



Province of Alberta

SALE OF GOODS ACT

Revised Statutes of Alberta 2000
Chapter S-2

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SALE OF GOODS ACT

Chapter S-2

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

- 1 In this Act,
 - (a) “action” includes counterclaim and set-off;
 - (b) “buyer” means a person who buys or agrees to buy goods;
 - (c) “contract of sale” includes an agreement to sell as well as sale;
 - (d) “delivery” means voluntary transfer of possession from one person to another;

- (e) “document of title to goods” includes
 - (i) a bill of lading, dock warrant, warehousekeeper’s certificate or warrant or order for the delivery of goods, and
 - (ii) any other documents used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods represented by the document;
- (f) “fault” means wrongful act or default;
- (g) “future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale;
- (h) “goods” includes
 - (i) all chattels personal other than things in action or money, and
 - (ii) emblements, industrial growing crops and things attached to or forming part of the land that are agreed to be severed before sale or under the contract of sale;
- (i) “property” means the general property in goods and not merely a special property;
- (j) “quality of goods” includes their state or condition;
- (k) “sale” includes a bargain and sale as well as a sale and delivery;
- (l) “seller” means a person who sells or agrees to sell goods;
- (m) “specific goods” means goods identified and agreed on at the time a contract of sale is made;
- (n) “warranty” means an agreement with reference to goods that are the subject of a contract of sale but collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

RSA 1980 cS-2 s1

Interpretation

2(1) A thing is deemed to be done “in good faith” within the meaning of this Act when it is in fact done honestly whether it is done negligently or not.

(2) A person is insolvent within the meaning of this Act when the person either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due whether or not the person has committed an act of bankruptcy.

(3) Goods are in a “deliverable state” within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

RSA 1980 cS-2 s2

**Part 1
Formation of Contract****Contract of Sale****Contract of sale**

3(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.

(2) There may be a contract of sale between one part owner and another.

(3) A contract of sale may be absolute or conditional.

(4) When under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but when the transfer of the property in the goods is to take place at a future time or subject to some condition subsequently to be fulfilled, the contract is called an agreement to sell.

(5) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

RSA 1980 cS-2 s3

Capacity to buy and sell

4(1) Subject to subsection (2), capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.

(2) When necessaries are sold and delivered to a minor or to a person who by reason of mental incapacity or drunkenness is

incompetent to contract, the minor or person must pay a reasonable price for them.

(3) In this section, “necessaries” means goods suitable to the condition in life of the minor or other person and to the minor’s or person’s actual requirements at the time of the sale and delivery.

RSA 1980 cS-2 s4

Formalities of the Contract

Form of contract of sale

5(1) Subject to this Act and any Act in that behalf, a contract of sale 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 section affects the law relating to corporations.

RSA 1980 cS-2 s6

Enforcement of contract over \$50

6(1) A contract for the sale of any goods of the value of \$50 or more is not enforceable by action

- (a) unless the buyer accepts part of the goods so sold and actually receives that part, or gives something in earnest to bind the contract or in part payment, or
- (b) unless some note or memorandum in writing of the contract is made and signed by the party to be charged or the party’s agent in that behalf.

(2) This section applies to every contract referred to in subsection (1) notwithstanding that the goods may be intended to be delivered at some future time, or may not, at the time of the contract, be actually made, procured or provided or fit or ready for delivery or that some act may be requisite for the making or completing the goods or rendering the goods fit for delivery.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act, in relation to the goods, that recognizes a pre-existing contract of sale whether there is an acceptance in performance of the contract or not.

RSA 1980 cS-2 s7

Subject-matter of contract

7(1) The goods that form the subject of a contract of sale may be either existing goods owned or possessed by the seller or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends on a contingency that may or may not happen.

(3) When by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

RSA 1980 cS-2 s8

Perishing of goods after agreement made

8 When there is a contract for the sale of specific goods and the goods without the knowledge of the seller have perished at the time that the contract is made, the contract is void.

RSA 1980 cS-2 s9

Perishing of goods after agreement made

9 When there is an agreement to sell specific goods and subsequently the goods without any fault on the part of the seller or buyer perish before the risk passes to the buyer, the agreement is by that reason avoided.

RSA 1980 cS-2 s10

The Price

Determining price

10(1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in the manner agreed by the contract or may be determined by the course of dealing between the parties.

(2) If the price is not determined in accordance with subsection (1), the buyer shall pay a reasonable price.

(3) What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

RSA 1980 cS-2 s11

Price fixed by valuation

11(1) When 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) Notwithstanding subsection (1), 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 in fault may maintain an action for damages against the party in fault.

RSA 1980 cS-2 s12

Conditions and Warranties

Stipulations re time of payment

12(1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment shall not be deemed to be of the essence of a contract of sale.

(2) Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

(3) In a contract of sale, “month” means, in the absence of evidence to the contrary, calendar month.

RSA 1980 cS-2 s13

When contract subject to conditions

13(1) When a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or may elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated or a warranty the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated depends in each case on the construction of the contract.

(3) A stipulation may be a condition though called a warranty in the contract.

(4) When a contract of sale is not severable and the buyer has accepted the goods or part of them, or a contract of sale is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller shall only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated unless there is a term of the contract expressed or implied to that effect.

(5) Nothing in this section affects the case of a condition or warranty the fulfilment of which is excused by law by reason of impossibility or otherwise.

RSA 1980 cS-2 s14

Implied conditions in contract

14 In a contract of sale, unless the circumstances of the contract show a different intention, there is

- (a) an implied condition on the part of the seller
 - (i) that, in the case of a sale, the seller has a right to sell the goods, and
 - (ii) that, in the case of an agreement to sell, the seller will have a right to sell the goods at the time that the property is to pass,
- (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods, and
- (c) an implied warranty that the goods are free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time that the contract is made.

RSA 1980 cS-2 s15

Sale by description

15 When there is a contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description, and if the sale is 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.

RSA 1980 cS-2 s16

Implied conditions re quality, etc.

16(1) Subject to this Act and any Act in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as provided in this section.

(2) When the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description that it is in the course of the seller's business to supply, whether the seller is the manufacturer or not, there is an implied condition that the goods are reasonably fit for that purpose.

(3) Notwithstanding subsection (2), in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(4) When goods are bought by description from a seller who deals in goods of that description, whether the seller is the manufacturer or not, there is an implied condition that the goods are of a merchantable quality.

(5) Notwithstanding subsection (4), if the buyer has examined the goods there is no implied condition as regards defects that the examination ought to have revealed.

(6) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

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

RSA 1980 cS-2 s17

Sale by Sample

Sale by sample

17(1) A contract of sale is a contract for sale by sample when there is a term in the contract express or implied to that effect.

(2) In the case of a contract for sale by sample

- (a) there is an implied condition that the bulk corresponds with the sample in quality,
- (b) there is an implied condition that the buyer will have a reasonable opportunity of comparing the bulk with the sample, and
- (c) there is an implied condition that the goods will be free from any defect rendering them unmerchantable and that would not be apparent on reasonable examination of the sample.

RSA 1980 cS-2 s18

Part 2 Effects of the Contract

Transfer of Property as Between Seller and Buyer

Ascertainment of goods

18 When there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer until the goods are ascertained.

RSA 1980 cS-2 s19

Time of transfer

19(1) When there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at the time that 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.

RSA 1980 cS-2 s20

Rules for ascertaining intention

20(1) Unless a different intention appears, the rules set out in this section are the rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

(2) When there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

(3) When there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until the thing is done and the buyer has notice of it.

(4) When there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until the act or thing is done and the buyer has notice of it.

(5) When goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property in them passes to the buyer

- (a) when the buyer signifies the buyer’s approval or acceptance to the seller or does any other act adopting the transaction, or
- (b) if the buyer does not signify the buyer’s approval or acceptance to the seller but retains the goods without giving notice of rejection then if a time has been fixed for the return of the goods, on the expiration of that time, and, if no time has been fixed, on the expiration of a reasonable time, and what is a reasonable time is a question of fact.

(6) When there is a contract for the sale of unascertained or future goods by description and goods of that description and in a

deliverable state are unconditionally appropriated to the contract either

- (a) by the seller with the assent of the buyer, or
- (b) by the buyer with the assent of the seller,

the property in the goods passes on that appropriation to the buyer.

(7) For the purpose of subsection (6),

- (a) the assent may be expressed or implied and may be given either before or after the appropriation is made, and
- (b) if pursuant to the contract the seller delivers the goods to the buyer or to a carrier or other bailee, whether named by the buyer or not, for the purpose of transmission to the buyer and does not reserve the right to disposal, the seller is deemed to have unconditionally appropriated the goods to the contract.

RSA 1980 cS-2 s21

Reservation of right of disposal

21(1) When there is a contract for the sale of specific goods or when goods are subsequently appropriated to the contract, the seller may by the terms of the contract or appropriation reserve the right of disposal of the goods until certain conditions are fulfilled.

(2) In that case, notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee 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) When goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or the seller's agent, the seller in the absence of evidence to the contrary has the right of disposal.

(4) When the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if the buyer does not honour the bill of exchange and if the buyer wrongfully retains the bill of lading the property in the goods does not pass to the buyer.

RSA 1980 cS-2 s22

Risk transferred with property

22(1) Unless otherwise agreed, 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) Notwithstanding subsection (1), if delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss that might not have occurred but for that fault.

(3) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

RSA 1980 cS-2 s23

Transfer of Title

Sale by person not owner

23(1) Subject to this Act, if goods are sold by a person who is not the owner of them 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 the owner's conduct precluded from denying the seller's authority to sell.

(2) Nothing in this Act affects

- (a) the *Factors Act* or any enactment enabling the apparent owner of goods to dispose of them as if the apparent owner were the true owner of them, or
- (b) the validity of any contract or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

RSA 1980 cS-2 s24

Sale under voidable title

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

RSA 1980 cS-2 s25

Acquisition of title to grain

25(1) When grain is sold and delivered at an elevator licensed under the *Canada Grain Act* (Canada) to the manager or operator of the elevator as defined in that Act or to a track buyer licensed under that Act, the buyer acquires a good title to the grain so bought and delivered if the buyer

- (a) buys it in good faith and without actual knowledge of any defect or want of title on the part of the seller in the grain so sold and delivered, and
- (b) keeps a record showing the kind of vehicle from which the grain is delivered into the elevator or car, as the case may be, and if that vehicle is a motor propelled vehicle or a trailer drawn by a motor propelled vehicle, the licence number of it.

(2) Notwithstanding the *Personal Property Security Act*, the interest of a buyer under subsection (1) takes priority over any security interest in the grain, if the interest of the buyer is acquired under the circumstances described in subsection (1).

RSA 1980 cS-2 s26;1988 cP-4.05 s95

Possession of goods after sale

26(1) When a person who has sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for that person of the goods or documents of title under any sale, pledge or other disposition thereof, to any person receiving them in good faith and without notice of the previous sale has the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make it.

(2) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of documents of title to goods, other than negotiable documents of title to goods, that is out of the ordinary course of business of the person having sold the goods where, prior to the sale, pledge or disposition, the interest of the owner is registered in the Personal Property Registry in accordance with the regulations made under the *Personal Property Security Act*, and Part 4 of that Act applies, with the necessary modifications, to that registration.

(3) When a person who has bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for that person, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving them in good faith and without notice of any lien or other right of the original seller in respect of the goods 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.

(4) Subsection (3) does not apply to a sale, pledge or other disposition of goods or documents of title to goods by a person who has obtained possession of the goods pursuant to a security

agreement under which the seller has a security interest as defined in the *Personal Property Security Act*.

(5) In this section, “mercantile agent” means a mercantile agent having, in the customary course of the agent’s business as a mercantile agent, authority to sell goods or to consign goods for the purpose of sale, or to buy goods or to raise money on the security of goods.

RSA 1980 cS-2 s27;1988 cP-4.05 s95

Part 3

Performance of the Contract

Duties of seller and buyer

27 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 of sale.

RSA 1980 cS-2 s28

Payment and delivery as concurrent conditions

28 Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is,

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

RSA 1980 cS-2 s29

Rules re delivery

29(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract express or implied between the parties.

(2) Apart from any contract express or implied, the place of delivery is the seller’s place of business if the seller has one and, if not, the seller’s residence.

(3) Notwithstanding subsection (2), if the contract is for the sale of specific goods that to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

(4) When under the contract of sale the seller is bound to send the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(5) When the goods at the time of the sale are in the possession of a third person, there is no delivery by the seller to the buyer until the third person acknowledges to the buyer that the third person holds the goods on the seller's behalf.

(6) Notwithstanding subsection (5), nothing in this section affects the operation of the issue or transfer of any document of title to goods.

(7) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour, and what is a reasonable hour is a question of fact.

(8) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

RSA 1980 cS-2 s30;1997 c18 s30

Delivery of wrong quantity

30(1) When the seller delivers to the buyer a quantity of goods less than the seller contracted to sell, the buyer may reject them but if the buyer accepts the goods so delivered the buyer shall pay for them at the contract rate.

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

(3) When the seller delivers to the buyer goods the seller contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods that are in accordance with the contract and reject the rest or the buyer may reject the whole.

(4) This section is subject to any usage of trade, special agreement or course of dealing between the parties.

RSA 1980 cS-2 s31

Instalment deliveries

31(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery of them by instalments.

(2) When there is a contract for the sale of goods to be delivered by stated instalments that are to be separately paid for and the seller makes defective deliveries in respect of one or more instalments or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it depends in each case on the terms of the

contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

RSA 1980 cS-2 s32

Delivery to carrier

32(1) When in pursuance of a contract of sale the seller is authorized or required to send the goods to the buyer, delivery of the goods to the carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is, in the absence of evidence to the contrary, delivery of the goods to the buyer.

(2) Unless otherwise authorized by the buyer, the seller shall make a contract with the carrier on behalf of the buyer that is reasonable, having regard to the nature of the goods and the other circumstances of the case, and if the seller omits 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 the buyer or may hold the seller responsible in damages.

(3) Unless otherwise agreed, when goods are sent by the seller to the buyer in a route involving sea transit under circumstances in which it is usual to insure, the seller shall give such notice to the buyer as will enable the buyer to insure them during their sea transit and if the seller fails to do so, the goods shall be deemed to be at the seller's risk during the sea transit.

RSA 1980 cS-2 s33

Risk when delivery to distant place

33 When the seller of goods agrees to deliver them at the seller's own risk at a place other than that at which 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.

RSA 1980 cS-2 s34

Examination of goods by buyer

34(1) When goods that a buyer has not previously examined are delivered to the buyer, the buyer shall not be deemed to have accepted them unless and until the buyer has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, the seller is bound on request to afford the buyer a reasonable opportunity of examining the goods for the

purpose of ascertaining whether they are in conformity with the contract.

RSA 1980 cS-2 s35

Acceptance of goods

35 The buyer is deemed to have accepted the goods

- (a) when the buyer intimates to the seller that the buyer has accepted them,
- (b) when the goods have been delivered to the buyer and the buyer does in relation to the goods any act inconsistent with the ownership of the seller, or
- (c) when after the lapse of a reasonable time the buyer retains the goods without intimating to the seller that the buyer has rejected them.

RSA 1980 cS-2 s36

Return of rejected goods

36 Unless otherwise agreed, when goods are delivered to the buyer and the buyer having the right to do so, refuses to accept them, 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.

RSA 1980 cS-2 s37

Liability of buyer for refusing delivery of goods

37(1) When 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 the request take delivery of the goods, the buyer is liable to the seller for any loss occasioned by the buyer's neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.

(2) Nothing in this section affects the rights of the seller when the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

RSA 1980 cS-2 s38

Part 4 Rights of Unpaid Seller Against the Goods

Unpaid seller

38(1) The seller of the goods is an "unpaid seller" within the meaning of this Act

- (a) when the whole of the contract price has not been paid or tendered, or
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part, “seller” includes any person who is in the position of a seller, as for instance an agent of the seller to whom the bill of lading has been endorsed or a consignor or agent who has himself or herself paid or is directly responsible for the price.

RSA 1980 cS-2 s39

Rights of unpaid seller

39(1) Subject to this Act and any Act in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods as an unpaid seller has by implication of law,

- (a) while the seller is in possession of the goods, a lien on the goods or right to retain them for the price,
- (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, and
- (c) a right of resale as limited by this Act.

(2) When the property in 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 lien and stoppage in transit when the property has passed to the buyer.

RSA 1980 cS-2 s40

Unpaid Seller’s Lien

Seller’s lien

40(1) Subject to this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price, in the following cases:

- (a) when the goods have been sold without any stipulation as to credit;
- (b) when the goods have been sold on credit but the term of credit has expired;
- (c) when the buyer becomes insolvent.

(2) The seller may exercise the seller's right of lien notwithstanding that the seller is in possession of the goods as agent or bailee for the buyer.

RSA 1980 cS-2 s41

Part delivery

41 When an unpaid seller has made part delivery of the goods, the seller may exercise the seller's right of lien or retention on the remainder unless the part delivery has been made under circumstances that show an agreement to waive the lien or right of retention.

RSA 1980 cS-2 s42

Termination of lien

42(1) The unpaid seller of goods loses the seller's lien or right of retention on them

- (a) when the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods,
- (b) when the buyer or the buyer's agent lawfully obtains possession of the goods, or
- (c) by waiver of it.

(2) The unpaid seller of goods having a lien or right of retention on them does not lose the seller's lien or right of retention by reason only that the seller has obtained judgment for the price of the goods.

RSA 1980 cS-2 s43

Stoppage in Transit

Right of stoppage in transit

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

RSA 1980 cS-2 s44

Duration of transit

44(1) Goods shall be deemed to be in course of transit from the time that they are delivered to a carrier or other bailee for the purpose of transmission to the buyer until the buyer or the buyer's

agent in that behalf takes delivery of them from the carrier or other bailee.

(2) If the buyer or the buyer's agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If after the arrival of the goods at the appointed destination the carrier or other bailee acknowledges to the buyer or the buyer's agent that the carrier or other bailee holds the goods on the buyer's behalf and continues in possession of them as bailee for the buyer or the buyer's agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit shall not be deemed to be at an end even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it depends on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) When the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or the buyer's agent in that behalf, the transit shall be deemed to be at an end.

(7) When part delivery of the goods has been made to the buyer or the buyer's agent in that behalf, the remainder of the goods may be stopped in transit unless the part delivery has been made under circumstances that show an agreement to give up possession of the whole of the goods.

RSA 1980 cS-2 s45

Exercising right of stoppage

45(1) The unpaid seller may exercise the seller's right of stoppage in transit either

- (a) by taking actual possession of the goods, or
- (b) by giving notice of the seller's claim to the carrier or other bailee in whose possession the goods are.

(2) The notice may be given either to the person in actual possession of the goods or to that person's principal, and in the latter case the notice to be effectual must be given at a time and under circumstances that the principal by the exercise of reasonable

diligence may communicate it to the principal's servant or agent in time to prevent a delivery to the buyer.

(3) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, the carrier or other bailee shall redeliver the goods to or according to the direction of the seller.

(4) The expenses of the redelivery shall be borne by the seller.

RSA 1980 cS-2 s46

Resale by Buyer or Seller

Resale by buyer

46(1) Subject to this Act, the unpaid seller's right of lien or retention or stoppage in transit is not affected by any sale or other disposition of the goods that the buyer may have made unless the seller has assented thereto.

(2) Notwithstanding subsection (1), when a document of title to 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 the document in good faith and for valuable consideration, then

- (a) if the last mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage in transit is defeated, and
- (b) if the last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transit shall only be exercised subject to the rights of the transferee.

RSA 1980 cS-2 s47

Rescinding contract of sale

47(1) Subject to this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of the seller's right of lien or retention or stoppage in transit.

(2) When an unpaid seller who has exercised the seller's right of lien or retention or stoppage in transit resells the goods, the buyer acquires a good title to them as against the original buyer.

(3) When the goods are of a perishable nature or when the unpaid seller gives notice to the buyer of the seller's intention to resell and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell the goods and recover from the original

buyer damage for any loss occasioned by the buyer's breach of contract.

(4) When the seller expressly reserves a right of resale in case the buyer makes default and, on the buyer making default, resells the goods, the original contract of sale is on that resale rescinded but without prejudice to any claim that the seller may have for damages.

RSA 1980 cS-2 s48

Part 5

Actions for Breach of the Contract

Remedies of the Seller

Action for price of goods

48(1) When under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against the buyer for the price of the goods.

(2) When under a contract of sale the price is payable on a day certain, irrespective of delivery, and the buyer wrongfully neglects or refuses to pay the price, the seller may maintain an action for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

(3) Nothing in this section prejudices the right of the seller to recover interest on the price from the date of tender of the goods or from the date on which the price was payable, as the case may be.

RSA 1980 cS-2 s49

Damages for non-acceptance

49(1) When the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against the buyer for damages for non-acceptance.

(2) The measure of damages shall be the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract.

(3) When there is an available market for the goods in question, the measure of damages is, in the absence of evidence to the contrary, 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 accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

RSA 1980 cS-2 s50

Remedies of the Buyer

Damages for non-delivery

50(1) When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller 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) When there is an available market for the goods in question, the measure of damages is, in the absence of evidence to the contrary, 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 for delivery, then at the time of the refusal to deliver.

RSA 1980 cS-2 s51

Specific performance of the contract

51(1) In an action for breach of contract to deliver specific or ascertained goods, the court if it thinks fit may on the application of the plaintiff direct by its judgment that the contract be performed specifically without giving the defendant the option of retaining the goods on payment of damages.

(2) The judgment may be unconditional or on any terms and conditions as to damages, payment of the price and otherwise that to the court seems just and the application by the plaintiff may be made at any time before judgment or decree.

RSA 1980 cS-2 s52

Remedy for breach of warranty

52(1) When there is a breach of warranty by the seller or when the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of that breach of warranty entitled to reject the goods, but the buyer may

- (a) set up against the seller the breach of warranty in diminution or extinction of the price, or
- (b) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty shall be the estimated loss directly and naturally resulting in the ordinary course of events from the breach of warranty.

(3) In the case of breach of warranty of quality, its loss is, in the absence of evidence to the contrary, 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 answered to the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent the buyer from maintaining an action for the same breach of warranty if the buyer has suffered further damage.

RSA 1980 cS-2 s53

Interest or special damages

53 Nothing in this Act affects the right of the buyer or the seller

- (a) to recover interest or special damages in any case where by law interest or special damages may be recoverable, or
- (b) to recover money paid where the consideration for the payment of it has failed.

RSA 1980 cS-2 s54

Part 6 Supplementary

Exclusion of implied terms, etc.

54 Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties or by usage if the usage is such as to bind both parties to the contract.

RSA 1980 cS-2 s55

References to “reasonable time”

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

RSA 1980 cS-2 s56

Enforcement of rights, etc.

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

RSA 1980 cS-2 s57

Sale by auction

57 In the case of a sale by auction, the following provisions apply:

- (a) when goods are put up for sale by auction in lots, each lot is, in the absence of evidence to the contrary, the subject of a separate contract of sale;
- (b) a sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and until that announcement is made any bidder may retract the bidder's bid;
- (c) when a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it is not lawful for the seller to bid himself or herself or to employ any person to bid at the sale, or for the auctioneer knowingly to take any bid from the seller or any person on the seller's behalf, and any sale contravening this rule may be treated as fraudulent by the buyer;
- (d) a sale by auction may be notified to be subject to a reserve or upset price and the right to bid may also be reserved expressly by or on behalf of the seller, and when a right to bid is expressly reserved, but not otherwise, the seller or any one person on the seller's behalf may bid at the auction.

RSA 1980 cS-2 s58

Application of common law

58(1) The rules of the common law including the law merchant except insofar as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake or other invalidating cause, continue to apply to contracts for the sale of the goods.

(2) Nothing in this Act affects the enactments relating to bills of sale or any enactment relating to the sale of goods and not expressly repealed by this Act.

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

RSA 1980 cS-2 s59



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