

SYNOPSIS

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11. Stipulations as to time

Time of payment shall not be of the essence of a contract of sale unless the contract shows a different intention.

Section 11 of the Sale of Goods Act, 1930 deals with whether a time limit in a contract of sale is so important that its breach allows the other party to treat the contract as ended. A stipulation "of the essence" is treated as a condition, whose breach entitles the innocent party to repudiate the contract, while a stipulation not of the essence is treated only as a warranty, whose breach gives a right to damages but not to reject the goods or end the contract (s. 12). The section sets out two rules. First, for time of payment, the law presumes that it is not of the essence: if the buyer pays late, the seller cannot for that reason alone cancel the sale, but may claim the price with interest or damages, and may use the unpaid seller's rights such as lien and, in the circumstances allowed by s. 54, resale. This presumption can be displaced if the contract shows that the parties meant timely payment to be essential, for instance by an express clause that the contract will stand cancelled if payment is not made by a set date. Second, for all other time stipulations, such as the time of delivery, there is no presumption either way: whether time is essential depends on the terms of the contract, read in light of the

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nature of the goods and the transaction. For example, J agrees to sell 200 quintals of potatoes to K, with delivery on 1 March and payment by 15 March. If K pays on 25 March, J cannot cancel the sale merely because payment was late, since time of payment is not of the essence, though J may claim interest or damages for the delay. But if the contract had stated "payment by 15 March is of the essence, failing which the seller may cancel", J could treat the contract as at an end after 15 March. As for delivery, if the contract shows that K needed the potatoes by 1 March for a specific seasonal sale, time of delivery would likely be of the essence, and K could refuse late delivery; if nothing in the contract makes the date essential, K could only claim damages for the delay.

## **12. Condition and warranty:**

### **12.1 A stipulation in a contract of sale relating to the goods shall be either a condition or a warranty.**

Section 12(1) of the Sale of Goods Act, 1930 classifies the terms of a contract of sale that concern the goods themselves, such as their quality, description, fitness for purpose or time of delivery, into two categories. A condition is a stipulation essential to the main purpose of the contract, and its breach gives the buyer the right to treat the contract as repudiated, that is, to reject the goods and recover the price (s. 12(2)). A warranty is a stipulation collateral to the main purpose, and its breach gives only a claim for damages, not a right to reject the goods (s. 12(3)). The label the parties use is not decisive: whether a stipulation is a condition or a warranty depends on the construction of the contract in each case, and a term may be a condition even though the contract calls it a warranty (s. 12(4)). The classification matters because it decides the remedy available on breach. The buyer may also

choose, or may be compelled, to treat a breach of condition as a breach of warranty, for instance after accepting the goods (s. 13). For example, J orders a tractor from K, stating that it must be able to plough his hilly land, and K assures him that it can. If the tractor cannot plough such land, the stipulation on fitness goes to the root of the contract and is a condition, so J may reject the tractor and recover the price. If, instead, the tractor ploughs well but K's promise of a free set of seat covers is not fulfilled, that stipulation is merely collateral, so it is a warranty, and J must keep the tractor and may only claim damages for the missing covers.

**12.2 A stipulation essential to the main purpose of the contract is a condition, and its breach shall entitle the aggrieved party to treat the contract as repudiated.**

Section 12(2) of the Sale of Goods Act, 1930 defines a condition by its importance and by the remedy for its breach. A condition is a term that goes to the root of the contract, so that without its fulfilment the aggrieved party would not get substantially what it bargained for. It is contrasted with a warranty, a stipulation collateral to the main purpose, whose breach gives only a claim for damages and not a right to reject the goods and treat the contract as repudiated (s. 12(3)). Whether a stipulation is a condition or a warranty depends on the construction of the contract in each case, and a term may be a condition even though the contract calls it a warranty (s. 12(4)). When a condition is broken, the aggrieved party may reject the goods, refuse further performance and recover any price paid, as well as claim damages. The aggrieved party may, however, choose to waive the condition or treat its breach as a breach of warranty, and in some cases, such as where a buyer has accepted the goods under

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a non-severable contract, it is obliged to do so (s. 13). Besides express conditions, the Act implies certain conditions, such as the seller's right to sell, correspondence with description or sample, and fitness for purpose or merchantable quality (ss. 14 to 17). For example, a buyer orders a pump from a seller, expressly stating that it must be able to lift water to the third floor of his building, and the seller supplies a pump that can only reach the first floor. The pump's ability to do what the buyer bought it for is essential to the main purpose of the contract, so it is a condition. The buyer may reject the pump, treat the contract as repudiated and recover the price, and may also claim damages for any further loss. But if the only defect was that the pump came with a slightly scratched casing, that would ordinarily be a breach of warranty, giving the buyer a claim for damages only.

12.3 Breach of a warranty shall entitle the buyer to claim damages only, and not to reject the goods or treat the contract as repudiated.

Section 12(3) of the Sale of Goods Act, 1930 defines a warranty as a stipulation collateral, that is, subsidiary, to the main purpose of the contract. It is contrasted with a condition, which is a stipulation essential to the main purpose, the breach of which allows the buyer to reject the goods and treat the contract as repudiated (s. 12(2)). Because a warranty does not go to the root of the contract, its breach does not defeat the substance of the bargain: the buyer still receives essentially what was contracted for, so the contract stands and the buyer must keep the goods, but may recover compensation for the loss suffered. Under s. 59, the buyer may either set up the breach to reduce or extinguish the price, or sue the seller for damages. Whether a stipulation is a condition or a warranty depends on the construction of the

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contract in each case, and a stipulation may be a condition even though it is called a warranty (s. 12(4)). Further, a buyer may choose, or in some cases be compelled, to treat a breach of condition as a breach of warranty, for instance after accepting the goods (s. 13). The Act also implies certain warranties, such as the buyer's right to quiet possession and freedom from undisclosed encumbrances (s. 14(b) and (c)). For example, J buys a new car from K, and the contract states that the car is a particular model with a particular engine, and that it comes with a set of floor mats and a spare wheel cover. If the car delivered is of a different model, a condition is broken and J may reject it. But if the car is correct and only the floor mats and spare wheel cover are missing, this is a breach of warranty, since those items are collateral to the main purpose of buying the car: J must keep the car, but may deduct their value from the price or sue K for damages.

**12.4 Whether a stipulation is a condition or a warranty shall be determined by the construction of the contract as a whole, and not by the label the parties give it.**

Section 12(4) of the Sale of Goods Act, 1930 deals with how to classify the terms (stipulations) of a contract of sale. Under s. 12(2), a condition is a stipulation essential to the main purpose of the contract, and its breach gives the aggrieved party the right to treat the contract as repudiated; under s. 12(3), a warranty is a stipulation collateral to the main purpose, and its breach gives only a right to claim damages, not to reject the goods or end the contract. Section 12(4) directs that this classification is a matter of construing the contract in each case: the court looks at the substance of the term, its importance to the main purpose of the contract, and the intention of the parties as shown by the contract

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and the surrounding circumstances. The words the parties use are not decisive, so a term called a "warranty" may in law be a condition if it goes to the root of the contract, and the aggrieved party then gets the wider remedy of rejection. For example, R orders a pump from S for irrigating his fields, and the contract states "S warrants that the pump will lift water from a depth of 100 feet". R's well is 100 feet deep, and S knows this. The pump delivered can lift water only from 40 feet, making it useless for R's purpose. Although the contract calls the term a "warranty", it goes to the very purpose of the purchase, so on construction it is a condition; R may reject the pump and treat the contract as repudiated, instead of being limited to damages. By contrast, a term that the pump would be painted green would remain a warranty, since its breach does not defeat the main purpose, and R could claim only damages.

13. When condition to be treated as warranty

13.1 The buyer may waive a condition to be fulfilled by the seller, or treat its breach as a breach of warranty.

Section 13(1) of the Sale of Goods Act, 1930 gives the buyer a choice of remedy when the seller breaks a condition. Under s. 12, a condition is a stipulation essential to the main purpose of the contract, whose breach entitles the buyer to treat the contract as repudiated, that is, to reject the goods and recover the price; a warranty is a stipulation collateral to that purpose, whose breach gives only a right to damages, not a right to reject the goods. Section 13(1) allows the buyer, instead of repudiating the contract for breach of a condition, either to waive the condition altogether, giving up any claim based on it, or to treat the breach as a breach of warranty, keeping the goods and claiming damages for the loss suffered. The choice belongs to the buyer alone; the

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seller cannot force the buyer to accept the goods, and cannot escape liability merely because the buyer chooses the lesser remedy. The option exists for the buyer's benefit, since a buyer who needs the goods may prefer to keep them with compensation rather than cancel the whole deal. For example, J orders 100 cotton shirts of a particular brand and quality from K for a festival sale, and supply of that quality is a condition of the contract. K delivers shirts of a slightly inferior quality. J is entitled to reject the shirts and treat the contract as ended, but since the festival is near and no other supply is available, J may instead keep the shirts and claim damages from K for the difference in value, thereby treating the breach of condition as a breach of warranty. Alternatively, J may waive the condition entirely and accept the shirts without any claim.

**13.2 Where a contract of sale is not severable and the buyer has accepted the goods or any part of them, a breach of condition by the seller shall be treated only as a breach of warranty.**

Section 13(2) of the Sale of Goods Act, 1930 limits the buyer's remedies once the goods have been accepted. A condition is a stipulation essential to the main purpose of the contract, whose breach ordinarily allows the buyer to reject the goods and treat the contract as repudiated; a warranty is a stipulation collateral to that purpose, whose breach gives only a right to damages (s. 12). Under s. 13(2), however, if the contract is not severable, meaning it is a single, indivisible contract rather than one for separate deliveries each separately paid for, and the buyer has accepted the goods or even part of them, the buyer loses the right to reject and must treat the seller's breach of condition as a breach of warranty. The buyer's remedy is then limited to claiming

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damages, or setting them off against the price (s. 59). The rule rests on fairness and certainty: after accepting the goods, a buyer should not be able to undo the whole transaction and return the goods. Acceptance takes place when the buyer tells the seller he has accepted the goods, does an act inconsistent with the seller's ownership after delivery, or keeps the goods beyond a reasonable time without rejecting them (s. 42). The rule gives way if the contract, expressly or by implication, allows rejection even after acceptance. For example, J orders from K 100 bags of Grade A basmati rice for ₹3 lakh, to be delivered and paid for in one lot. J receives the bags, uses 30 of them in his restaurant, and then discovers the rice is Grade B, a breach of the condition that goods correspond with their description (s. 15). Because the contract is not severable and J has accepted part of the goods by using them, J cannot reject the remaining 70 bags and cancel the contract; he can only claim damages, such as the difference in value between Grade A and Grade B rice. If the contract had expressly allowed J to reject the goods for wrong grade even after use, he could have rejected them.

13.3 Where the law excuses the fulfilment of a condition or warranty, by reason of impossibility or otherwise, section 13 shall not apply to it.

This is sub-section (3) of Section 13 of the Sale of Goods Act, 1930. Section 13 deals with when a breach of condition may, or must, be treated as a breach of warranty: under s. 13(1) the buyer may waive a condition or choose to treat its breach as a breach of warranty, and under s. 13(2), where the contract is not severable and the buyer has accepted the goods, a breach of condition can be treated only as a breach of warranty, so the buyer loses the right to reject the goods and is left with a claim for damages.

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Section 13(3) carves out an exception: these rules operate only where there is an actual breach. If the law itself excuses performance of a condition or warranty, whether because it has become impossible, as under s. 56 of the Indian Contract Act, 1872 (frustration), or because the goods have perished without fault, as under ss. 7 and 8 of the Sale of Goods Act, or for any other legal reason, there is no breach at all. Section 13 then has nothing to operate on: the buyer cannot claim damages as for a breach of warranty, and the parties' rights are governed by the law that excuses performance, usually discharge of the contract and return of any price paid. For example, J contracts to sell K 500 tonnes of rice, with a condition that the rice will be shipped by a named vessel in March. Before March, the government requisitions that vessel, so shipment by it becomes impossible. Performance of the condition is excused by law, so K cannot treat J's failure as a breach of condition or of warranty and claim damages under s. 13; instead, the contract is frustrated, and K may recover any advance paid.

#### **14. Implied undertaking as to title, etc:**

**The seller shall have the right to sell the goods, shall ensure that the buyer enjoys undisturbed possession of them, and shall deliver them free from any charge or encumbrance not disclosed to the buyer.**

Section 14 of the Sale of Goods Act, 1930 reads three promises about title into every contract of sale, unless the circumstances show that the parties intended otherwise. Under clause (a), the seller impliedly undertakes that he has the right to sell the goods (in a sale) or will have that right when property is to pass (in an agreement to sell). This is a condition, a term going to the root of the contract (s. 12(2)), so if the seller has no right to sell, the

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buyer may reject the goods and recover the full price, even after using them, because he never received the very thing he bargained for: lawful ownership. Under clause (b), the seller impliedly warrants that the buyer will enjoy quiet possession, that is, that no one with a better right will disturb the buyer's use of the goods. Under clause (c), the seller impliedly warrants that the goods are free from any charge or encumbrance, such as a pledge or hypothecation, in favour of a third party that was not declared to or known by the buyer at the time of the contract. Clauses (b) and (c) are warranties, terms collateral to the main purpose (s. 12(3)), so their breach entitles the buyer only to claim damages, not to reject the goods (s. 12(3), s. 59). For example, P sells a car to Q for ₹4 lakh. If it later turns out that the car was stolen and Q has to hand it over to the true owner, P has broken the implied condition under clause (a), and Q can recover the entire ₹4 lakh, even though he drove the car for several months. If, instead, P owned the car but had hypothecated it to a bank without telling Q, and the bank later seizes it to recover P's loan, P has broken the implied warranties under clauses (b) and (c), and Q may claim damages from P for his loss.

### 15. Sale by description

**Goods sold by description shall correspond with that description.**

Section 15 of the Sale of Goods Act, 1930 implies, in every sale of goods by description, a condition that the goods delivered will match the description. A sale is by description where the buyer relies on words describing the goods, such as their kind, variety, quality, size, origin, packing, labelling or specifications, rather than on examining them; this covers goods the buyer has never seen, and also goods seen but sold by reference to a description.

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Because the term is a condition and not a warranty (s. 12), its breach entitles the buyer to reject the goods and treat the contract as repudiated, though the buyer may choose, or may be compelled by s. 13 (for instance after accepting the goods), to treat it as a breach of warranty and claim damages only. The second limb deals with sales by sample as well as by description: the goods must match both, so it is no defence that the bulk corresponds with the sample if it does not also answer the description. The condition may, however, be excluded or varied by express agreement (s. 62). For example, J orders from K "100 bags of Basmati rice, Grade A". K sends 100 bags of ordinary non-Basmati rice of good quality. The goods do not correspond with the description, so J may reject them and refuse to pay, even though the rice is fit for eating. Similarly, if J had approved a sample that happened to be non-Basmati rice while the contract still described "Basmati rice", delivery of rice matching the sample would not protect K, because the bulk must also correspond with the description.

## **16. Implied conditions as to quality or fitness**

**The buyer shall bear the risk as to the quality and fitness of the goods he buys (caveat emptor).**

Section 16 of the Sale of Goods Act, 1930 states the rule of *caveat emptor* ("let the buyer beware"): ordinarily, the seller gives no implied promise that the goods are of good quality or suitable for the buyer's purpose, so the buyer must examine the goods and use his own judgment, and cannot complain later merely because they turn out unsuitable. The section then lists exceptions, where the law implies such a promise. First, under s. 16(1), if the buyer tells the seller, expressly or by implication, the particular purpose for which he needs the goods, in a way that

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shows he relies on the seller's skill or judgment, and the seller deals in such goods in the course of business, there is an implied condition that the goods are reasonably fit for that purpose. This does not apply where the buyer orders a specified article by its patent or trade name, since he then relies on the brand and not on the seller. Second, under s. 16(2), where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that they are of merchantable quality, meaning fit to be sold as goods of that description; but if the buyer has examined the goods, there is no implied condition as to defects that the examination ought to have revealed. Third, under s. 16(3), trade usage may attach an implied condition or warranty as to quality or fitness. Fourth, under s. 16(4), an express term in the contract does not exclude these implied terms unless it is inconsistent with them. The rule is also "subject to the provisions of this Act and of any other law", which today includes consumer protection law. Since these are conditions, their breach entitles the buyer to reject the goods, or he may treat the breach as one of warranty and claim damages (ss. 12 and 13). For example, J buys a tin of paint from a hardware shop after choosing it himself from the shelf, without saying what it is for; if the paint proves unsuitable for his outdoor wall, the rule of *caveat emptor* applies and J has no claim. But if J had told the shopkeeper that he needed paint for an exterior wall exposed to heavy rain and asked him to recommend one, and the recommended paint washed off in the first monsoon, J could reject it or claim damages under s. 16(1).

17. Sale by sample

A contract of sale shall be treated as a sale by sample where the contract, expressly or impliedly, so provides.

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Section 17(1) of the Sale of Goods Act, 1930 defines when a sale is a "sale by sample": the contract must contain a term, stated in words or implied, that the goods are sold by reference to a sample. Merely showing a sample during negotiations is not enough; the parties must have agreed that the sample will serve as the standard the delivered goods must meet. The term may be express, as where the contract says "as per sample", or implied from the dealings of the parties, the trade usage or the circumstances, as where goods are commonly bought in that trade on the basis of samples the buyer cannot otherwise inspect in bulk. Classifying a contract as a sale by sample matters because it attracts the implied conditions in s. 17(2): that the bulk shall correspond with the sample in quality, that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. For example, a textile retailer, J, is shown a swatch of cotton fabric by a mill, K, and orders 500 metres, with the order form stating "quality as per sample submitted". This is a sale by sample by express term. If the fabric delivered is thinner and of a different weave from the swatch, K has breached the implied condition that the bulk will correspond with the sample, and J may reject the goods. By contrast, if K had merely handed J a swatch to look at, but J then ordered by catalogue description alone without referring to the swatch as the standard, the sale would not be a sale by sample, and J's remedy would instead depend on the rules for sale by description (s. 15).

**17.2 In a sale by sample, the bulk shall correspond with the sample in quality, the buyer shall have a reasonable**

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opportunity to compare the two, and the goods shall be free from hidden defects making them unmerchantable.

Section 17(2) of the Sale of Goods Act, 1930 applies to a contract for sale by sample, that is, one where the contract expressly or impliedly provides that the goods are sold by reference to a sample (s. 17(1)). In such a sale the buyer agrees on the basis of the sample, usually without seeing the whole lot, so the law reads three conditions into the contract even if the parties say nothing about them. First, the bulk delivered must match the sample in quality; it is not enough that the goods are of similar kind or are commercially acceptable if they are inferior to the sample. Second, the buyer must be given a reasonable opportunity to compare the bulk with the sample before being bound to accept the goods, which links with the buyer's right of examination under s. 41. Third, the goods must be free from any defect that makes them unmerchantable, that is, unfit for sale under their description in the ordinary course of trade, if that defect would not be revealed by a reasonable examination of the sample. The seller is not protected merely because the bulk matches the sample, since the sample itself may carry a hidden defect; but if the defect could have been found by a reasonable examination of the sample, the buyer cannot complain of it. Because these are conditions, and not mere warranties, a breach entitles the buyer to reject the goods and treat the contract as ended (s. 12(2)), although the buyer may choose to treat the breach as one of warranty and claim damages instead (s. 13(1)). For example, J, a garment maker, orders 1,000 metres of cloth from K after examining a sample. If the cloth delivered is of a lower thread count than the sample, K breaches the first condition. If K refuses to let J open the bales to compare them with the sample before acceptance, K breaches the second. And

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if the cloth, though matching the sample in appearance, is chemically treated in a way that makes it tear on the first wash, a defect that ordinary handling of the sample would not show, K breaches the third. In each case J may reject the cloth.