

AN ACT

An Act to declare the law relating to the sale of goods.

BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS:

PART I.

PRELIMINARY.

1 Section 1. Short title and effective date.

2 This Act may be cited as the Sale of Goods Act 1986 and shall
3 come into effect on the date on which it becomes law.

4 Section 2. Interpretation.

5 (1) In this Act, unless the context or subject-matter
6 otherwise requires -

7 "action" includes cross-claim;

8 "buyer" means a person who buys or agrees to buy
9 goods;

10 "contract of sale" includes an agreement to sell as
11 well as a sale;

12 "delivery" means voluntary transfer of possession from
13 one person to another;

14 "document of title to goods" includes any bill of lading,
15 dock warrant, warehouse-keeper's certificate, and
16 warrant or order for the delivery of goods, and any
17 other document used in the ordinary course of
18 business as proof of the possession or control of
19 goods, or authorizing or purporting to authorize,

1 either by endorsement or delivery, the possessor of
2 the document to transfer or receive goods thereby
3 represented.

4 "fault" means wrongful act or default

5 "future goods" means goods to be manufactured or acquired
6 by the seller after the making of the contract of
7 sale.

8 "goods" include all movables except moneys. The term
9 includes growing crops and things attached to or
10 forming part of the land which are agreed to be
11 severed before sale or under the contract of sale.

12 "lien" includes the right of retention.

13 "plaintiff" includes the defendant making a cross-claim.

14 "property" means the general property in goods and not
15 merely a special property.

16 "quality of goods" includes their state or condition.

17 "sale" includes a bargain and sale as well as a sale and
18 delivery.

19 "seller" means a person who sells or agrees to sell
20 goods.

21 "specific goods" mean goods identified and agreed upon at
22 the time a contract is made.

23 "warranty" means an agreement with reference to goods
24 which are the subject of a contract of sale, but
25 collateral to the main purpose of such contract of

1 sale, the breach of which gives rise to a claim for
2 damages, but not to a right to reject the goods and
3 treat the contract as repudiated.

4 (2) A thing is deemed to be done "in good faith" within the
5 meaning of this Act when it is in fact done honestly whether it is
6 negligently or not.

7 (3) A person is deemed to be insolvent within the meaning of
8 this Act, who either has ceased to pay his debts in the ordinary course
9 of business, or cannot pay his debts as they become due, whether he has
10 committed an act of insolvency or not, and whether he has become an
11 insolvent or not.

12 (4) Goods are in a "deliverable state" within the meaning of
13 this Act when they are in such a state that the buyer would under the
14 contract be bound to take delivery of them.

15 PART II.

16 FORMATION OF THE CONTRACT.

17 CONTRACT OF SALE.

18 Section 3. Sale and agreement to sell.

19 (1) A contract of sale of goods is a contract whereby the
20 seller transfers or agrees to transfer the property in goods to the
21 buyer for a money consideration, called "the price". There may be a
22 contract of sale between one part-owner and another.

23 (2) A contract of sale may be absolute or conditional.

24 (3) Where under a contract of sale the property in the goods
25 is transferred from the seller to the buyer the contract is called "a

1 sale but where the transfer of the property in the goods is to take
2 place at a future time, or subject to some condition thereafter to be
3 fulfilled, the contract is called "an agreement to sell".

4 (4) An agreement to sell becomes a sale when the time elapses
5 or the conditions are fulfilled subject to which the property in the
6 goods is to be transferred.

7 Section 4. Capacity to buy and sell.

8 Capacity to buy and sell is regulated by the general law
9 concerning capacity to contract, and to transfer and acquire property:

10 Provided that where necessaries are sold and delivered to a
11 minor, or to a person who by reason of mental incapacity or drunkenness
12 is incompetent to contract, he must pay a reasonable price therefor.

13 "Necessaries" in this Section means goods suitable to the
14 condition in life of such minor or other person, and to his actual
15 requirements at the time of the sale and delivery.

16 FORMALITIES OF THE CONTRACT.

17 Section 5. Contract of sale how made.

18 Subject to the provisions of this Act and of any enactment in
19 that behalf, a contract of sale may be made in writing, or by word of
20 mouth, or partly in writing and partly by word of mouth, or may be
21 implied from the conduct of the parties:

22 Provided that nothing in this Section shall affect the law
23 relating to corporations.

24 Section 6. No contract to be in force unless in writing and
25 signed.

1 (1) A contract for the sale of any goods shall not be
2 enforceable by action unless the buyer shall accept part of the goods so
3 sold, and actually receive the same, or pay the price or part thereof,
4 or unless some note or memorandum in writing of the contract be made and
5 signed by the party to be charged or his agent in that behalf.

6 (2) The provisions of this Section apply to every such
7 contract, notwithstanding that the goods may be intended to be delivered
8 at some future time, or may not at the time of such contract be actually
9 made, procured, or provided, or fit or rendering the same fit for
10 delivery.

11 (3) There is an acceptance of goods within the meaning of
12 this Section when the buyer does any act in relation to the goods which
13 recognizes a pre-existing contract of sale, whether there be an
14 acceptance in performance of the contract or not.

15 SUBJECT-MATTER OF CONTRACT.

16 Section 7. Existing or future goods.

17 (1) The goods which form the subject of a contract of sale
18 may be either existing goods, owned or possessed by the seller, or goods
19 to be manufactured or acquired by the seller after the making of the
20 contract of sale, in this Act called "future goods".

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

24 (3) Where by a contract of sale the seller purports to effect
25 a present sale of future goods, the contract operates as an agreement to
26 sell the goods.

1 delivered to and appropriated by the buyer he must pay a reasonable price
2 therefor.

3 (2) Where such third party is prevented from making the
4 valuation by the fault of the seller or buyer, the party not in fault
5 may maintain an action for damages against the party in fault.

6 CONDITIONS AND WARRANTIES.

7 Section 12. Stipulations as to time of payment.

8 (1) Unless a different intention appears from the terms of
9 the contract, stipulations as to time of payment are not deemed to be of
10 the essence of a contract of sale. Whether any other stipulation as to
11 time is of the essence of the contract or not depends on the terms of
12 the contract.

13 (2) In a contract of sale "month" means prima facie calendar
14 month.

15 Section 13. When condition to be treated as warranty.

16 (1) Where a contract of sale is subject to any condition to
17 be fulfilled by the seller, the buyer may waive the conditions, or may
18 elect to treat the breach of such condition as a breach of warranty, and
19 not as a ground for treating the contract as repudiated.

20 (2) Whether a stipulation in a contract of sale is a
21 condition, the breach of which may give rise to a right to treat the
22 contract as repudiated, or a warranty, the breach of which may give rise
23 to a claim for damages, but not to a right to reject the goods and treat
24 the contract as repudiated, depends in each case on the construction of
25 the contract. A stipulation may be a condition though called a warranty
26 in the contract.

1 (3) Where a contract of sale is not severable, and the buyer
2 has accepted the goods or part thereof, or where the contract is for
3 specific goods, the property in which has passed to the buyer, the
4 breach of any condition to be fulfilled by the seller can only be
5 treated as a breach of warranty, and not as a ground for rejecting the
6 goods and treating the contract as repudiated, unless there be a term of
7 the contract, express or implied, to that effect.

8 (4) Nothing in this Section shall affect the case of any
9 condition or warranty, the fulfilment of which is excused by law by
10 reason of impossibility or otherwise.

11 Section 14. Implied undertaking as to title, & c.

12 In a contract of sale, unless the circumstances are such as to
13 show a different intention, there is

14 (a) an implied condition on the part of the seller
15 that in the case of a sale he has a right to
16 sell the goods, and that, in the case of an
17 agreement to sell, he will have a right to sell
18 the goods at the time when the property is to
19 pass;

20 (b) an implied warranty that the buyer shall have
21 and enjoy quiet possession of the goods;

22 (c) an implied warranty that the goods shall be
23 free from any charge or encumbrance in favour of
24 any third party, not declared or known to the
25 buyer before or at the time when the contract
26 is made.

1 Section 15. Sale by description.

2 Where there is a contract for the sale of goods by
3 description, there is an implied condition that the goods shall
4 correspond with the description; and if the sale be by sample, as well
5 as by description, it is not sufficient that the bulk of the goods
6 corresponds with the sample if the goods do not also correspond with the
7 description.

8 Section 16. Implied conditions as to quality or fitness.

9 Subject to the provisions of this Act and of any enactment in
10 that behalf, there is no implied warranty or condition as to the quality
11 or fitness for any particular purpose of goods supplied under a contract
12 of sale, except as follows: -

13 (1) Where the buyer, expressly or by implication,
14 makes known to the seller the particular purpose
15 for which the goods are required, so as to show that
16 the buyer relies on the seller's skill and
17 judgment, and the goods are of a description which
18 it is in the course of the seller's business to
19 supply (whether he be the manufacturer or not),
20 there is an implied condition that the goods shall
21 be reasonably fit for such purpose:

22 Provided that in the case of a contract for the
23 sale of a specified article under its patent or
24 other trade name, there is no implied condition
25 as to its fitness for any particular purpose.

1 (2) When goods are bought by description from a seller
2 who deals in goods of that description (whether he
3 be the manufacturer or not), there is an implied
4 condition that the goods shall be of merchantable
5 quality:

6 Provided that if the buyer has examined the goods
7 there shall be no implied condition as regards
8 defects which such examination ought to have
9 revealed.

10 (3) An implied warranty or condition as to quality or
11 fitness for a particular purpose may be annexed by
12 the usage of trade.

13 (4) An express warranty or condition does not negative a
14 warranty or condition implied by this Act unless
15 inconsistent therewith.

16 SALE BY SAMPLE

17 Section 17. Sale by sample.

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

20 (2) In the case of a contract for sale by sample -

21 (a) there is an implied condition that the bulk
22 shall correspond with the sample in quality;

23 (b) there is an implied condition that the buyer
24 shall have a reasonable opportunity of comparing
25 the bulk with the sample;

1 (c) there is an implied condition that the goods shall
2 be free from any defect, rendering them
3 unmerchantable, which would not be apparent on a
4 reasonable examination of the sample.

5 PART II.

6 EFFECT OF THE CONTRACT.

7 TRANSFER OF PROPERTY BETWEEN SELLER AND BUYER.

8 Section 18. Goods must be ascertained.

9 Where there is a contract for the sale of unascertained goods
10 no property in the goods is transferred to the buyer unless and until
11 the goods are ascertained.

12 Section 19. Property passes when intended to pass.

13 (1) Where there is a contract for the sale of specific or
14 ascertained goods, the property in them is transferred to the buyer at
15 such time as the parties to the contract intend it to be transferred.

16 (2) For the purpose of ascertaining the intention of the
17 parties regard shall be had to the terms of the contract, the conduct of
18 the parties and the circumstances of the case.

19 Section 20. Rules for ascertaining intention.

20 Unless a different intention appears, the following are rules
21 for ascertaining the intention of the parties as to the time at which
22 the property in the goods is to pass to the buyer: -

23 Rule 1. - Where there is an unconditional contract for
24 the sale of specified goods, in a deliverable state,
25 the property in the goods passes to the buyer when

1 the contract is made, and it is immaterial whether
2 the time of payment or the time of delivery, or both
3 be postponed.

4 Rule 2. - Where there is a contract for the sale of
5 specific goods, and the seller is bound to do something
6 to the goods for the purpose of putting them into a
7 deliverable state, the property does not pass until such
8 thing be done and the buyer has notice thereof.

9 Rule 3. - Where there is a contract for the sale of
10 specific goods in a deliverable state, but the seller is
11 bound to weigh, measure, test, or do some other act or
12 thing with reference to the goods for the purpose of
13 ascertaining the price, the property does not pass until
14 such act or thing be done and the buyer has notice
15 thereof.

16 Rule 4. - When goods are delivered to the buyer on
17 approval, or "on sale or return", or other similar terms,
18 the property therein passes to the buyer -

19 (a) when he signifies his approval or acceptance to
20 the seller, or does any other act adopting the
21 transaction;

22 (b) if he does not signify his approval or acceptance
23 to the seller, but retains the goods without
24 giving notice of rejection, then, if a time has
25 been fixed for the return of the goods, on the

1 expiration of such time, and, if no time has been
2 fixed, on the expiration of a reasonable time.

3 What is a reasonable time is a question of fact.

4 Rule 5. (1) Where there is a contract for the sale
5 of unascertained or future goods by description, and
6 goods of that description and in a deliverable state
7 are unconditionally appropriated to the contract,
8 either by the seller with the assent of the buyer or
9 by the buyer with the assent of the seller, the
10 property in the goods there upon passes to the buyer.
11 Such assent may be express or implied, and may be given
12 either before or after the appropriation is made.

13 (2) Where in pursuance of the contract,
14 the seller delivers the goods to the buyer or to a
15 carrier or other bailee (whether named by the buyer
16 or not) for the purpose of transmission to the buyer,
17 and does not reserve the right of disposal, he is
18 deemed to have unconditionally appropriated the
19 goods to the contract.

20 Section 21. Reservation of right of disposal.

21 (1) Where there is a contract for the sale of specific
22 goods, or where goods are subsequently appropriated to the contract,
23 the seller may, by the terms of the contract or appropriation, reserve
24 the right of disposal of the goods until certain conditions are
25 fulfilled. In such case, notwithstanding the delivery of the goods to

1 Section 23. Sale by person not the owner.

2 (1) Subject to the provisions of this Act, where goods are
3 sold by a person who is not the owner thereof, and who does not sell
4 them under the authority or with the consent of the owner, the buyer
5 acquires no better title to the goods than the seller had, unless the
6 owner of the goods is by his conduct precluded from denying the seller's
7 authority to sell.

8 (2) Provided also that nothing in this Act shall affect -

9 (a) the provisions of any law in force enabling the
10 apparent owner of goods to dispose of them as
11 if he were the true owner thereof;

12 (b) the validity of any contract of sale under
13 any statutory power of sale or under the order
14 of a court of competent jurisdiction.

15 Section 24. Sale under voidable title.

16 When the seller of goods has a voidable title thereto, but
17 his title has not been avoided at the time of the sale the buyer
18 acquires a good title to the goods, provided he buys them in good faith
19 and without notice of the seller's defect of title.

20 Section 25. Re-vesting of property in stolen goods on conviction.

21 (1) Where goods have been stolen and the offender is
22 prosecuted to conviction, the property in the goods so stolen re-vests
23 in the person who was the owner of the goods, or his personal
24 representative, notwithstanding any intermediate dealing with them.

25 (2) Notwithstanding any enactment to the contrary, where any

1 the buyer, or to a carrier or other bailee for the purpose of transmission
2 to the buyer, the property in the goods does not pass to the buyer until
3 conditions imposed by the seller are fulfilled.

4 (2) Where goods are shipped, and by the bill of lading the
5 goods are deliverable to the order of the seller or his agent, the
6 seller is prima facie deemed to reserve the right of disposal.

7 (3) Where the seller of goods draws on the buyer for the
8 price, and transmits the bill of exchange and bill of lading to the
9 buyer together, to secure acceptance or payment of the bill of exchange,
10 the buyer is bound to return the bill of lading if he does not honour
11 the bill of exchange, and if he wrongfully retains the bill of lading
12 the property in the goods does not pass to him.

13 Section 22. Risk prima facie passes with property.

14 Unless otherwise agreed, the goods remain at the seller's risk
15 until the property therein is transferred to the buyer, but when the
16 property therein is transferred to the buyer the goods are at the
17 buyer's risk, whether delivery has been made or not.

18 Provided that where delivery has been delayed through the
19 fault of either buyer or seller, the goods are at the risk of the party
20 in fault as regards any loss which might not have occurred but for such
21 fault:

22 Provided also that nothing in this Section shall affect the
23 duties or liabilities of either seller or buyer as a bailee of the
24 goods of the other party.

25 TRANSFER OF TITLE.

1 goods have been obtained by fraud or other wrongful means not amounting
2 to theft, the property in such goods shall not re-vest in the person
3 who was the owner of the goods, or his personal representative by reason
4 only of the conviction of the offender.

5 Section 26. Seller or buyer in possession after sale.

6 (1) Where a person having sold goods continues or is in
7 possession of the goods, or of the documents of title to the goods, the
8 delivery or transfer by that person, or by a mercantile agent acting for
9 him, of the goods or documents of title under any sale, pledge or other
10 disposition thereof, to any person receiving the same in good faith and
11 without notice of the previous sale, shall have the same effect as if
12 the person making the delivery or transfer were expressly authorized by
13 the owner of the goods to make the same.

14 (2) Where a person having bought or agreed to buy goods
15 obtains, with the consent of the seller, possession of the goods or the
16 documents of title to the goods, the delivery or transfer by that
17 person, or by a mercantile agent acting for him, of the goods or
18 documents of title, under any sale, pledge or other disposition thereof,
19 to any person receiving the same in good faith and without notice of any
20 lien or other right of the original seller in respect of the goods,
21 shall have the same effect as if the person making the delivery or
22 transfer were a mercantile agent in possession of the goods or documents
23 of title with the consent of the owner.

24 (3) In this Section the term "mercantile agent" shall mean a
25 mercantile agent having in the customary course of his business as such

1 agent authority either to sell goods, or to consign goods for the
2 purpose of sale, or to buy goods, or to raise money on the security of
3 goods.

4 Section 27. Effect of writs of execution.

5 A writ of execution against goods shall bind the property in
6 the goods of the execution-debtor as from the time when the writ is
7 delivered to the appropriate authority to be executed; and, for the
8 better manifestation of such time, it shall be the duty of such
9 authority, without fee, upon the receipt of any such writ, to endorse
10 upon the back thereof the hour, day, month, and year when he received
11 the same:

12 Provided that no such writ shall prejudice the title to such
13 goods acquired by any person in good faith and for valuable
14 consideration, unless such person had at the time when he acquired his
15 title, notice that such writ or any other writ, by virtue of which the
16 goods of the execution-debtor might be attached or seized, had been
17 delivered to and remained unexecuted in the hands of such authority.

18 PART III.

19 PERFORMANCE OF THE CONTRACT.

20 Section 28. Duties of seller and buyer.

21 It is the duty of the seller to deliver the goods, and of the
22 buyer to accept and pay for them, in accordance with the terms of the
23 contract of sale.

24 Section 29. Payment and delivery are concurrent conditions.

25 Unless otherwise agreed, delivery of the goods and payment of

1 the price are concurrent conditions that is to say, the seller must be
2 ready and willing to give possession of the goods to the buyer in
3 exchange for the price, and the buyer must be ready and willing to pay
4 the price in exchange for the goods.

5 Section 30. Rules as to delivery.

6 (1) Whether it is for the buyer to take possession of the
7 goods or for the seller to send them to the buyer is a question
8 depending in each case on the contract, express or implied, between the
9 parties. Apart from any such contract, the place of delivery is the
10 seller's place of business, if he has one, and if not, his residence.

11 Provided that, if the contract be for the sale of specific
12 goods, which to the knowledge of the parties when the contract is made
13 are in some other place, then that place is the place of delivery.

14 (2) Where under the contract of sale the seller is bound to
15 send the goods to the buyer, but no time for sending them is fixed, the
16 seller is bound to send them within a reasonable time.

17 (3) Where the goods at the time of sale are in the possession
18 of a third person, there is no delivery by seller to buyer unless and
19 until such third person acknowledges to the buyer that he holds the
20 goods on his behalf:

21 Provided that nothing in this section shall affect the
22 operation of the issue or transfer of any document of title to goods.

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

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

4 Section 31. Delivery of wrong quantity.

5 (1) Where the seller delivers to the buyer a quantity of
6 goods less than he contracted to sell, the buyer may reject them, but if
7 the buyer accepts the goods so delivered he must pay for them at the
8 contract rate.

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

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

19 (4) The provisions of this section are subject to any usage
20 of trade, special agreement, or course of dealing between the parties.

21 Section 32. Instalment deliveries.

22 (1) Unless otherwise agreed, the buyer of goods is not
23 bound to accept delivery thereof by instalments.

24 (2) Where there is a contract for the sale of goods to be
25 delivered by stated instalments, which are to be separately paid for,

1 and the seller makes defective deliveries in respect of one or more
2 instalments or the buyer neglects or refuses to take delivery of or pay
3 for one or more instalments, it is a question in each case, depending on
4 the terms of the contract and the circumstances of the case whether the
5 breach of contract is a repudiation of the whole contract, or whether it
6 is a severable breach giving rise to a claim for compensation, but not
7 to a right to treat the whole contract as repudiated.

8 Section 33. Delivery to carrier.

9 (1) Where, in pursuance of a contract of sale, the seller is
10 authorized or required to send goods to the buyer, delivery of the goods
11 to a carrier, whether named by the buyer or not, for the purpose of
12 transmission to the buyer, is prima facie deemed to be a delivery of the
13 goods to the buyer.

14 (2) Unless otherwise authorized by the buyer, the seller must
15 make such contract with the carrier on behalf of the buyer as may be
16 reasonable, having regard to the nature of the goods and the other
17 circumstances of the case. If the seller omits so to do and the goods
18 are lost or damaged in course of transit, the buyer may decline to treat
19 the delivery to the carrier as a delivery to himself, or may hold the
20 seller responsible in damages.

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

1 Section 34. Risk where goods are delivered at distant places.

2 Where the seller of goods agrees to deliver them, at his own
3 risk, at a place other than that where they are when sold, the buyer
4 must, nevertheless, unless otherwise agreed, take any risk of
5 deterioration in the goods necessarily incident to the course of
6 transit.

7 Section 35. Buyer's right of examining the goods.

8 (1) Where goods are delivered to the buyer which he has not
9 previously examined, he is not deemed to have accepted them unless and
10 until he has had a reasonable opportunity of examining them for the
11 purpose of ascertaining whether they are in conformity with the
12 contract.

13 (2) Unless otherwise agreed, when the seller tenders delivery
14 of goods to the buyer, he is bound, on request, to afford the buyer a
15 reasonable opportunity of examining the goods for the purpose of
16 ascertaining whether they are in conformity with the contract.

17 Section 36. Acceptance.

18 The buyer is deemed to have accepted the goods when he
19 intimates to the seller that he has accepted them, or when the goods
20 have been delivered to him and he does any act in relation to them which
21 is inconsistent with the ownership of the seller, or when after the
22 lapse of a reasonable time, he retains the goods without intimating to
23 the seller that he has rejected them.

24 Section 37. Buyer not bound to return rejected goods.

25 Unless otherwise agreed, when goods are delivered to the buyer

1 and he refuses to accept them, having the right so to do, he is not
2 bound to return them to the seller, but it is sufficient if he intimates
3 to the seller that he refuses to accept them.

4 Section 38. Liability of buyer for neglecting or refusing
5 delivery of goods.

6 When the seller is ready and willing to deliver the goods and
7 requests the buyer to take delivery, and the buyer does not within a
8 reasonable time after such request take delivery of the goods, he is
9 liable to the seller for any loss occasioned by his neglect or refusal
10 to take delivery, and also for a reasonable charge for the care and
11 custody of the goods:

12 Provided that nothing in this Section shall affect the rights
13 of the seller where the neglect or refusal of the buyer to take delivery
14 amounts to a repudiation of the contract.

15 PART IV.

16 RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

17 Section 39. "Unpaid seller" defined.

18 (1) The seller of goods is deemed to be an "unpaid seller"
19 within the meaning of this Act -

20 (a) when the whole of the price has not been paid
21 or tendered;

22 (b) when a bill of exchange or other negotiable
23 instrument has been received as conditional
24 payment, and the condition on which it was
25 received has not been fulfilled by reason of

1 the dishonour of the instrument or otherwise.

2 (2) In this Part of this Act the term "seller" includes any
3 person who is in the position of a seller, as, for instance, an agent of
4 the seller to whom the bill of lading has been indorsed, or a consignee
5 or agent who has himself paid, or is directly responsible for, the
6 price.

7 Section 40. Unpaid seller's rights.

8 (1) Subject to the provisions of this Act and of any
9 enactment in that behalf, notwithstanding that the property in the goods
10 may have passed to the buyer, the unpaid seller of goods, as such, has
11 by implication of law -

12 (a) a lien on the goods or right to retain
13 them for the price while he is in possession
14 of them;

15 (b) in case of the insolvency of the buyer, a
16 right of stopping the goods in transitu
17 after he has parted with the possession of
18 them;

19 (c) a right of re-sale as limited by this Act.

20 (2) Where the property in goods has not passed to the
21 buyer, the unpaid seller has, in addition to his other remedies, a right
22 of withholding delivery similar to and co-extensive with his rights of
23 lien and stoppage in transitu where the property has passed to the
24 buyer.

25 UNPAID SELLER'S LIEN.

1 Section 41. Seller's lien.

2 (1) Subject to the provisions of this Act, the unpaid seller
3 of goods who is in possession of them is entitled to retain possession
4 of them until payment or tender of the price in the following cases,
5 namely:

6 (a) where the goods have been sold without
7 any stipulation as to credit;

8 (b) where the goods have been sold for credit,
9 but the term of credit has expired;

10 (c) where the buyer becomes insolvent.

11 (2) The seller may exercise his right of lien notwithstanding
12 that he is in possession of the goods as agent or bailee for the buyer.

13 Section 42. Part delivery.

14 (1) Where an unpaid seller has made part delivery of the
15 goods, he may exercise his right of lien or retention on the remainder,
16 unless such part delivery has been made under such circumstances as to
17 show an agreement to waive the lien or right of retention.

18 Section 43. Termination of lien.

19 (1) The unpaid seller of goods loses his lien or right of
20 retention thereon

21 (a) when he delivers the goods to a carrier or other
22 bailee for the purpose of transmission to the buyer
23 without reserving the right of disposal of the
24 goods.

1 (b) when the buyer or his agent lawfully obtains
2 possession of the goods;

3 (c) by waiver thereof.

4 (2) The unpaid seller of goods, having a lien or right of
5 retention thereon, does not lose his lien or right of retention by
6 reason only that he has obtained judgment or decree for the price of the
7 goods.

8 STOPPAGE IN TRANSITU.

9 Section 44. Right of stoppage in transitu.

10 Subject to the provisions of this Act, when the buyer of goods
11 becomes insolvent the unpaid seller who has parted with the possession
12 of the goods has the right of stopping them in transitu; that is to say,
13 he may resume possession of the goods as long as they are in course of
14 transit, and may retain them until payment or tender of the price.

15 Section 45. Duration of transit.

16 (1) Goods are deemed to be in course of transit from the time
17 when they are delivered to a carrier by land, air or water, or other
18 bailee, for the purpose of transmission to the buyer, until the buyer,
19 or his agent in that behalf, takes delivery of them from such carrier or
20 other bailee.

21 (2) If the buyer or his agent in that behalf obtains delivery
22 of the goods before their arrival at the appointed destination, the
23 transit is at an end.

24 (3) If after the arrival of the goods at the appointed
25 destination the carrier or other bailee acknowledges to the buyer, or

1 his agent, that he holds the goods on his behalf, and continues in
2 possession of them as bailee for the buyer, or his agent, the transit is
3 at an end, and it is immaterial that a further destination for the goods
4 may have been indicated by the buyer.

5 (4) If the goods are rejected by the buyer, and the carrier
6 or other bailee continues in possession of them, the transit is not
7 deemed to be at an end even if the seller has refused to receive them
8 back.

9 (5) When goods are delivered to a ship chartered by the
10 buyer, it is a question depending on the circumstances of the
11 particular case whether they are in possession of the master as a
12 carrier or as agent to the buyer.

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

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

21 Section 46. How stoppage in transitu effected.

22 (1) The unpaid seller may exercise his right of stoppage in
23 transitu either by taking actual possession of the goods or by giving
24 notice of his claim to the carrier or other bailee in whose possession
25 the goods are. Such notice may be given either to the person in actual

1 possession of the goods or to his principal. In the latter case the
2 notice, to be effectual, must be given at such time and under such
3 circumstances that the principal, by the exercise of reasonable
4 diligence, may communicate it to his servant or agent in time to prevent
5 a delivery to the buyer.

6 (2) When notice of stoppage in transitu is given by the
7 seller to the carrier, or other bailee in possession of the goods, he
8 must re-deliver the goods to, or according to the directions of, the
9 seller. The expenses of such re-delivery must be borne by the seller.

10 RE-SALE BY BUYER OR SELLER.

11 Section 47. Effect of sub-sale or pledge by buyer.

12 Subject to the provisions of this Act, the unpaid seller's
13 right of lien or retention or stoppage in transitu is not affected by
14 any sale or other disposition of the goods which the buyer may have
15 made, unless the seller has assented thereto:

16 Provided that where a document of title to goods has been
17 lawfully transferred to any person as buyer or owner of the goods, and
18 that person transfers the document to a person who takes the document in
19 good faith and for valuable consideration, then, if such last mentioned
20 transfer was by way of sale, the unpaid seller's right of lien or
21 retention or stoppage in transitu is defeated, and if such last
22 mentioned transfer was by way of pledge or other disposition for value,
23 the unpaid seller's right of lien or retention or stoppage in transitu
24 can only be exercised subject to the rights of the transferee.

1 (3) Where there is an available market for the goods in
2 question, the measure of damages is prima facie to be ascertained by the
3 difference between the contract price and the market or current price of
4 the goods at the time or times when they ought to have been delivered,
5 or, if no time was fixed, then at the time of the refusal to deliver.

6 Section 52. Specific performance.

7 In any action for breach of contract to deliver specific or
8 ascertained goods the court may, if it thinks fit, on the application of
9 the plaintiff, by its judgment or decree direct that the contract shall
10 be performed specifically, without giving the defendant the option of
11 retaining the goods on payment of damages. The judgment or decree may
12 be unconditional, or upon such terms and conditions as to damages,
13 payment of the price, and otherwise as to the court may seem just. And
14 the application by the plaintiff may be made at any time before judgment
15 or decree.

16 Section 53. Remedy for breach of warranty.

17 (1) Where there is a breach of warranty by the seller or
18 where the buyer elects, or is compelled, to treat any breach of a
19 condition on the part of the seller as a breach of warranty, the buyer
20 is not by reason only of such breach of warranty entitled to reject the
21 goods but he may

22 (a) set up against the seller the breach of
23 warranty in diminution or extinction of
24 the price; or

25 (b) maintain an action against the seller
26 for damages for the breach of warranty.

1 (2) The measure of damages for breach of warranty is the
2 estimated loss directly and naturally resulting, in the ordinary course
3 of events, from the breach of warranty.

4 (3) In the case of breach of warranty of quality, such loss
5 is prima facie the difference between the value of the goods at the time
6 of delivery to the buyer and the value they would have had if they had
7 answered to the warranty.

8 (4) The fact that the buyer had set up the breach of warranty
9 in diminution or extinction of the price does not prevent him from
10 maintaining an action for the same breach of warranty if he has suffered
11 further damage.

12 Section 54. Interest and special damages.

13 Nothing in this Act shall affect the right of the buyer or the
14 seller to recover interest or special damages in any case where by law
15 interest or special damages may be recoverable, or to recover money paid
16 where the consideration for the payment has failed.

17 PART VI.

18 SUPPLEMENTARY.

19 Section 55. Exclusion of implied terms and conditions.

20 Where any right, duty or liability would arise under a
21 contract of sale by implication of law, it may be negatived or varied by
22 express agreement or by the course of dealing between the parties, or by
23 usage if the usage be such as to bind both parties to the contract.

24 Section 56. Reasonable time a question of fact.

25 Where by this Act any reference is made to a reasonable time,
26 the question what is a reasonable time is a question of fact.

1 Section 57. Rights, & c., enforceable by action.

2 Where any right, duty, or liability is declared by this Act,
3 it may, unless otherwise by this Act provided, be enforced by action.

4 Section 58. Auction sales.

5 In the case of a sale by auction -

6 (1) Where goods are put up for sale by auction in
7 lots, each lot is prima facie deemed to be the subject of
8 a separate contract of sale.

9 (2) A sale by auction is complete when the auctioneer
10 announces its completion by the fall of the hammer or in
11 other customary manner. Until such announcement is made
12 any bidder may retract his bid.

13 (3) Where a sale by auction is not notified to be
14 subject to a right to bid on behalf of the seller, it
15 shall not be lawful for the seller to bid himself or to
16 employ any person to bid at such sale, or for the
17 auctioneer knowingly to take any bid from the seller or
18 any such person. Any sale contravening this rule may
19 be treated as fraudulent by the buyer.

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

23 Where a right to bid is expressly reserved, but not otherwise, the
24 seller, or any one person on his behalf, may bid at the auction.

1

2 /s/ Andrew Misaiah
3 Andrew Misaiah, V Speaker
4 Nitijela of the Marshall Islands

4

5 Attest

6

7 /s/ Rufina N. Jack
8 Rufina N. Jack, Clerk
9 Nitijela of the Marshall Islands

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