

## CHAPTER 421A

### THE SUPPLY OF GOODS AND SERVICES (IMPLIED TERMS) ACT

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SUPPLY OF GOODS AND SERVICES (IMPLIED  
TERMS)

An Act for the terms to be implied in certain contracts for the transfer of property in goods, in certain contracts for the hire of goods and in certain contracts for the supply of services, and for connected purposes.

(21st February, 1991.)

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**1.** This Act may be cited as the Supply of Goods and Services (Implied Terms) Act. **Short title.**

**2.** (1) In this Act—

**Interpretation.**

"bailee" in relation to a contract for the hire of goods means a person to whom goods are or are to be bailed under the contract, or a person to whom the rights under the contract of such first named person have passed;

"bailor" in relation to a contract for the hire of goods means a person who bails or agrees to bail goods under the contract or a person to whom the duties under the contract of such first named person have passed;

"business" includes a profession and activities of any government department or local or public authority;

"contract for the hire of goods" means a contract (other than a hire-purchase agreement) in which one person bails or agrees to bail goods to another by way of hire;

"contract for the supply of service" means a contract (other than a contract of service or apprenticeship) in which a person ("the supplier") agrees to carry out a service;

"contract for the transfer of goods" means a contract (other than an excepted contract) in which one per-

son transfers or agrees to transfer to another the property in goods;

“excepted contract” means

<sup>a</sup> (a) a contract of sale of goods;

(b) a hire-purchase agreement;

(c) a transfer or agreement to transfer which is made by deed and for which there is no consideration other than the prescribed consideration imported by the deed; or

(d) a contract intended to operate by way of mortgage, pledge, charge or other security;

“goods” include all personal chattels other than things in action and money, emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before the transfer or bailment, or under the contract concerned;

“hire-purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee; and where by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreements shall be treated for the purposes of this Act as a single agreement made at the time when the last of the agreements was made:

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

“quality” in relation to goods includes their state or condition;

"transferee" in relation to a contract for the transfer of goods means a person to whom the property in the goods is transferred or is to be transferred under the contract, or a person to whom the rights under the contract of such first named person have passed;

"transferor" in relation to a contract for the transfer of goods means a person who transfers or agrees to transfer the property to whom the duties under the contract of such first named person have passed.

(2) In the definitions of bailee, bailor, transferee and transferor in subsection (1) a reference to rights and duties passing is a reference to their passing by assignment, operation of law or otherwise.

(3) For the purposes of this Act—

(a) a contract is a contract for the hire of goods whether or not services are also provided or to be provided under the contract, and whatever is the nature of the consideration for the bailment or agreement to bail by way of hire;

(b) a contract is a contract for the supply of a service whether or not goods are also—

- (i) transferred or to be transferred; or
- (ii) bailed or to be bailed by way of hire under the contract, and whatever is the nature of the consideration for which the service is to be carried out;

(c) a contract is a contract for the transfer of goods whether or not services are also provided or to be provided under the contract and whatever is the nature of the consideration for the transfer or agreement to transfer.

(4) Goods are of "merchantable quality" if they are fit for the purpose or purposes for which goods of that kind are commonly supplied as it is reasonable to expect having regard to the description applied to them, the price or consideration (if relevant) and all other relevant circumstances.

## PART I

## SUPPLY OF GOODS

*Contracts for the Transfer of Property in Goods*

Implied terms  
about title etc.

3. (1) In a contract for the transfer of goods (other than a contract described in sub-section (2)) there is—

(a) in the case of a transfer of the property in the goods, an implied condition that the transferor has the right to transfer the property, and in the case of an agreement to transfer, an implied condition that he will have the right to transfer the property at the time when the property is to be transferred;

(b) an implied warranty—

(i) that the goods are free and will remain free until the time when the property is to be transferred from any charge or encumbrance not disclosed or known to the transferee before the contract is made; and

(ii) that the transferee will enjoy quiet possession of the goods except in so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

(2) In a contract for the transfer of goods where there appears from the contract or is to be inferred from its circumstances an intention that the transferor should transfer only such title as he or a third person may have, there is an implied warranty—

(a) that all charges or encumbrances known to the transferor and not known to the transferee have been disclosed to the transferee before the contract is made; and

(b) that the transferee's quiet possession will not be disturbed by any of the following—

(i) the transferor;

(ii) in the case where the parties to the contract intend that the transferor should transfer only

such title as a third person may have, that third person;

- (iii) anyone claiming through or under the transferor or the third person, otherwise than under a charge or encumbrance disclosed or known to the transferee before the contract is made.

**4.** (1) Where in a contract for the transfer of goods a transferor transfers or agrees to transfer the property in the goods by description, there is an implied condition that the goods will correspond with the description. **Implied terms where transfer is by description.**

(2) Where a transferor transfers or agrees to transfer the property in the goods by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(3) A contract for the transfer of goods is not prevented from being a contract for the transfer of goods by description by reason only that, being exposed for supply, the goods are selected by the transferee.

**5.** (1) Subject to this Act and to any other law, there is no implied condition or warranty about the quality or fitness for any particular purpose of goods supplied under a contract for the transfer of goods except— **Implied terms about quality or fitness.**

(a) where the transferor transfers the property in the goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality, but there is no condition—

- (i) as regards defects specifically drawn to the transferee's attention before the contract is made; or
- (ii) as regards defects which an examination ought to have revealed, where the transferee examines the goods before the contract is made;

(b) Where the transferor transfers the property in goods in the course of a business and the transferee

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*(Implied Terms)*

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expressly or by implication makes known to the transferor any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose whether or not that is the purpose for which such goods are commonly supplied, except where the circumstances show that the transferee does not rely or that it was unreasonable for him to rely on the skill or judgment of the transferor.

(2) An implied condition or warranty about quality or fitness for a particular purpose may be annexed by usage to a contract for the transfer of goods.

(3) This section applies to a transfer by an agent acting in the course of a business for a principal as it applies to a transfer by a principal in the course of a business, but does not apply where the agent is acting for a principal who is not transferring in the course of a business and either the transferee knows that fact or reasonable steps are taken to bring it to his notice before the contract is made.

**Implied terms where transfer is by sample.**

**6.** (1) Where in a contract for the transfer of goods the transferor transfers or agrees to transfer property in the goods by reference to a sample there is an implied condition—

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

(b) that the transferee will have a reasonable opportunity of comparing the bulk with the sample; and

(c) that the goods will be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

(2) For the purpose of subsection (1) a transferor transfers or agrees to transfer the property in goods by reference to a sample where there is an express or implied term to that effect in the contract.

*Contracts for the Hire of Goods*

**Implied terms about right to transfer possession.**

**7.** (1) In a contract for the hire of goods there is on the part of the bailor—

(a) an implied condition that in the case of a bailment, he has the right to transfer possession of the goods by way of hire for the period of the bailment, and in the case of an agreement to bail, he will have such a right at the time of the bailment;

(b) an implied warranty that the bailee will enjoy quiet possession of goods for the period of the bailment except in so far as the possession may be distributed by the owner or other person entitled to any charge or encumbrance disclosed or known to the bailee before the contract is made.

(2) Subsection (1) does not affect the right of a bailee to repossess goods under an express or implied term of a contract.

**8.** (1) Where in a contract for the hire of goods, the bailor bails or agrees to bail the goods by description, there is an implied condition that the goods will correspond with the description. **Implied terms where hire is by description.**

(2) Where a bailor bails or agrees to bail goods by reference to a sample as well as a description it is not sufficient that the bulk of the goods corresponds with the description.

(3) A contract for the hire of goods is not prevented from being a contract for the hire of goods by description by reason only that, being exposed for supply, the goods are selected by the bailee.

**9.** (1) Subject to this Act and to any other law, there is no implied condition or warranty about the quality or fitness for any particular purpose of goods bailed under a contract for the hire of goods except— **Implied terms about quality or fitness.**

(a) where the bailor bails goods in the course of a business there is an implied condition that the goods supplied under the contract are of merchantable quality but there is no condition—

- (i) as regards defects specifically drawn to the bailee's attention before the contract is made; or

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(Implied Terms)

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(ii) as regards defects which an examination ought to have revealed where the bailee examines the goods before the contract is made;

(b) where the bailor bails goods in the course of business and the bailee makes known to the bailor in the course of negotiations conducted by him in relation to the making of the contract any particular purpose for which the goods are being bailed, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the bailee does not rely or that it is unreasonable for him to rely on the skill or judgment of the bailor.

(2) An implied condition or warranty about quality or fitness for a particular purpose may be annexed by usage to a contract for the hire of goods.

(3) This section applies to a bailment by an agent acting in the course of business for a principal as it applies to a bailment by a principal in the course of business, but does not apply where the agent is acting for a principal who is not bailing in the course of a business; and either the bailee knows that fact or reasonable steps are taken to bring it to his notice before the contract is made.

**Implied terms where hire is by sample.**

**10.** (1) Where in a contract for the hire of goods, the bailor bails or agrees to bail the goods by reference to a sample there is an implied condition—

(a) that the goods will correspond to the sample in quality;

(b) that the bailee will have a reasonable opportunity of comparing the bulk with the sample; and

(c) that the goods will be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

(2) For the purpose of sub-section (1) a bailor bails or agrees to bail goods by reference to a sample where there is an express or implied term to that effect in the contract.

PART II

*Supply of Services*

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

**12.** (1) Where in 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 fixed by the contract, left to be fixed in a manner agreed by the contract or determined by the course of dealing between the parties, there is an implied term that the supplier will carry out the service within a reasonable time. **Implied terms about time for performance.**

(2) The question what is a reasonable time is a question of fact.

**13.** (1) Where in a contract for the supply of a service the consideration for the service is not determined by the contract, left to be determined in a manner agreed by the contract or determined by the course of dealing between the parties, there is an implied term that the party contracting with the supplier will pay a reasonable charge. **Implied terms about consideration.**

(2) The question what is a reasonable charge is a question of fact.

PART III

*Miscellaneous*

**14.** (1) Where a right, duty or liability would arise— **Exclusion of implied terms.**

(a) by implication of law under a contract for the transfer of goods or a contract for the hire of goods;

(b) by virtue of this Act under a contract for the supply of goods;

the right, duty, or liability may, subject to the Unfair Contract Terms Act, be negated or varied by express agreement or by the course of dealing between the parties, or by usage if the usage binds both parties to the contract. **Cap. 451.**

(2) An express condition, warranty or term does not negate a condition, warranty or term implied by this Act unless inconsistent with it.

<sup>a</sup> (3) This Act does not prejudice the operation of any other Act or rule of law—

(a) whereby a condition or warranty (other than one relating to quality or fitness) is to be implied in a contract for the transfer of goods or a contract for the hire of goods;

(b) which imposes on the supplier a duty stricter than that imposed by sections 11 and 12 of this Act;

(c) whereby a term not inconsistent with this Act is to be implied in a contract for the supply of a service.

**Application of  
Sections 11 to 13  
of this Act.**

**15.** Sections 11 to 13 of this Act are subject to any other Act which defines or restricts the rights, duties, or liabilities arising in connection with a service of any kind.

**Applicability of  
Part II to certain  
contracts.**

**16.** (1) The Minister may by order provide that one or more of sections 11 to 13 do not apply to a service of a description specified in the order, and such order may make different provisions for different circumstances.

(2) An order under subsection (1) shall be subject to negative resolution of Parliament.

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