unascertained goods if the following conditions are met –
 - (a) the goods or some of them form part of a bulk that is identified either 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 that are the subject of the contract and form part of the bulk.
- (2) Unless the parties agree otherwise, as soon as the conditions specified in paragraph (1)(a) and (b) are met or at such later time as the parties may agree –
 - (a) property in an undivided share in the bulk is transferred to the buyer; and
 - (b) the buyer becomes an owner in common of the bulk.
- (3) For the purposes of this Article, the undivided share of a buyer in a bulk at any time shall be such share 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) However, if the aggregate of the undivided shares of buyers in a bulk, being shares determined under paragraph (3), would at any time exceed the whole of the bulk at that time, each buyer's undivided share in the bulk shall be reduced by the same proportion so that the aggregate of the undivided shares is equal to the whole bulk.
- (5) If a buyer has paid the price for only some of the goods due to the buyer out of a bulk, any delivery to the buyer out of the bulk shall, for the purposes of this Article, be ascribed in the first place to the goods in respect of which payment has been made.
- (6) For the purposes of this Article, payment of part of the price for any goods shall be treated as payment for a corresponding part of the relevant bulk.

47 Deemed 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 Article 46 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 due to the other owner under the latter's contract; and
 - (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) No cause of action shall accrue to anyone against a person by reason of something done as referred to in paragraph (1)(a) or (b) in reliance on any consent taken to have been given as referred to in that paragraph.
- (3) Nothing in this Article or Article 46 shall–
 - (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 the buyer's contract.

48 Sale by person not the owner

- (1) If goods are sold under a contract of sale of goods by a person who is not their owner, 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) Nothing in this Article affects –
 - (a) the operation of any enactment enabling the apparent owner of goods to dispose of them as if he or she were their true owner; or
 - (b) the validity or effect of a contract of sale under any special customary law power of sale, under any power of sale under an enactment or under any order of a court of competent jurisdiction.

49 Seller with voidable title

If the seller under a contract of sale of goods has voidable title to the goods, but this title has not been avoided at the time of the sale, the buyer acquires good title to the goods if the buyer buys them in good faith without notice of the seller's defect of title.

50 Seller in possession after sale

If –

- (a) a person sells goods under a contract of sale of goods but continues, or is, in possession of the goods, or of the documents of title to the goods; and
- (b) the person, or a mercantile agent acting for that person, delivers or transfers the goods, or documents of title, under a sale, *gage*, or other disposition, to a person receiving the goods or documents in good faith without notice of the previous sale,

the delivery or transfer has the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the delivery or transfer.

51 Buyer in possession after sale

- (1) If –
 - (a) a person who has bought or agreed to buy goods under a contract of sale of goods obtains, with the consent of the seller, possession of the goods or of the documents of title to the goods; and
 - (b) the person, or a mercantile agent acting for that person, delivers or transfers the goods, or documents of title, under a sale, *gage*, or other disposition, to a person receiving the goods or documents in good faith and without notice of any right to retain the goods or other right of the original seller in respect of the goods,

the delivery or transfer has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.
- (2) For the purposes of paragraph (1), a buyer under a conditional sale agreement is not taken to be a person who has bought or agreed to buy goods.

PART 7

EFFECTS OF CERTAIN CONTRACTS RELATING TO MOTOR VEHICLES

52 Interpretation

For the purposes of this Part –

- (a) a person becomes a purchaser of a motor vehicle at the time when a disposition of the vehicle is made to the person;
- (b) a person shall be taken to be a purchaser of a motor vehicle without notice of a hire-purchase agreement or conditional sale agreement if at the time of the disposition made to the person, he or she has no actual notice that the vehicle is or was the subject of any such agreement;
- (c) a reference to the title of the supplier to a motor vehicle that is let under a hire-purchase agreement, or to the title of the seller to a motor vehicle that is the subject of a conditional sale agreement, being a motor vehicle that is disposed of by the hirer or buyer under the agreement, is a reference to such title (if any) to the vehicle as, immediately before that disposition, was vested in the person who then was that supplier or seller under the agreement.

53 Protection if motor vehicle disposed of

- (1) This Article applies if a motor vehicle has been let under a hire-purchase agreement, or has been the subject of a conditional sale agreement, and, before the property in the vehicle has become vested in the hirer or buyer, the latter disposes of the vehicle to another person.
- (2) If the other person is a private purchaser, and also a purchaser of the motor vehicle in good faith and without notice of the first agreement, the disposition shall have effect as if the supplier's or seller's title to the vehicle had been vested in the hirer or buyer immediately before the disposition.
- (3) If the other person is a trade or finance purchaser, and if the person who is the first private purchaser of the motor vehicle after the disposition to the other person is a purchaser of the vehicle in good faith and without notice of the first agreement, the disposition of the vehicle to the first private purchaser shall have effect as if the title of the supplier or seller to the vehicle had been vested in the hirer or buyer immediately before the latter disposed of it to the other person.
- (4) If, in the case referred to in paragraph (3) –
 - (a) the disposition by which the first private purchaser becomes a purchaser of the motor vehicle in good faith and without notice of the first agreement is itself a letting under a hire-purchase

agreement; and

- (b) the person who is the supplier in relation to that agreement disposes of the vehicle to the first private purchaser, or a person claiming under him or her, by transferring to him or her the property in the vehicle in pursuance of a provision in the agreement in that behalf,

the disposition referred to in sub-paragraph (b) (whether or not the person to whom it is made is a purchaser in good faith and without notice of the first agreement) shall as well as the disposition referred to in sub-paragraph (a) have effect as set out in paragraph (3).

- (5) This Article applies –
 - (a) notwithstanding Article 48; and
 - (b) without prejudice to the provisions of any enactment enabling the apparent owner of goods to dispose of them as if he or she were the true owner.
- (6) Nothing in this Article affects any liability (whether criminal or civil) to which a hirer, or buyer, referred to in paragraph (1) may be subject.
- (7) If a hirer, or buyer, referred to in paragraph (1) disposes of the motor vehicle referred to in that paragraph to a trade or finance purchaser, nothing in this Article affects any liability (whether criminal or civil) to which the following is subject –
 - (a) the trade or finance purchaser; or
 - (b) any other trade or finance purchaser who becomes a purchaser of the vehicle and is not a person claiming under the first private purchaser.

54 Presumptions relating to dealings with motor vehicles

- (1) If in any proceedings (whether criminal or civil) relating to a motor vehicle it is proved that –
 - (a) the vehicle was let under a hire-purchase agreement, or was the subject of a conditional sale agreement; and
 - (b) a person (whether party to the proceedings or not) became a private purchaser of the vehicle in good faith without notice of the agreement,this Article shall have effect for the purposes of the operation of Article 53 in relation to those proceedings.
- (2) It shall be presumed for those purposes, unless the contrary is proved, that the disposition of the vehicle to the person was made by the hirer or buyer of the vehicle.
- (3) If it is proved that that disposition was not made by the hirer or buyer, then it shall be presumed for those purposes, unless the contrary is proved –
 - (a) that the hirer or buyer disposed of the vehicle to a private purchaser purchasing in good faith without notice of the relevant agreement; and
 - (b) that the relevant purchaser is or was a person claiming under the person to whom the hirer or buyer so disposed of the vehicle.
- (4) If it is proved that the disposition of the vehicle to the relevant purchaser was not made by the hirer or buyer, and that the person to whom the hirer or buyer disposed of the vehicle (the “original purchaser”) was a trade or finance purchaser, then it shall be presumed for those purposes, unless the contrary is proved –
 - (a) that the person who, after the disposition of the vehicle to the original purchaser, first became a private purchaser of the vehicle was a purchaser in good faith without notice of the relevant agreement; and
 - (b) that the relevant purchaser is or was a person claiming under the original purchaser.
- (5) Without prejudice to any other method of proof, if in any proceedings a party admits a fact, that fact shall for the purposes of this Article, be taken as against him or her to be proved in relation to those

proceedings.

PART 8

PERFORMANCE OF CONTRACT OF SALE OF GOODS

55 Application of this Part

This Part applies in respect of a contract of sale of goods.

56 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.

57 Payment and delivery are concurrent conditions

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is, both the following must be satisfied –

- (a) the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price;
- (b) the buyer must be ready and willing to pay the price in exchange for possession of the goods.

58 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 shall be a question depending in each case on the contract, express or implied, between the parties.
- (2) Except as otherwise agreed, whether expressly or by implication, by the seller and the buyer, the place of delivery shall be the seller's place of business if the seller has one, and, if not, the seller's residence.
- (3) However, 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 shall be the place of delivery.
- (4) If under the contract the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller shall be bound to send them within a reasonable time.
- (5) If the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer until the third person acknowledges to the buyer that he or she holds the goods on the buyer's behalf.
- (6) However, nothing in this Article shall affect the operation of the issue or transfer of any document of title to goods.
- (7) A demand for delivery, or tender of delivery, may be treated as ineffectual unless made at a reasonable hour.
- (8) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be met by the seller.

59 Delivery of wrong quantity

- (1) If the seller delivers to the buyer a quantity of goods smaller than the seller contracted to sell, the buyer may reject them.

- (2) However, if the buyer accepts the goods so delivered the buyer shall pay for them at the contract rate.
- (3) If 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 accept or reject the whole.
- (4) If the buyer accepts the whole of the goods so delivered the buyer shall pay for them at the contract rate.
- (5) A buyer shall not be entitled to reject goods under paragraph (1) or (3) unless the shortfall or excess is material.
- (6) This Article is subject to any usage of trade, special agreement, or course of dealing between the parties.

60 Instalment deliveries

- (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery of them by instalments.
- (2) In the case of a contract of sale of goods to be delivered by stated instalments that are to be separately paid for, if the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or to 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) a repudiation of the whole contract; or
 - (b) a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

61 Delivery to carrier

- (1) If, in pursuance of a contract of sale of goods, the seller is authorized 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 shall prima facie be taken to be delivery of the goods to the buyer.
- (2) Unless otherwise authorized by the buyer, the seller shall 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.
- (3) If the seller fails 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 herself or may hold the seller responsible in damages.
- (4) Unless otherwise agreed, if 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 the buyer to insure them during their sea transit.
- (5) If the seller fails to do so, the goods shall be at the seller's risk during the sea transit.
- (6) However, if the buyer under a contract of sale of goods deals as consumer, paragraphs (1) to (5) shall not apply in respect of the contract.
- (7) If the buyer under a contract of sale of goods deals as consumer and, in pursuance of the contract, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier shall not be delivery of the goods to the buyer.

62 Risk if goods are delivered at distant place

If the seller of goods agrees to deliver them at his or her own risk at a place other than that where they are when sold, the buyer shall nevertheless (unless otherwise agreed) take any risk of deterioration in the goods

necessarily incident to the course of transit.

63 Buyer's right to examine goods

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 to examine the goods for the purpose –

- (a) in every case, of ascertaining whether they are in conformity with the contract; and
- (b) in the case of a contract of sale by sample, of comparing the bulk with the sample.

64 Acceptance

- (1) The buyer shall be taken to have accepted the goods –
 - (a) when the buyer intimates to the seller that the buyer has accepted them; or
 - (b) when the goods have been delivered to the buyer and the buyer does in relation to them any act inconsistent with the ownership of the seller.
- (2) However, if goods are delivered to the buyer, and the buyer has not previously examined them, he or she shall not be taken to have accepted them under paragraph (1) until he or she has had a reasonable opportunity of examining them for the purpose –
 - (a) in every case, of ascertaining whether they are in conformity with the contract; and
 - (b) in the case of a contract of sale by sample, of comparing the bulk with the sample.
- (3) If the buyer deals as consumer he or she cannot lose the right to rely on paragraph (2) by agreement waiver or otherwise.
- (4) The buyer shall also be taken to have accepted the goods when after the lapse of a reasonable time the buyer retains them without intimating to the seller that the buyer has rejected them.
- (5) The questions that are material in determining for the purposes of paragraph (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 paragraph (2).
- (6) The buyer shall not by virtue of this Article be taken to have accepted the goods merely because –
 - (a) the buyer asks for, or agrees to, their repair by or under an arrangement with the seller; or
 - (b) the goods are delivered to another person under a sub-sale or other disposition.
- (7) If the contract is for the sale of goods making one or more commercial units, a buyer who accepts any goods included in a unit shall be taken to have accepted all the goods making the unit.
- (8) In paragraph (7), “commercial unit” means a unit, division of which would materially impair the value of the goods included in the unit or would materially impair the character of the unit.

65 Right of partial rejection

- (1) Despite Article 64(7), 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; and
 - (b) accepts some of the goods,
the buyer does not by accepting some of the goods lose the right to reject the rest.
- (2) In the case of a buyer who has the right to reject an instalment of goods, paragraph (1) shall apply as if references to the goods were references to the goods comprised in the instalment.
- (3) For the purposes of paragraph (1), goods are affected by a breach if by reason of the breach they are not in conformity with the contract.

- (4) Paragraph (1) applies whether the goods accepted are or include all of the conforming goods, are or include some of the conforming goods, or include none of the conforming goods.
- (5) This Article shall not apply to a contract of sale of goods if a contrary intention appears in, or is to be implied from, the contract.

66 Buyer not bound to return rejected goods

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

67 Buyer's liability for not taking delivery of goods

- (1) If 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, the buyer shall be liable to the seller for –
 - (a) any loss occasioned by the neglect or refusal of the buyer to take delivery after that time; and
 - (b) a reasonable charge for the seller's care and custody of the goods after that time.
- (2) Nothing in this Article affects the rights of the seller if the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART 9

RIGHTS OF UNPAID SELLER AGAINST GOODS

68 Unpaid seller defined

- (1) The seller of goods is an unpaid seller within the meaning of this Part –
 - (a) when the whole of the price has not been paid or tendered;
 - (b) when a negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonouring of the instrument or otherwise.
- (2) In this Part "seller" includes any person who is in the position of a seller, as, for example, an agent of the seller to whom a bill of lading has been indorsed, or a consignor or agent who has paid (or is directly responsible for) the price.

69 Unpaid seller's rights

- (1) Notwithstanding that the property in the goods under a contract of sale of goods may have passed to the buyer, the unpaid seller of the goods, as such, has the following in accordance with this Part –
 - (a) in every case, a right to retain the goods for the price while in possession of them;
 - (b) in the case of the insolvency of the buyer, a right of stopping the goods in transit after the seller has parted with the possession of them;
 - (c) in every case, a right of re-sale.
- (2) If the property in goods under a contract of sale of goods has not passed to the buyer, the unpaid seller has (in addition to the seller's other remedies) a right of withholding delivery similar to and co-extensive with the seller's rights of retention and stoppage in transit where the property has passed to the buyer.

70 Right of retention

- (1) The unpaid seller of goods under a contract of sale of goods who is in possession of them is entitled in the following cases to retain possession of them until payment or tender of the price –
 - (a) if the goods have been sold without any stipulation as to credit;
 - (b) if the goods have been sold on credit but the term of credit has expired;
 - (c) if the buyer becomes insolvent.
- (2) The seller may exercise his or her right of retention notwithstanding that he or she is in possession of the goods as agent or depositree for the buyer.

71 Part-delivery

If an unpaid seller has made part-delivery of the goods under a contract of sale of goods, he or she may exercise the right of retention on the remainder, unless the part-delivery has been made in such circumstances as to show that the seller waives the right of retention.

72 Termination of right of retention

- (1) The unpaid seller of goods under a contract of sale of goods shall lose the right of retention in respect of them –
 - (a) when he or she delivers the goods to a carrier or a depositree for the purpose of transmission to the buyer and does so without reserving the right of disposal of the goods;
 - (b) when the buyer or the buyer's agent lawfully obtains possession of the goods; or
 - (c) by waiver of the right of retention.
- (2) An unpaid seller of goods who has a right of retention in respect of them shall not lose the right of retention by reason only that he or she has obtained judgment for the price of the goods.

73 Right of stoppage in transit

If the buyer of goods under a contract of sale of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods shall have the right of stopping them in transit, that is to say, the seller may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

74 Duration of transit

- (1) For the purposes of Article 73, goods shall be taken to be in course of transit from the time when they are delivered to a carrier or depositree for the purpose of transmission to the buyer, until the buyer or the buyer's agent takes delivery of them from the carrier or depositree.
- (2) If the buyer or buyer's agent obtains delivery of the goods before their arrival at the appointed destination, the transit shall be taken to be at an end.
- (3) If, after the arrival of the goods at the appointed destination, the carrier or depositree acknowledges to the buyer or buyer's agent that the carrier or depositree holds the goods on the buyer's or agent's behalf and continues in possession of them as depositree for the buyer or agent, the transit shall be taken to be at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.
- (4) In a case to which paragraph (3) does not apply, if the goods are rejected by the buyer, and the carrier or depositree continues in possession of them, the transit shall not be taken to be at an end, even if the

seller has refused to receive them back.

- (5) If 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 agent of the buyer or as a carrier.
- (6) If the carrier or depositary wrongfully refuses to deliver the goods to the buyer or the buyer's agent, the transit shall be taken to be at an end.
- (7) If part-delivery of the goods has been made to the buyer or the buyer's agent, the seller may stop the remainder of the goods in transit, unless the part-delivery has been made in such circumstances as to show an agreement to give up possession of the whole of the goods.

75 How stoppage in transit is effected

- (1) The unpaid seller may exercise the right of stoppage in transit either by taking actual possession of the goods or by giving notice to the carrier or depositary in whose possession the goods are.
- (2) The notice may be given either to the person in actual possession of the goods or to the principal of that person.
- (3) If given to the principal, the notice is ineffective unless 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 depositary in possession of the goods, the carrier or depositary shall re-deliver the goods to, or according to the directions of, the seller.
- (5) The expenses of the re-delivery shall be met by the seller.

76 Effect of sub-sale, etc. by buyer

- (1) The unpaid seller's right of retention, or stoppage in transit, in respect of goods that are the subject of a contract of sale of goods is not affected by the buyer's sale (if any) or other disposition (if any) of the goods, unless the seller has assented to the sale or disposition (as the case may be).
- (2) If a document of title to goods that are the subject of a contract of sale of goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes it in good faith and under an onerous contract, and –
 - (a) if the last-mentioned transfer is by a sale, the unpaid seller's right of retention or stoppage in transit is defeated; or
 - (b) if the last-mentioned transfer was not by a sale but by way of *gage* or other disposition under an onerous contract, the unpaid seller's right of retention or stoppage in transit can only be exercised subject to the rights of the transferee.

77 Rescission and re-sale by seller

- (1) A contract of sale of goods is not rescinded by the mere exercise by an unpaid seller of the seller's right of retention or stoppage in transit.
- (2) If an unpaid seller who has exercised the right of retention, or stoppage in transit, in respect of goods re-sells the goods, the new buyer shall acquire a good title to them as against the original buyer.
- (3) If the goods are of a perishable nature, or if the unpaid seller gives notice to the buyer of the seller's 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 the original buyer's breach of contract.

- (4) Despite paragraph (1), if the seller expressly reserves the right of resale in case the buyer should make default, and on the buyer's making default re-sells the goods, the original contract of sale is rescinded but without prejudice to any claim that the seller may have for damages.

PART 10

ADDITIONAL RIGHTS OF BUYER OF GOODS IN CONSUMER CASES

78 Interpretation

For the purposes of this Part, goods do not conform to a contract of sale of goods if there is, in relation to the goods, a breach of an express term of the contract or a breach of a warranty under Article 22, 23, 24 or 25.

79 Consumer remedies if goods do not conform

- (1) This Article applies if –
 - (a) a buyer under a contract of sale of goods deals as consumer; and
 - (b) the goods do not conform to the contract of sale at the time of delivery.
- (2) If this Article applies, the buyer has the right –
 - (a) in accordance with Article 80, to require the seller to repair or replace the goods; or
 - (b) in accordance with Article 81–
 - (i) to require the seller to reduce the price by an appropriate amount, or
 - (ii) to rescind the contract with regard to the goods in question.
- (3) For the purposes of paragraph (1)(b) goods that do not conform to the contract of sale at any time within the period of 6 months starting with the date on which the goods are delivered to the buyer shall be taken not to have so conformed also at that date.
- (4) Paragraph (3) does not apply if–
 - (a) it is established that the goods did so conform at that date; or
 - (b) its application is incompatible with the nature of the goods or the nature of the lack of conformity.

80 Repair or replacement of the goods

- (1) If Article 79 applies, the buyer may require the seller–
 - (a) to repair the goods; or
 - (b) to replace the goods.
- (2) If the buyer requires the seller to repair or replace the goods, the seller shall –
 - (a) repair or, as the case may be, replace the goods within a reasonable time and without causing significant inconvenience to the buyer; and
 - (b) bear any necessary costs incurred in doing so (including in particular the costs of any labour, of any materials and of any reasonable means of transmission of the goods).
- (3) However, the buyer cannot, under this Article, require the seller to repair the goods if repair is –
 - (a) impossible;
 - (b) disproportionate in comparison with replacing the goods; or
 - (c) disproportionate in comparison with an appropriate reduction in the price under Article 81(1).

- (a), or rescission under Article 81(1)(b).
- (4) Likewise, the buyer cannot require the seller to replace the goods if replacement is –
 - (a) impossible;
 - (b) disproportionate in comparison with repairing the goods; or
 - (c) disproportionate in comparison with an appropriate reduction in the price under Article 81(1)(a), or rescission under Article 81(1)(b).
- (5) For the purposes of paragraphs (3) and (4), one remedy is disproportionate in comparison with the other if the one would impose costs on the seller that, in comparison with those that would be imposed on the seller by the other, are unreasonable, taking into account –
 - (a) the value that the goods would have at the time of making the costs comparison if the goods had conformed to the contract of sale at the time of delivery;
 - (b) the significance of the lack of conformity; and
 - (c) whether the other remedy could be effected without significant inconvenience to the buyer.
- (6) For the purposes of this Article, any question as to what is a reasonable time or significant inconvenience is to be determined by reference to –
 - (a) the nature of the goods; and
 - (b) the purpose for which the goods were acquired.

81 Reduction of price or rescission of contract

- (1) If Article 79 applies, and the condition in paragraph (2) is satisfied, the buyer may–
 - (a) require the seller to reduce the price of the goods to the buyer by an appropriate amount; or
 - (b) rescind the contract with regard to those goods.
- (2) The condition is that –
 - (a) by virtue of Article 80(3) and (4) the buyer may require neither repair nor replacement of the goods; or
 - (b) the buyer has required the seller to repair or replace the goods, but the seller is in breach of the requirement of Article 80(2)(a) to do so within a reasonable time and without significant inconvenience to the buyer.
- (3) For the purposes of this Part, if the buyer rescinds the contract, any reimbursement to the buyer may be reduced to take account of the use that the buyer has had of the goods since they were delivered to the buyer.

82 Seller to have time to repair or replace

- (1) If under this Part the buyer requires the seller to repair the goods, the buyer cannot require the seller to replace the goods, and cannot reject the goods and treat the contract as repudiated, until he or she has given the seller a reasonable time in which to repair the goods.
- (2) If under this Part the buyer requires the seller to replace the goods, the buyer cannot require the seller to repair the goods, and cannot reject the goods and treat the contract as repudiated, until he or she has given the seller a reasonable time in which to replace the goods.

83 Powers of the court

- (1) In any proceedings in which a remedy is sought by virtue of this Part, a court, in addition to any other power that it has, may act under this Article.
- (2) On the application of the buyer a court may make an order requiring specific performance by the

seller of any obligation imposed on the seller by virtue of Article 80.

- (3) Paragraph (4) applies if—
 - (a) the buyer has chosen to make a requirement under Article 80, to make a requirement under Article 81, or to claim to rescind the relevant contract under Article 81; and
 - (b) a court decides that another choice under Articles 80 and 81 is appropriate instead.
- (4) The court may proceed as if the buyer had made the other choice.
- (5) If the buyer has claimed to rescind the contract, the court may order that any reimbursement to the buyer shall be reduced to take account of the use that the buyer has had of the goods since they were delivered to the buyer.
- (6) A court may make an order under this Article unconditionally or on such terms and conditions as to damages, payment of the price and otherwise as it thinks just.

PART 11

ACTIONS FOR BREACH OF CONTRACT

84 Action for price of goods

- (1) If, under a contract of sale of goods, 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 shall have a right of action against the buyer for the price of the goods.
- (2) If, under a contract of sale of goods, the price is payable on a given day (irrespective of delivery) and the buyer wrongfully neglects or refuses to pay that price, the seller shall have a right of action for the price, although the property in goods has not passed and the goods have not been appropriated to the contract.

85 Damages for non-acceptance of goods

- (1) If the buyer wrongfully neglects or refuses to accept and pay for goods under a contract of sale of goods, the seller shall have a right of action against the buyer for damages for non-acceptance.
- (2) The measure of damages is the estimated loss, directly and naturally resulting in the ordinary course of events, from the buyer's breach of contract.
- (3) If there is an available market for the goods, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted or (if no time was fixed for acceptance) at the time of the failure to accept.

86 Damages for non-delivery of goods

- (1) If the seller wrongfully neglects or refuses to deliver goods to the buyer under a contract of sale of goods, the buyer shall have a right of action against the seller for damages for non-delivery.
- (2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.
- (3) If there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered or (if no time was fixed) at the time of the failure to deliver.

87 Specific performance of contract of sale of goods

- (1) In any action for breach of contract to deliver specific or ascertained goods a court may, if it thinks fit, on the plaintiff's application, order that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.
- (2) The plaintiff's application may be made at any time before judgment in the action.
- (3) The order may be unconditional, or on such terms and conditions as to damages, payment of the price and otherwise as seem just to the court.

88 Remedy for breach of contract

- (1) If a seller is in breach of a term of, or warranty under this Law in relation to, a contract of sale of goods, a contract for the supply of services or a hire-purchase agreement, the buyer shall be entitled as follows –
 - (a) in any case, to claim damages;
 - (b) in a case where the breach is material and the contract is a contract of sale of goods or a hire-purchase agreement, to reject any goods delivered under the contract and to treat the contract as repudiated.
- (2) If the buyer deals as consumer under the contract, for the purposes of paragraph (1)(b), the breach by the seller of any term of, or warranty under this Law in relation to, the contract shall be taken to be a material breach –
 - (a) in any case, if the term or warranty relates to the quality of the goods or their fitness for a purpose;
 - (b) in a case where under the contract the goods are, or are to be, sold by description, if the term or warranty is that the goods will correspond with the description;
 - (c) in a case where under the contract the goods are, or are to be, sold by reference to a sample, if the term or warranty is that the bulk will correspond in quality with the sample.
- (3) In this Article, a reference to a term includes a term whether it is expressed or implied in the contract.

89 Measure of damages: supply of goods

- (1) The measure of damages for the seller's breach of a contract, being a contract of sale of goods or a hire-purchase agreement, shall be the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach.
- (2) If the seller's breach consists in the delivery of goods that are not of the quality required by the contract and the buyer retains the goods, the loss referred to in paragraph (1) is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the contract.

90 Interest, special damages and recovery of money paid

Nothing in this Law affects 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 (whether by an *action en nullité* or an *action en résolution* or otherwise) if the *objet* for the payment of it has failed.

91 Exclusion of rights, duties or liabilities

- (1) If a right, duty or liability would arise, by the operation of this Law, under a contract, the right, duty or liability may be negated or varied by express agreement, or by the course of dealing between the parties, or by such usage as binds both parties to the contract.
- (2) However, an express term does not negate a warranty under this Law unless inconsistent with it.
- (3) In this Article, “contract” means a contract of sale of goods, a contract for the supply of services or a hire-purchase agreement.

92 Auction sales

- (1) If 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.
- (2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner.
- (3) Until the sale is complete any bidder may retract his or her bid.
- (4) A sale by auction may, by notice to the persons present at the sale, be made subject to a reserve or upset price, or to a seller’s right to bid.
- (5) If a sale by auction is so made subject to a seller’s right to bid –
 - (a) the seller (and no one else on behalf of the seller) may bid at the auction; or
 - (b) any one person (instead of the seller) may bid on the seller’s behalf at the auction.
- (6) If a sale by auction is not so made subject to a seller’s right to bid, it shall not be lawful for the seller to bid or to agree with any person to bid at the sale on the seller’s behalf, or for the auctioneer to take a bid that the auctioneer knows is made by or on behalf of the seller.
- (7) If anything occurs at, or in relation to, a sale by auction, being something that by virtue of paragraph (6) is not lawful, the sale may be treated as fraudulent by the buyer under the sale.

93 Reasonableness a question of fact

Where a reference is made in this Law to a reasonable time, to a reasonable hour, to a reasonable price or to a reasonable charge, the question what is reasonable is a question of fact, dependent on the circumstances of each particular case.

94 Regulations

- (1) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Law by Regulations.
- (2) The States may by Regulations make provision in respect of the terms of contracts, being contracts for the sale of goods, contracts for the supply of services and hire-purchase agreements.
- (3) The States may by Regulations –
 - (a) prevent or restrict the exclusion or restriction of civil liability, being the exclusion or restriction of civil liability by the use of terms in contracts to which paragraph (2) applies or by the use of notices to, or agreements with, parties to contracts to which paragraph (2) applies;
 - (b) exclude, or restrict the effect of, unfair terms in contracts to which paragraph (2) applies;
 - (c) specify additional terms to be included in contracts to which paragraph (2) applies and require

the inclusion of those terms in those contracts;

- (d) limit or exclude the operation of Article 91 in relation to contracts to which paragraph (2) applies; or
 - (e) amend Article 91.
- (4) Regulations referred to in paragraph (2) or (3) may prescribe among other things-
- (a) additional warranties that shall apply, by virtue of those Regulations, in contracts to which paragraph (2) applies;
 - (b) terms that shall be deemed to be unfair if contained in contracts to which paragraph (2) applies;
 - (c) the consequences of the inclusion of specified terms in contracts to which paragraph (2) applies; or
 - (d) without limiting sub-paragraph (c), in the case of a term deemed to be unfair as referred to in sub-paragraph (b), that the term is unenforceable or of no effect or that the contract containing the term shall be void, voidable, unenforceable or otherwise affected (as prescribed by the Regulations) by the inclusion of the term in the relevant contract.
- (5) Paragraph (4) shall not limit the consequences that the Regulations may set out in respect of the inclusion of any terms in contracts to which paragraph (2) applies.
- (6) Regulations made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.
- (7) Regulations made under this Law may create an offence punishable by a fine not exceeding level 4 on the standard scale.

95 Savings: rules of law

- (1) The provisions of the Bankruptcy (Désastre) (Jersey) Law 1990^[2], and of the rules in bankruptcy, relating to contracts of sale continue to apply to those contracts, notwithstanding anything in this Law.
- (2) The rules of customary law, except in so far as they are inconsistent with this Law, continue to apply to contracts of sale of goods, contracts for the supply of services and hire-purchase agreements.
- (3) The provisions of this Law about contracts of sale of goods or hire-purchase agreements do not apply to a transaction in the form of a contract that is intended to operate by way of sûreté, mortgage, *gage*, charge, or other security.

96 Citation and commencement

- (1) This Law may be cited as the Supply of Goods and Services (Jersey) Law 200-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint and different days may be appointed for different provisions of this Law and for different purposes.

[1]

chapter 25.200

[2]

chapter 04.160