



SAMOA

SALE OF GOODS ACT 1975

Arrangement of Provisions

PART 1 PRELIMINARY

1. Short title
2. Interpretation

PART 1A FORMATION OF THE CONTRACT

Division 1 – Contract of Sale

3. Sale and agreement to sell.
4. Capacity to buy and sell

Division 2 – Formalities of the Contract

5. Contract of sale, how made

Division 3 – Subject-matter of the Contract

6. Existing or future goods
7. Goods which have perished
8. Goods perishing before sale
but after agreement to sell

Division 4 – The Price

9. Ascertainment of price
10. Agreement to sell at
valuation

Division 5 – Conditions and

Warranties

11. Stipulations as to time
12. When condition to be treated
as warranty
13. Implied undertaking as to
title, etc.
14. Sale by description.
15. Implied conditions as to
quality or fitness

Division 6 – Sale by Sample

16. Sale by sample

PART 2 EFFECTS OF THE CONTRACT

Division 1 – Transfer of Property as Between Seller and Buyer

17. Goods must be ascertained
18. Property passes when
intended to pass
19. Rules for ascertaining
intention
20. Reservation of right of
disposal
21. Risk *prima facie* passes with
property

Division 2 – Transfer of title

22. Sale by person not the owner

- 23. Sale under voidable title
- 24. Re-vesting of property in stolen goods on conviction of offender
- 25. Seller or buyer in possession after sale
- 26. Effect of writs of execution

**PART 3
PERFORMANCE OF THE
CONTRACT**

- 27. Duties of seller and buyer
- 28. Payment and delivery are concurrent conditions
- 29. Rules as to delivery
- 30. Delivery of wrong quantity
- 31. Instalment deliveries
- 32. Delivery to carrier
- 33. Risk where goods delivered at distant place
- 34. Buyer's right of examining goods
- 35. Acceptance
- 36. Buyer not bound to return rejected goods
- 37. Liability of buyer for neglecting or refusing delivery

**PART 4
RIGHTS OF UNPAID
SELLER AGAINST
THE GOODS**

- 38. "Unpaid seller" defined
- 39. Unpaid seller's rights

Division 1 – Unpaid Seller's Lien

- 40. Unpaid seller's lien
- 41. Part delivery
- 42. Termination of lien

Division 2 – Stoppage in transitu

- 43. Right of stoppage in *transitu*
- 44. Duration of transit
- 45. How stoppage in *transitu* effected

Division 3 – Resale by Buyer or Seller

- 46. Effect of sub-sale or pledge by buyer
- 47. Sale not generally rescinded by lien or stoppage in *transitu*

**PART 5
ACTIONS FOR BREACH OF
THE CONTRACT**

Division 1 – Remedies of the Seller

- 48. Action for price
- 49. Damages for non-acceptance

Division 2 – Remedies of the Buyer

- 50. Damages for non-delivery
- 51. Specific performance
- 52. Remedy for breach of warranty
- 53. Interest and special damages, or recovery of money paid

**PART 6
MISCELLANEOUS**

- 54. Exclusion of implied terms and conditions
- 55. Reasonable time a question of fact
- 56. Rights and duties under Act enforceable by action
- 57. Auction sales
- 58. Savings
- 59. Repeal

SALE OF GOODS ACT 1975

1975

No.14

AN ACT to amend and consolidate the law relating to the sale of goods.

[Assent and commencement date: 23 December 1975]

**PART 1
PRELIMINARY**

1. Short title – This Act may be cited as the Sale of Goods Act 1975.

2. Interpretation– (1) In this Act, unless the context otherwise requires:

“action” includes counterclaim and set-off;

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

“contract of sale” includes an agreement to sell as well as a sale;

“delivery” means voluntary transfer of possession from one person to another;

“document of title to goods” includes any bill of lading, dock warrant, warehouse keeper’s certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

“fault” means wrongful act or default;

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

“goods” includes all chattels personal other than money or things in action. The term includes emblements, growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

“plaintiff” includes defendant counterclaiming;

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

“quality of goods” includes their state or condition;

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

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

“specific goods” means goods identified and agreed on at the time a contract of sale is made;

“warranty” means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such 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;

“writ of execution” means any writ of sale, warrant of distress, or other writ or warrant of execution under which chattels of any kind may be seized or taken to satisfy process issued out of any Court.

(2) A thing is taken 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.

(3) A person is taken to be insolvent within the meaning of this Act, who 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 he or she has committed an act of bankruptcy or not.

(4) 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.

PART 1A

FORMATION OF THE CONTRACT

Division 1 – Contract of Sale

3. Sale and agreement to sell – (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) If, 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 thereafter 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.

4. Capacity to buy and sell – Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Division 2 – Formalities of the Contract

5. Contract of sale, how made – Subject to the provisions of this Act and of any statute 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:

PROVIDED THAT nothing in this section affects the law relating to corporations.

Division 3 – Subject-matter of the Contract

6. Existing or future goods – (1) The goods which form the subject of a contract of sale 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 of sale, in this Act called “future goods”.

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

(3) If 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.

7. Goods which have perished – If there is a contract for the sale of specific goods, and the goods without the knowledge of the

seller have perished at the time when the contract is made, the contract is void.

8. Goods perishing before sale but after agreement to sell

– If 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 thereby avoided.

Division 4 – The Price

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

(2) If the price is not determined under subsection (1), the buyer must pay a reasonable price.

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

10. 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 such third party cannot or does not make such valuation, the agreement is avoided:

PROVIDED THAT if the goods or any part thereof have been delivered to and appropriated by the buyer he or she must pay a reasonable price therefor.

(2) 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.

Division 5 - Conditions and Warranties

11. Stipulations as to time – (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are taken not 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 a calendar month.

12. When condition to be treated as warranty – (1) If 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 such 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. A stipulation may be a condition, though called a “warranty” in the contract.

(3) If a contract of sale is not severable, and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can 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, express or implied, to that effect.

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

13. Implied undertaking as to title, etc. – In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is:

- (a) an implied condition on the part of the seller that in the case of a sale he or she has a right to sell the goods, and that in the case of an agreement to sell he or she will have a right to sell the goods at the time when the property is to pass;
- (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;
- (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 when the contract is made;

14. Sale by description – If there is a contract for the sale of goods by description there is an implied condition that the goods

shall 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.

15. Implied conditions as to quality or fitness – Subject to the provisions of this Act and of any statute 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 follows:

- (a) if 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 judgement, and the goods are of a description which it is in the course of the seller's business to supply (whether he or she is the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:

PROVIDED THAT for 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;

- (b) if goods are bought by description from a seller who deals in goods of that description (whether he or she is the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality:

PROVIDED THAT if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;

- (c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- (d) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Division 6 - Sale by Sample

16. Sale by sample – (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there is an implied condition:

- (a) that the bulk shall correspond with the sample in quality;
- (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample; and
- (c) that the goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

PART 2

EFFECTS OF THE CONTRACT

*Division 1 – Transfer of Property as
Between Seller and Buyer*

17. Goods must be ascertained – Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

18. Property passes when intended to pass – (1) Where there is a contract for the 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.

19. Rules for ascertaining intention– Unless a different intention appears, the following are 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:

Rule 1: Where there is an unconditional contract for

the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both, is postponed;

Rule 2: Where there is a contract for the sale of specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done, and the buyer has notice thereof;

Rule 3: Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done, and the buyer has notice thereof;

Rule 4: Where goods are delivered to the buyer on approval, or “on sale or return” or other similar terms, the property therein passes to the buyer:

- (a) when he or she signifies his or her approval or acceptance to the seller, or does any other act adopting the transaction;
- (b) if he or she does not signify his or her approval or acceptance to the seller, but retains the goods without giving notice of rejection then, if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5: (1) If there is a contract for the sale of unascertained or future goods by

description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) If, in pursuance of the contract, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he or she is deemed to have unconditionally appropriated the goods to the contract.

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

(2) In such case, despite 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) If goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his or her agent, the seller is *prima facie* deemed to reserve the right of disposal.

(4) If 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 he or she does not honour the bill of exchange, and if he or she wrongfully retains the bill of lading the property in the goods does not pass to him or her.

21. Risk *prima facie* passes with property – (1) Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer; but when the property

therein is transferred to the buyer the goods are at the buyer's risk, whether delivery has been made or not:

PROVIDED THAT where 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 which might not have occurred but for such fault.

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

Division 2 – Transfer of Title

22. Sale by person not the owner – (1) Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, 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 Act affects:

- (a) the Mercantile Law Act 1975 or any other enactment enabling the apparent owner of goods to dispose of them as if he or she were the true owner thereof; or
- (b) the validity of any contract of sale under any special common law or statutory power of sale, or under the order of a Court of competent jurisdiction;
- (c) the provisions of the Personal Property Securities Act 2013 enabling a purchaser of goods to acquire good title to the goods.

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

24. Re-vesting of property in stolen goods on conviction of offender – (1) If goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen re-vests in the person who was the owner of the goods, or his or her

personal representative, despite any intermediate dealing with them, whether by sale or otherwise.

(2) Despite any enactment to the contrary, if goods have been obtained by fraud or other wrongful means not amounting to theft, the property in such goods shall not revert in the person who was the owner of the goods, or his or her personal representative, by reason only of the conviction of the offender.

25. Seller or buyer in possession after sale – (1) If a person having 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 him or her, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(1A) Subsection (1) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a security interest that has been perfected under the Personal Property Securities Act 2013, in possession of the goods or documents of title to the goods.

(2) If a person, having brought 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 him or her, of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(2A) Subsection (2) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a security interest that has been perfected under the Personal Property Securities Act 2013, in possession of the goods or documents of title to the goods.

(3) In this section:

“mercantile agent” has the same meaning as in Part 1
of the Mercantile Law Act 1975;

“security interest” has the same meaning as in the
Personal Property Securities Act 2013.

26. Effect of writs of execution – A writ of execution against goods binds the property in the goods of the execution debtor as from the time when the writ is delivered for execution:

PROVIDED THAT no such writ prejudices the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he or she acquired his or her title notice that such writ or any other writ under which the goods of the execution debtor might be seized or attached had been delivered for execution.

PART 3

PERFORMANCE OF THE CONTRACT

27. Duties of seller and buyer – The seller shall deliver the goods, and the buyer shall accept and pay for them, under the terms of the contract of sale.

28. Payment and delivery are concurrent conditions – Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

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

(2) Apart from any such 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:

PROVIDED THAT 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 is the place of delivery.

(3) If 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.

(4) If the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he or she holds the goods on his or her behalf:

PROVIDED THAT nothing in this section affects the operation of the issue or transfer of any document of title to goods.

(5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

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

30. Delivery of wrong quantity – (1) If the seller delivers to the buyer a quantity of goods less than he or she contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he or she must pay for them at the contract rate.

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

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

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

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

(2) If there is a contract for the sale of goods to be delivered by stated instalments, which 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 is a question in each case depending on the terms of 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.

32. Delivery to carrier – (1) If, under a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller must 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. If the seller omits so to do, 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.

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

33. Risk where goods 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 must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

34. Buyer's right of examining goods – (1) If goods are delivered to the buyer, which he or she has not previously examined, he or she is taken not to have accepted them unless and until he or she has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he or she 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.

35. Acceptance – The buyer is taken to have accepted the goods when the buyer intimates to the seller that the buyer has accepted the goods, or when the goods have been delivered to him or her, and he or she does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he or she retains the goods, without intimating to the seller that he or she has rejected them.

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

37. Liability of buyer for neglecting or refusing delivery – Where 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, he or she is liable to the seller for any loss occasioned by his or her neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

PROVIDED THAT nothing in this section affects the rights of the seller where the neglect or refusal of the buyer to take delivery amount to a repudiation of the contract.

PART 4

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

38. “Unpaid seller” defined – (1) The seller of goods is taken to be an “unpaid seller”, within the meaning of this Act:

- (a) when the whole of the price has not been paid or tendered;
- (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.

39. Unpaid seller’s rights – (1) Subject to the provisions of this Act, and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has, by implication of law:

- (a) a lien on the goods, or right to retain them for the price, while he or she is in possession of them;
- (b) in case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he or she has parted with the possession of them;
- (c) a right of resale, as limited by this Act.

(2) If the property in goods has not passed to the buyer, the unpaid seller has, in addition to his or her other remedies, a right of withholding delivery similar to and co-extensive with his or her rights of lien and stoppage *in transitu* where the property has passed to the buyer.

Division 1 -Unpaid Seller’s Lien

40. Unpaid seller’s lien – (1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tenders of the price in the following cases namely:

- (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 lien, notwithstanding that he or she is in possession of the goods as agent or bailee for the buyer.

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

42. Termination of lien – (1) The unpaid seller of goods loses his or her lien or right of retention thereon:

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

(2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his or her lien or right of retention by reason only that he or she has obtained judgement for the price of the goods.

Division 2 -Stoppage in transitu

43. Rights of stoppage *intransitu* – Subject to the provisions of 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 transitu*, that is to say, he or she 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.

44. Duration of transit – (1) Goods are taken to be in course of transit from the time when they are delivered to a carrier by land or water, 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 such 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 he or she holds the goods on his or her behalf, and

continues in possession of them as bailee for the buyer, or his or her agent, 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 is not 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 is a question, depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, or his or her agent in that behalf, the transit is deemed to be at an end.

(7) When part delivery of the goods has been made to the buyer, or his or her agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

45. How stoppage *in transitu* effected – (1) The unpaid seller may exercise his or her right of stoppage *in transitu* either by taking actual possession of the goods, or by giving notice of his or her claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his or her principal. In the latter case the notice, to be effectual, must be given at such time and under 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.

(2) When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee in possession of the goods, he or she must redeliver the goods to or according to the directions of the seller. The expenses of such redelivery must be borne by the seller.

Division 3 -Resale by Buyer or Seller

46. Effect of sub-sale or pledge by buyer – Subject to the provisions of this Act, the unpaid seller's right of lien or retention or stoppage *in transitu* is not affected by any sale or other

disposition of the goods which the buyer may have made, unless the seller has assented thereto:

PROVIDED THAT where 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, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage *in transitu* is defeated, and if such 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 transitu* can only be exercised subject to the rights of the transferee.

47. Sale not generally rescinded by lien or stoppage in transitu – (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his or her right of lien or retention or stoppage *in transitu*.

(2) If an unpaid seller who has exercised his or her right of lien or retention or stoppage *in transitu* re-sells the goods, the buyer acquires a good title thereto as against the original buyer.

(3) If the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his or her 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 damages for any loss occasioned by his or her breach of contract.

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

PART 5

ACTIONS FOR BREACH OF THE CONTRACT

Division 1 – Remedies of the Seller

48. Action for price – (1) If , 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 him or her for the price of the goods.

(2) If , 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 such 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.

49. Damages for non-acceptance – (1) If the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him or her 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 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 at the time or times when the goods ought to have been accepted, or if no time was fixed for acceptance, then at the time of the refusal to accept.

Division 2 -Remedies of the Buyer

50. Damages for non-delivery – (1) If the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an 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, then at the time of the refusal to deliver.

51. Specific performance – (1) In an action for breach of contract to deliver specific or ascertained goods the Court may, if it thinks fit, on the application of the plaintiff, by its judgment direct

that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.

(2) The judgment may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as the Court deems just; and the application by the plaintiff may be made at any time before judgment.

52. Remedy for breach of warranty – (1) If there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he or she 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 is 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, such loss 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 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 him or her from maintaining an action for the same breach of warranty if he or she has suffered further damage.

53. Interest and special damages, or recovery of money paid – Nothing in this Act 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 where the consideration for the payment of it has failed.

PART 6 MISCELLANEOUS

54. Exclusion of implied terms and conditions – If any right, duty, or liability would arise under a contract of sale by implication of law, it may be negative 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.

55. Reasonable time a question of fact – If by this Act any reference is made to a “reasonable time”, the question what is a reasonable time is a question of fact.

56. Rights and duties under Act enforceable by action – If any right, duty, or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by action.

57. 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; until such announcement is made any bidder may retract his or her bid.

(3) If a sale by auction is not notified to be subject to a right to bid on behalf of the seller, the seller shall not bid himself or herself or employ any person to bid at such sale, nor shall the auctioneer knowingly take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer.

(4) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

(5) If a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his or her behalf, may bid at the auction.

58. Savings – (1) The rules in bankruptcy from time to time in force relating to contracts of sale shall continue to apply thereto, despite anything in this Act.

(2) The rules of the common law, including the law merchant, save in so far 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, shall continue to apply to contracts for the sale of goods.

(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 which is intended to operate by way of mortgage, pledge, charge, or other security.

(4) Nothing in this Act affects the enactments in force relating to chattels transfer, or any other enactment in force relating to the sale of goods.

59. Repeal – The Sale of Goods Act 1908 (NZ) is repealed as part of the law of Samoa.

REVISION NOTES 2008 – 2023

This is the official version of this Act as at 31 December 2023.

This Act has been revised by the Legislative Drafting Division from 2008 to 2023 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”
 - (xii) Part numbering changed to decimal and Part 6 re-titled ‘MISCELLANEOUS’

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the Personal Property Securities Act 2016, (No. 5), commencing on 27 February 2017:

Section 22 in subsection (2), insert new “paragraph (c)” after paragraph (b);

Section 25 insert new “subsection (1A)” after subsection (1);
for subsection (2), for “:” substitute “.” and omit the proviso;
insert new “subsection (2A)” after subsection (2);
insert “new subsection (3)”.



Su'a Hellene Wallwork
Attorney General of Samoa

*This Act is administered by
the Ministry of Justice and Courts Administration*