

No Refund Given

This short article takes the main aspects of the Sale of Goods Act and the implications for the procurement professional.

How often do you have to return something that you have bought which doesn't fit or doesn't go with your home decoration? If like me it is a regular occurrence then you need to go armed with your rights. You enter into a contract with the retailer as soon as your card is swiped or your cash is taken. Although the rights and responsibilities of contracting parties are established through this agreement, the UK government has intervened increasingly ensuring fairness. Incidentally, the contract you are making, unless you make a counter offer, is that of the retailers. The terms of conditions can most often be found on the back of the receipt!

Contracts for the sale of goods are covered by the Sale of Goods Act 1979, amended by the Sale of Goods (amendment) Act 1994 and 1995, while contracts for the supply of goods and services are governed by the Supply of Goods and Services Act 1982, and amended by the Sale and Supply of Goods Act 1994. These acts provide a framework for the relationship between the buyer and supplier and cover the rights and duties of the parties and their remedies in the event of breach.

The following are the most important provisions, in our opinion, of the SOGA 1979 Act:

The Implied Terms are:

Title (s 12)

There is an implied condition on the part of the seller that he has a right to sell the goods and will have when the property passes. If the seller does not have the right he will be in breach of condition. This is particularly relevant when someone is trying to sell an item which is being leased or

hired from another. As a buyer you must ask to see proof of ownership.

Description (s 13)

Where there is a contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description. This seems simple but it is amazing how much we take this for granted. Do not assume anything always make sure that what you are buying is what was described.

Quality and suitability (s 14) (Caveat Emptor – Let the buyer beware!)

'Where the seller sells goods in the course of business' not to sales by private individuals. This means that s14 cannot be used for private agreements.

Section 14 implies two conditions: that the goods are of satisfactory quality and that they are fit for a particular purpose.

Goods are satisfactory if they meet the standard that a reasonable person would regard as satisfactory, taking into account any description of the goods, the price (if relevant) and all other relevant circumstances. This includes fitness for all purposes for which goods of this kind are commonly supplied; appearance and finish; freedom from minor defects; safety and durability. Satisfactory quality does not mean high quality or perfect in every way. The circumstances of the purchase are taken into account. You would generally not expect to buy a car for £50.00 and for it to be scratch free and have no minor defects.

Section 14 (3) provides that where the seller sells goods in the course of a business and the buyer expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied are reasonably fit for that purpose.

Sample (s 15)

Section 15 provides that in a contract of sale by sample there is an implied condition that:

- a) the bulk will correspond with the sample quality. This does rely on you or someone to check that each of the items provided does match the sample. In a business situation, this is often not done by those receiving the goods. By signing the goods receipt note you are accepting the goods, agreeing that they have been delivered in good condition and that they correspond to quality. Remember, it is easier to return goods if you haven't accepted them.
- b) the buyer will have reasonable opportunity of comparing the bulk with sample;
- c) The goods will be free from any defect making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.

Section 15 and section 13 can apply to both business and private sales.

This we hope now gives you the power to negotiate your refund. Make sure you follow these 'three golden rules of buying';

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1. Tell the supplier why you want to buy – This will ensure that you can put forward your case if the product is 'fit for purpose'
2. Make sure the supplier can and has the right to sell
3. Ensure that what you bought does what you want it to do

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