

PREAMBLE

Whereas it is expedient to provide detailed rules of law for the regulation of transactions for the sale of goods in commerce;

Now, therefore, be it enacted by the Gyalyong Tshogdu Chhenmo as follows:

**The Commercial Sale of Goods Act
of the Kingdom of Bhutan, 2001**

**PART I
PRELIMINARY**

TITLE

1. This Act may be cited as “The Commercial Sale of Goods Act of the Kingdom of Bhutan, 2001”.

COMMENCEMENT

2. This Act shall come into effect from the 26th day of the 5th month of the Female Iron Snake Year corresponding to 17 July, 2001.

TERRITORIAL EXTENT

3. This Act shall extend to the whole of the Kingdom of Bhutan.

SCOPE

4. Unless the context otherwise requires, this Act applies only to transactions in goods. It does not apply to other types of transactions, such as transactions in services, securities, or immovable property.

RULES OF CONSTRUCTION

5. In this Act, unless the context otherwise requires;
 - i) Words in the singular number include the plural, and words in the plural include the singular;
 - ii) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

OBLIGATION OF GOOD FAITH

6. Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.

ACTIONS BY AGENTS OF THE BUYER OR SELLER

7. Any action required or permitted to be taken by either the buyer or the seller under this Act, may be taken instead by an agent of the buyer or seller, provided the other party is given notice of the agency.

STATUTE OF LIMITATIONS IN SALES CONTRACTS

- 8.1 An action for breach of any contract for sale must be commenced within three years after the cause of action has accrued. The parties, however, may agree to reduce or extend the period of time within which a lawsuit must be commenced.
- 8.2 A cause of action accrues when the breach of contract occurs, regardless of the aggrieved party's lack of knowledge of the breach. Provided, however, that a cause of action for a breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance, the cause of action accrues when the breach is or should have been discovered.
- 8.3 This section does not prevent parties from agreeing to toll the statute of limitations nor does it apply to causes of action that have accrued before this Act became effective.

PART II DEFINITIONS

9. In this Act, unless the context otherwise requires:
- (i) "**Agreement**" means the bargain of the parties as determined from their language or actions, or from other circumstances, including course of dealing, usage of trade, or course of performance. In order for an agreement to be formed, there must be an offer and an acceptance.
 - (ii) "**Bill of Lading**" means a document evidencing the receipt of goods for transport (whether by ship, land, or air) issued by a person engaged in the business of transporting goods.
 - (iii) "**Buyer**" means a person who buys or contracts to buy goods.
 - (iv) "**Cause of Action**" means a situation or state of facts, which would entitle a party to sustain a legal action and would give the party the right to seek a judicial remedy.
 - (v) "**Conforming**" means in accordance with a party's obligations under the contract.
 - (vi) "**Consideration**" means a right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, undertaken, or suffered by another party as part of a bargained-for exchange.
 - (vii) "**Contract**" means the total legal obligation that results from the parties' agreement as affected by this Act and any other applicable rules of law.
 - (viii) "**Course of Dealing, Course of Performance, Usage of Trade**"

- a) A "course of dealing" is a sequence of previous conduct between the parties to a particular transaction, which is fairly regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
 - b) A "course of performance" with respect to a contract for sale that involves repeated occasions for performance by either party, means any pattern of action or inaction that is acquiesced in without objection by the other party and may fairly be regarded as relevant to determining the meaning of the contract.
 - c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question.
 - d) A "course of dealing" or "course of performance" between parties and any "usage of trade" in the vocation or trade in which they are engaged give particular meaning to and supplement or qualify terms of an agreement.
 - e) The express terms of an agreement and any applicable "course of performance", "course of dealing", or "usage of trade" shall be construed wherever reasonable as consistent with each other. When such construction is not reasonable, these interpretative tools are to be deemed controlling in the following order of priority: (1) express terms, (2) course of performance, (3) course of dealing (4) usage of trade.
- (ix) **"Document of Title"** means any document that in the regular course of business is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers.
 - (x) **"Force Majeure"** means a material occurrence that causes the performance of all or part of a contract to be impracticable due to causes that: (1) are outside the control of the parties, (2) were not specifically contemplated by the parties at the time of contracting, and (3) could not have been avoided by precaution that a reasonable person under like circumstances would have taken.
 - (xi) **"Good Faith"** means honesty in fact and the observance of reasonable standards of fair dealing. In the case of a merchant, it also requires reasonable standards of fair dealing in the trade.
 - (xii) **"Goods"** means all things (including specially manufactured goods) that are movable at the time of identification to the contract for sale. "Goods" includes animals and their unborn young. "Goods" also includes minerals, oil and gas, growing crops, and other things to be severed from real property, but does not include the real property itself. Goods must be both existing and identified before any interest in them can pass. Goods that are not both existing and identified are "future goods".
 - (xiii) **"Identification"** of goods means the designation of existing goods as the goods to which the contract refers.

- (xiv) **“Insolvent”** means a person who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due.
- (xv) **“Lien”** means a claim or charge on property for payment of some debt, obligation, or duty.
- (xvi) **“Liquidated Damages”** means a specific sum of money that the parties to a contract have expressly indicated to be the amount of damages to be recovered for a breach of the contract.
- (xvii) **“Person”** means an individual, a business entity, a governmental entity, or other form of organization.
- (xviii) **“Sale”** means the passing of title from the seller to the buyer for a price.
- (xix) **“Seller”** means a person who sells or contracts to sell goods.
- (xx) **“Ship or Shipment”** when used with respect to goods, to "ship" means to transport the goods, whether by sea, land, or air. The place of "shipment" is the place from which the goods are to be transported.
- (xxi) **“Tender”** means to be ready and willing to perform one's obligations under a contract in the case of concurrent performance by another party, with present ability to so perform, and notice to the other party of such readiness.
- (xxii) **“Termination and Cancellation”**
 - a) "Termination" occurs when either party, pursuant to a power created by agreement or law, puts an end to the contract otherwise than for its breach. On "termination", all obligations not yet performed by either side are discharged, provided however that any right based on a prior breach or performance survives.
 - b) "Cancellation" occurs when either party puts an end to the contract as a result of a breach by the other party. Cancellation has the same effect as termination except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.
- (xxiii) **“Commercial Unit”** means unit of goods that in commercial usage is a single whole for purposes of sale. A commercial unit may be a single article (as a machine) or a set of a quantity (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit, division of which would materially impair its character or value on the market or in use.
- (xxiv) **“Warranty”** means a promise that certain facts are as they are represented to be and that they will remain so, subject to any specified limitations.

PART III
FORM, FORMATION AND READJUSTMENT OF CONTRACT

FORMAL REQUIREMENTS

- 10.1 Except as otherwise provided in this Act, a contract for the sale of goods for a price exceeding Nu.100/-, or the equivalent in merchandise or services, is not enforceable unless there is some writing indicating that a contract for sale was made between the parties.
- 10.2 The writing referred to in subsection 1 must be in compliance with the Rules on Use of Judicial Stamps in Bhutan, as amended, attested to by disinterested witness(s), and must be signed by the party against whom enforcement is sought or by that party's authorized agent or broker. A writing may be sufficient, even though it omits or incorrectly states a term agreed upon, but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing. Where one or more party-signatories to the writing are resident outside of Bhutan, the writing may be sufficient, even though it was not attested to by disinterested witnesses.

FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE

11. The terms of the writing intended by the parties to be a final expression of their agreement may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement. Such a writing, however, may be explained or supplemented -
- a. by course of performance, course of dealing, or usage of trade; and
 - b. by evidence of consistent additional terms unless the writing was intended to be a complete and exclusive statement of the terms of the agreement.

FORMATION IN GENERAL

- 12.1 Notwithstanding Section 10, a contract for the sale of goods for the price up to Nu.100/- or the equivalent in merchandise or services may be made in any manner sufficient to show agreement, including conduct by both parties which tends to show their recognition of the existence of such a contract.
- 12.2 Even though one or more terms are left open, a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

OFFER AND ACCEPTANCE IN FORMATION OF CONTRACT

- 13.1 Unless otherwise unambiguously indicated by language or circumstances -

- a. an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;
 - b. an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a promise to ship or by the prompt shipment of conforming goods.
- 13.2 Where promptly beginning performance is a reasonable mode of accepting an offer, the offerer who does not receive notice of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

MODIFICATION, RESCISSION AND WAIVER

- 14.1 An agreement modifying a contract for the sale of goods needs no consideration to be binding.
- 14.2 A signed agreement that requires that modification or rescission be done by a signed writing cannot be otherwise modified or rescinded.
- 14.3 The requirements of Section 10 of this Act must be satisfied if the contract as modified falls within its provisions.
- 14.4 Subject to the preceding provisions of this section, a course of performance between the parties shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

PART IV
GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

General Obligations of Parties

15. The obligation of the seller is to transfer and deliver the goods. The obligation of the buyer is to accept and pay for the goods in accordance with the contract.

UNCONSCIONABLE CONTRACT OR CLAUSE

16. If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was entered into, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may limit the application of any unconscionable clause so as to avoid an unconscionable result.

PRICE PAYABLE IN MONEY, GOODS, OR OTHERWISE

17. The contract may permit or require the price to be paid in money or otherwise. If it is payable in whole or in part in goods, each party is a seller of the goods that he is to transfer.

OPEN PRICE TERM

- 18.1 If they so intend, the parties can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if -
- a. nothing is said as to price; or
 - b. the price is left to be agreed by the parties and they fail to agree; or
 - c. the price is to be fixed in relation to some agreed upon standard set or recorded by a third person and such standard is not so set or recorded.
- 18.2 A price to be fixed by the seller or by the buyer means a price to be fixed in good faith.
- 18.3 When a price left to be fixed otherwise than by agreement of the parties fails because of the fault of one party, the other party may at his option treat the contract as cancelled or he fix a reasonable price.
- 18.4 Where, however, the parties intend not to be bound unless the price be fixed or agreed upon and it is not fixed or agreed upon there is no contract. In such a case, the buyer must return any goods already received or if unable to do so must pay their reasonable value at the time of delivery, and the seller must return any portion of the price paid for such goods returned by the buyer.

DELIVERY IN SINGLE LOT OR SEVERAL LOTS

19. Unless otherwise agreed, all goods must be tendered in a single delivery, and payment is due only when all goods are tendered. Where the circumstances, however, give either party the right to make or demand delivery in lots, payment may be demanded for each lot.

ABSENCE OF SPECIFIED PLACE FOR DELIVERY

20. Unless otherwise agreed -
- a. the place for delivery of goods is the seller's place of business or, if he has none, his residence; but
 - b. in a contract for the sale of identified goods which, to the knowledge of the parties at the time of contracting, are in some other place, that place is the place for delivery.

ABSENCE OF SPECIFIC TIME PROVISIONS; NOTICE OF TERMINATION

- 21.1 The time for shipment or delivery or any other action under a contract if not provided in this Act or agreed upon by the parties shall be a reasonable time.
- 21.2 Where the contract provides for successive performances but is indefinite in duration, it is valid for a reasonable time. Unless otherwise agreed, however, such a contract may be terminated at any time by either party.
- 21.3 Termination of a contract by one party, except on the happening of an agreed upon event, requires that reasonable notice be received by the other party.

OPEN TIME FOR PAYMENT

22. Unless otherwise agreed, payment is due at the time and place at which the buyer is to receive the goods, even though the place of shipment is the place of delivery.

OPTIONS AND COOPERATION RESPECTING PERFORMANCE

23. An agreement for sale which is otherwise sufficiently definite to be a contract is not made invalid by the fact that it leaves certain details of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

WARRANTY OF TITLE

- 24.1 Subject to subsection 2, there is in a contract for sale a warranty by the seller that -

- a. the title conveyed shall be good, and its transfer rightful; and
- b. the goods shall be delivered free from any lien or encumbrance of which the buyer at the time of contracting has no knowledge.

24.2 A warranty under subsection 1 will be excluded or modified only by specific language or by circumstances that give the buyer reason to know that the seller is purporting to sell only such right or title as he or a third person may have.

EXPRESS WARRANTIES BY AFFIRMATION, PROMISE, DESCRIPTION, SAMPLE

25.1 Express warranties by the seller are created as follows -

- a. any affirmation of fact or promise made by the seller to the buyer that relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
- b. any description of the goods that is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
- c. any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

25.2 It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

IMPLIED WARRANTY: MERCHANTABILITY; USAGE OF TRADE

26.1 Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

26.2 Goods to be merchantable must be at least such as -

- a. pass without objection in the trade under the contract description; and
- b. in the case of fungible goods, are of fair average quality within the description; and
- c. are fit for the ordinary purposes for which such goods are used; and
- d. are adequately packaged and labelled as the agreement may require.

26.3 Unless excluded or modified, other implied warranties may arise from course of dealing or usage of trade.

CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED

27. Warranties, whether express or implied, shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable, the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:
- a. Exact or technical specifications displace an inconsistent sample or model or general language of description.
 - b. A sample from an existing bulk displaces inconsistent general language of description.
 - c. Express warranties displace inconsistent implied warranties.

F.O.B. AND F.A.S. TERMS

- 28.1 Unless otherwise agreed, the term F.O.B. (which means "free on board") at a named place is a delivery term under which -
- a. when the term is F.O.B. the place of shipment, the seller must, at his own expense and risk, transport the goods to that place in the manner provided in this Act and put them into the possession of the carrier; or
 - b. when the term is F.O.B. the place of destination, the seller must, at his own expense and risk, transport the goods to that place and there tender delivery of them in the manner provided in this Act;
- 28.2 Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port is a delivery term under which the seller must -
- a. at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and
 - b. obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.
- 28.3 Unless otherwise agreed, in any case falling within subsection 1 b. or subsection 2 the buyer must reasonably give any needed instructions for making delivery.
- 28.4 Under the term F.O.B. vessel or F.A.S., unless otherwise agreed, the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

C.I.F. AND C. & F. TERMS

- 29.1 The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.
- 29.2 Unless otherwise agreed, the term C.I.F. followed by a destination or its equivalent requires the seller, at his own expense and risk, to -
- a. put the goods into the possession of a carrier at the port for shipment and obtain negotiable bills of lading covering the entire transportation to the named destination; and
 - b. load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid; and
 - c. obtain a policy or certificate of insurance on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the buyer or for the account of whom it may concern; and
 - d. prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and
 - e. send with commercial promptness all the documents with any endorsement necessary to perfect the buyer's rights.
- 29.3 Unless otherwise agreed, the term C. & F. or its equivalent imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.
- 29.4 Under the term C.I.F. or C. & F., unless otherwise agreed, the buyer must make payment against tender of the required documents. The seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

PART V TITLE, CREDITORS AND GOOD FAITH PURCHASERS

PASSING OF TITLE

- 30.1 Title to goods cannot pass under a contract for sale prior to their identification to the contract, and unless otherwise explicitly agreed, the buyer acquires by their identification a special property interest as limited by this Act. Any reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited to a reservation of a security interest. Subject to the foregoing, title to goods passes from the seller to the buyer in any manner explicitly agreed on by the parties.

- 30.2 Unless otherwise explicitly agreed, title passes to the buyer when the seller completes physical delivery of the goods, even though the seller may have reserved a security interest or a document of title is to be delivered at a different time or place. In particular-
- a. if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but
 - b. if the contract requires delivery at destination, title passes when the seller tenders the goods at that destination.
- 30.3 Unless otherwise explicitly agreed, where delivery is to be made without moving the goods-
- a. if the seller is to deliver a document of title, title passes when he delivers such documents; or
 - b. if the goods are, at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.
- 30.4 A refusal by the buyer to receive the goods, whether or not justified, or a revocation of acceptance, if justified, re-vests title to the goods in the seller. Such re-vesting occurs by operation of law and is not a "sale".

POWER TO TRANSFER; GOOD FAITH PURCHASE OF GOODS; "ENTRUSTING"

- 31.1 A purchaser of goods acquires all title which his transferor had power to transfer, but a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser acquires such power to transfer good title even though -
- a. the transferor was deceived as to the identity of the purchaser; or
 - b. the delivery was in exchange for a cheque which is later dishonoured; or
 - c. the delivery was procured through fraud.
- 31.2 Any entrusting of goods to a merchant who deals in goods of that kind gives the merchant the power to transfer all rights held by the one entrusting to the one who buys the goods in the ordinary course of business.

Note: "Entrusting" means keeping of goods by a person in the possession of a merchant who deals in similar goods.

PART VI PERFORMANCE

INSURABLE INTEREST IN GOODS; MANNER OF IDENTIFICATION OF GOODS

- 32.1 The buyer obtains a special property interest and an insurable interest in goods by identification of existing goods as goods to which the contract refers, even though the goods so identified do not conform to the contract, and he has the right to reject them. Such identification can be made in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs -
- a. when the contract is made if it is for the sale of goods already existing and identified;
 - b. if the contract is for the sale of future goods other than those described in paragraph c., when goods are shipped, marked, or otherwise designated by the seller as goods to which the contract refers;
 - c. when the crops are planted or the young are conceived, if the contract is for the sale of crops or of unborn young animals.
- 32.2 The seller also retains an insurable interest in goods as long as title to or any security interest in the goods remains in him. Where the seller alone identifies the goods, he may substitute other goods for those identified, but he may do so only until a default under the contract or insolvency or his notifying the buyer that his identification of goods is final.

BUYER'S RIGHT TO GOODS ON SELLER'S INSOLVENCY

33. Even though the goods have not been shipped, a buyer who has paid part or all of the price for goods in which he has a special property interest may, by tendering any unpaid portion of their price, recover them from the seller if the seller becomes insolvent within ten days after receiving the first instalment on their price.

SELLER'S DELIVERY OF GOODS

- 34.1 Tender of delivery requires that the seller hold conforming goods at the buyer's disposition and give the buyer notice reasonably necessary to enable him to take delivery.
- 34.2 Where the seller is to send goods to the buyer, tender requires that the seller comply with the provisions of Section 35.

SHIPMENT BY SELLER

35. Where the seller is required or authorized to send the goods to the buyer and the contract does not specify a particular destination, then unless otherwise agreed he must -

- a. put the goods in the possession of a carrier and enter into a contract for their transportation that is reasonable under the circumstances; and
- b. promptly tender any document necessary to enable the buyer to obtain possession of the goods; and
- c. promptly notify the buyer of the shipment.

The seller's failure to notify the buyer under paragraph c., or to make a proper contract under paragraph a., is a ground for the buyer to reject the goods only if the failure causes material delay or loss.

EFFECT OF SELLER'S TENDER; DELIVERY ON CONDITION

- 36.1 The seller's tender of delivery is a condition to the buyer's duty to accept the goods and pay for them.
- 36.2 Where payment is due upon delivery to the buyer of goods or documents of title, the buyer's right to retain or dispose of the goods is conditional upon making the payment due.

CURE BY SELLER OF IMPROPER TENDER OR DELIVERY; REPLACEMENT

- 37.1 Where any tender or delivery by the seller is rejected because of non-conforming tender and the time for performance has not yet expired, the seller may promptly notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.
- 37.2 When the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable, the seller may promptly notify the buyer and have a further reasonable time to substitute a conforming tender.

RISK OF LOSS IN THE ABSENCE OF BREACH

- 38.1 Where the contract authorizes the seller to ship the goods by carrier -
 - a. if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are delivered to the carrier; but
 - b. if it does require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are tendered so as to enable the buyer to take delivery.
- 38.2 Where the goods are held by a bailee to be delivered without being physically moved, the risk of loss passes to the buyer -
 - a. when he receives a negotiable or non-negotiable document of title covering the goods; or

- b. when the bailee acknowledges the buyer's right to the goods.
- 38.3 In any case not within subsection 1 or 2, the risk of loss passes to the buyer when he receives the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.
- 38.4 The provisions of this section are subject to any contrary agreement by the parties and to the provisions of Section 39 on the effect of breach on risk of loss.

EFFECT OF BREACH ON RISK OF LOSS

- 39.1 Where a tender or delivery of goods so fails to conform to the contract as to give the buyer the right to reject them, the risk of loss remains on the seller until cure or acceptance.
- 39.2 Where the buyer rightfully revokes acceptance, he has the right to treat the risk of loss as having rested on the seller from the beginning.
- 39.3 Where the buyer as to conforming goods already identified to the contract repudiates the contract, or otherwise breaches the contract before risk of their loss has passed to him, the seller has the right to treat the risk of loss as resting on the buyer for a commercially reasonable time.

TENDER OF PAYMENT BY BUYER

40. Unless otherwise agreed, the buyer's tender of payment is a condition to the seller's duty to tender and complete delivery of the goods.

BUYER'S RIGHT TO INSPECTION OF GOODS

- 41.1 Unless otherwise agreed, the buyer has a right before payment or acceptance to inspect the goods in any reasonable manner. When the seller sends the goods to the buyer, the inspection may be after their arrival.
- 41.2 Unless otherwise agreed, the expenses of inspecting the goods must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

PRESERVING EVIDENCE OF GOODS IN DISPUTE

42. In order to resolve any dispute, either party on reasonable notification to the other has the right to inspect and test the goods, even though the goods may be under the control of the other party.

PART VII
BREACH, REPUDIATION AND EXCUSE

BUYER'S RIGHTS ON IMPROPER DELIVERY

43. Unless otherwise agreed under the sections on contractual limitations of remedy, if the goods or the tender of delivery fail in any material respect to conform to the contract, the buyer may -
- a. reject the whole; or
 - b. accept the whole; or
 - c. accept any commercial unit or units and reject the rest.

MANNER AND EFFECT OF RIGHTFUL REJECTION

- 44.1 Rejection of goods must be within a reasonable time after their delivery or tender. The rejection of goods is ineffective unless the buyer timely notifies the seller and states his reasons for rejection.
- 44.2 Subject to Section 45 on rejected goods-
- a. after rejecting the goods, any exercise of ownership by the buyer is wrongful as against the seller; and
 - b. if the buyer, before rejecting the goods, has taken physical possession of goods in which he does not have a security interest, he is under a duty after rejection to hold them with reasonable care for a time sufficient to permit the seller to remove them; but
 - c. the buyer has no further obligations with regard to goods rightfully rejected.
- 44.3 The seller's rights with respect to goods wrongfully rejected are governed by Section 55.

MERCHANT BUYER'S DUTIES AS TO RIGHTFULLY REJECTED GOODS

- 45.1 Notwithstanding Section 44.2 c., and subject to any security interest held by the buyer, when the seller has no agent or place of business at the market where the goods are rejected, a merchant buyer has a further duty after rejecting goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods. In the absence of such instructions, the merchant buyer is to make reasonable efforts to sell the goods for the seller's account if the goods are perishable or threaten to decline in value speedily. Instructions are not reasonable if, upon demand, indemnity for expenses is not forthcoming.

45.2 When the buyer sells goods under subsection 1, he is entitled to reimbursement from the seller or out of the proceeds for the reasonable expenses of caring for and selling the goods.

WHAT CONSTITUTES ACCEPTANCE OF GOODS

46. Acceptance of goods occurs when the buyer -
- a. after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or
 - b. fails to make an effective rejection, but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect the goods; or
 - c. does any act that, to a reasonable person, would indicate that the seller does not own the goods.

EFFECT OF ACCEPTANCE; NOTICE OF BREACH; BURDEN OF ESTABLISHING BREACH AFTER ACCEPTANCE

- 47.1 The buyer must pay at the contract rate for any goods accepted.
- 47.2 Once the buyer accepts the goods, he may not later revoke his acceptance based on the goods not conforming to the contract if, at the time he accepted the goods, he knew of this non-conformity, unless he accepted the goods on the reasonable assumption that the non-conformity would be timely cured. Acceptance under the preceding sentence does not of itself impair any other remedy provided by this Act for non-conformity.
- 47.3 Where a tender has been accepted, the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and
- 47.4 The burden is on the buyer to establish any breach with respect to the goods accepted.

REVOCAION OF ACCEPTANCE IN WHOLE OR IN PART

- 48.1 If the non-conformity of goods substantially impairs the value of a commercial unit, the buyer may revoke his acceptance if he has accepted the goods -
- a. on the reasonable assumption that the non-conformity would be cured and it has not been timely cured; or
 - b. without discovering such non-conformity, provided his acceptance was reasonably induced either by the difficulty of discovering the non-conformity or by the seller's assurances.

- 48.2 Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in the condition of the goods which is not caused by their own defects. Revocation is not effective until the buyer notifies the seller of it.
- 48.3 A buyer who so revokes goods has the same rights and duties with regard to those goods as if he had rejected them.

RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE

- 49.1 A contract for sale imposes an obligation on each party not to impair the other party's expectation of receiving due performance. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of performance. Until he receives such assurance, the party may, if commercially reasonable, suspend any performance for which he has not already received the agreed return.
- 49.2 After receiving a justified demand for assurance, a party's failure to provide adequate assurance under the circumstances and within a reasonable time may be deemed by the other party to be a repudiation of the contract.

ANTICIPATORY REPUDIATION

50. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may -
- a. for a commercially reasonable time await performance by the repudiating party; or
 - b. resort to any remedy for breach, even though he has notified the repudiating party that he will await the latter's performance and has urged retraction; and
 - c. in either case suspend his own performance or proceed in accordance with the provisions of this Act.

RETRACTION OF ANTICIPATORY REPUDIATION

- 51.1 Until the repudiating party's next performance is due, he can retract his repudiation, unless the aggrieved party has materially changed his position after the repudiation or otherwise indicated that he considers the repudiation final.
- 51.2 Retraction must include any assurance justifiably demanded under the provisions of this Act.
- 51.3 Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

CASUALTY TO IDENTIFIED GOODS

52. Where the contract requires goods to be identified when the contract is made, and the goods suffer casualty without the fault of either party before the risk of loss passes to the buyer, then -
- a. if the loss is total, the buyer and seller are relieved of their obligations under the contract; and
 - b. if the loss is partial or the goods have so deteriorated as no longer to conform to the contract, the buyer may nevertheless demand inspection and, at his option, he may either treat the contract as void or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

EXCUSE BY FAILURE OF PRESUPPOSED CONDITIONS

53. Unless otherwise agreed, the failure of either buyer or the seller to perform under the contract is not a breach if performance has been made impracticable by the occurrence of a material contingency that both parties assumed would not occur or any applicable foreign or domestic governmental law or order, whether or not it later proves to be invalid. Under these circumstances, the seller promptly must notify the buyer that there will be a delay or non-delivery, and the buyer may demand assurances pursuant to Section 49.

PART VIII REMEDIES

SELLER'S REMEDIES ON DISCOVERY OF BUYER'S INSOLVENCY

- 54.1 Where the seller discovers that the buyer is insolvent, he may refuse to deliver the goods except for a cash payment that includes payment for all goods already delivered under the contract, and he may stop delivery pursuant to Section 57.
- 54.2 Where the seller discovers that the buyer has received goods on credit while insolvent, he may reclaim the goods, but his right to reclaim is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Act. Successful reclamation of goods excludes all other remedies with respect to those goods.

SELLER'S REMEDIES IN GENERAL

- 55.1 Where the buyer breaches the contract, the seller is entitled to damages sufficient to place him in as good a position as if the buyer had fully performed.
- 55.2 In addition, where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then the aggrieved seller may do any of the following -

- a. withhold delivery of any shipments of goods under the contract;
- b. stop delivery by any bailee as hereafter provided;
- c. proceed under Section 56 concerning goods still unidentified to the contract;
- d. resell the goods in a commercially reasonable manner;
- e. cancel the contract.

55.3 A purchaser who buys goods in good faith at a resale takes the goods free of any rights of the original buyer.

**SELLER'S RIGHT TO IDENTIFY GOODS TO THE CONTRACT
NOTWITHSTANDING BREACH OR TO SALVAGE UNFINISHED GOODS**

56.1 An aggrieved seller under the preceding section may -

- a. identify to the contract conforming goods not already identified if at the time he learns of the breach the goods are in his possession or control;
- b. attempt to resell goods that had been demonstrated as intended for the particular contract, even though those goods are unfinished.

56.2 Where the goods are unfinished, an aggrieved seller exercising reasonable commercial judgement and attempting to avoid a loss, may -

- a. complete the manufacture of the goods and wholly identify them to the contract;
or
- b. cease manufacturing the goods and resell the unfinished goods for scrap or salvage value; or
- c. proceed in any other reasonable manner.

SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE

57.1 The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent, or when the buyer repudiates or fails to make a payment due before delivery, or if the seller has a right (for any other reason) to withhold or reclaim the goods.

57.2 As against such buyer the seller may stop delivery until such time as the buyer receives the goods or a negotiable document of title covering the goods.

SELLER'S DAMAGES FOR NON-ACCEPTANCE OR REPUDIATION

- 58.1 Subject to subsection 2, the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Act (Section 59), but less expenses saved in consequence of the buyer's breach.
- 58.2 If the measure of damages provided in subsection 1 is inadequate to put the seller in as good a position as performance would have done, then the measure of damages is the profit (including reasonable overhead) that the seller would have made from full performance by the buyer, together with any incidental damages provided in this Act with due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

SELLER'S INCIDENTAL DAMAGES

59. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, and in transporting and caring for the goods after the buyer's breach, and in returning or reselling the goods as a result of the breach.

BUYER'S REMEDIES IN GENERAL; BUYER'S SECURITY INTEREST IN REJECTED GOODS

- 60.1 Where the seller breaches the contract, the buyer is entitled to damages sufficient to place him in as good a position as if the seller had fully performed.
- 60.2 In addition, where the seller fails to make delivery or repudiates, or where the buyer rightfully rejects or justifiably revokes acceptance, then the buyer may cancel the contract.

Whether or not the buyer cancels the contract, he may in addition do any of the following -

- a. recover so much of the price as has been paid; or
 - b. "cover" pursuant to Section 61; or
 - c. if the goods have been identified, recover them as provided in this Act; or
 - d. in a proper case, obtain specific performance; or
 - e. in a proper case, recover incidental and consequential damages.
- 60.3 On rightful rejection or justifiable revocation of acceptance, a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care, or custody. The buyer may hold such goods and resell them in like manner as an aggrieved seller.

"COVER"; BUYER'S PROCUREMENT OF SUBSTITUTE GOODS

- 61.1 After a breach within the preceding section, the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.
- 61.2 The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined, but less expenses saved in consequence of the seller's breach.
- 61.3 A buyer's failure to effect cover within this section does not bar him from any other remedy.

BUYER'S DAMAGES FOR NON-DELIVERY OR REPUDIATION

- 62. The measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Act, but less expenses saved in consequence of the seller's breach.

BUYER'S DAMAGES FOR BREACH IN REGARD TO ACCEPTED GOODS

- 63.1 Where the buyer has accepted goods and given notification of seller's breach, he may recover as damages the loss resulting from the seller's breach as determined in any reasonable manner.
- 63.2 The measure of damages for breach of any warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.
- 63.3 In a proper case, incidental and consequential damages under Section 64 may also be recovered.

BUYER'S INCIDENTAL AND CONSEQUENTIAL DAMAGES

- 64.1 Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspecting, receiving, transporting, and caring for goods rightfully rejected, together with any reasonable expenses incident to the breach or incurred by effecting cover.
- 64.2 Consequential damages resulting from the seller's breach include -
 - a. any loss resulting from the seller's failure to fulfil any of the buyer's requirements of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by the buyer; and

- b. injuries to persons or property proximately resulting from any breach of warranty.

BUYER'S RIGHT TO SPECIFIC PERFORMANCE

- 65.1 The Court has discretion to direct that the seller perform as provided under the contract, without the option of retaining the goods and paying damages.
- 65.2 The court's order of specific performance may also include damages or other relief, as the court may deem just.

DEDUCTION OF DAMAGES FROM THE PRICE

- 66. The buyer, on notifying the seller of his intention to do so, may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

LIQUIDATION OR LIMITATION OF DAMAGES

- 67.1 An agreement may specify liquidated damages, and such provisions are enforceable, but only if the amount is reasonable in light of the anticipated or actual harm (whichever is greater) caused by the breach. A term fixing unreasonably large liquidated damages is void as a penalty.
- 67.2 Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds the liquidated damages to which the seller is entitled in accordance with subsection 1.
- 67.3 Where a seller has received payment in goods, their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection 2; but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Act on resale by an aggrieved seller.

CONTRACTUAL MODIFICATION OR LIMITATION OF REMEDY

- 68.1 Subject to the provisions of subsections 2 and 3 of this Section and Section 67 on liquidation and limitation of damages -
 - a. an agreement may provide for remedies in addition to or in substitution for those provided in this Act and may limit or alter the measure of damages recoverable under this Act, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and
 - b. resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

- 68.2 Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
- 68.3 Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable.

BREACHES BEFORE CANCELLATION OR TERMINATION

69. Unless the contrary intention is clearly expressed, a party's cancellation or termination of the contract or the like shall not be construed as discharging that party's claim against the other for damages caused by a breach occurring before the cancellation or termination.

PROOF OF MARKET PRICE: TIME AND PLACE

70. If a lawsuit based on a party's anticipatory repudiation of the contract is decided by the court before the time that performance is required with respect to some or all of the goods, any damages based on market price shall be determined with reference to the price of such goods that existed at the time when the aggrieved party learned of the repudiation.

Done at the 79th Session of the Gyalyong Tshogdu Chhenmo on the 26th day of the 5th month of the Female Iron Snake Year corresponding to 17 July, 2001.

**The Commercial Sale of Goods Act
of the Kingdom of Bhutan, 2000**

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