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3HR Legal Weekly

Commercial

Commercial Contracts (2): Domestic and International Contracts for the Sale of Goods

Domestic contracts for the sale of goods

The sale of goods contract is the most commonly occurring contract type of all, with countless numbers of contracts being entered into every day. All of these contracts are governed by the Sale of Goods Act 1979 ('SGA 1979'); where goods are supplied along with services, then the Supply of Goods and Services Act 1982 ('SGSA 1982') applies.

The 'sale of goods' is defined in the legislation as 'a contract by which the seller transfers the property in goods to the buyer for a money consideration, called the price'. Essentially, the focus is on when the ownership of the items in question are passed from the person selling them to the person paying the asking price. This is the sale of goods.

The main concern for both parties will be that the contract works for them financially. The seller will want to ensure that the price is right and that payment is prompt in order to avoid cash flow problems. In relation to payment, the buyer will be looking for favourable credit periods and will be more concerned to see that delivery is prompt.

The terms relating to price, payment and delivery are the 'core' terms of the contract, because they define the parties' principle obligations: the seller's obligation to deliver the goods and the buyer's obligation to pay for them.

Once the goods are delivered, the buyer will want to ensure that he has got what it paid for, in the sense that the goods are exactly as described and that they are in perfect condition. The seller will be concerned to minimise its liability in relation to the buyer in the event that the goods turn out to be defective or unsuitable for any reason.

The SGA 1979 acts to fill in voids and omissions to which the parties have not turned their minds, or where they have simply relied on the Act. In certain circumstances, the parties can opt out of some of these controls. Many of the implied provisions are safety-net terms, implied only if the parties have not made their own provision. Some of the implied terms can be excluded but most importantly, the obligation of the seller to pass good title to the buyer can never be excluded. Any attempt to do so will be void.

International contracts for the sale of goods

The typical international sale of goods transaction is one where the goods are shipped by sea over a long distance. This means there could be a considerable time delay between the goods being supplied and the seller being paid for them. The seller would ideally like to be paid when the goods are dispatched but the buyer will want to pay only when he has received the goods and had a chance to inspect them. In addition to the possible delay in payment, there are increased costs of insurance, to cover the sea voyage and possibly other risks.

To solve the problems of slow payment, the documents involved in an international sale have been elevated to a special status; in effect, they come to represent the goods themselves for the purpose of contract law. So delivery of the goods, in the legal sense, is performed by handing over the documents.

The key documents are:

(1) the bill of lading which is given by the carrier of the goods to the consignor of the goods at the time of the goods being loaded. It serves three purposes:

it is a receipt of the goods and evidence that they are in good condition at loading;
it contains the terms of contract of carriage; and
it is evidence of title to the goods, and a right to possess them.

(2) the commercial invoice which lists and describes the contract goods, demanding payment by the buyer; and

(3) the insurance policy which should be worded so as to cover the goods specified in the commercial invoice for the journey described in the bill of lading. The policy would need to be a transferable policy.

To have your commercial contracts reviewed, whether as the seller or buyer, or to discuss how the Sale of Goods Act 1979 or Sale of Goods and Services Act 1982 could affect your business, please do not hesitate to contact the Commercial team at 3HR Legal.

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