

## **Briefing Note – Supply of Goods and Services (Jersey) Law 2009**

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The Supply of Goods and Services (Jersey) Law 2009 (the “Law”) came into force on 1 September 2009, marking a significant departure from Jersey Customary Law which previously applied in Jersey in so far as it concerns the Law of Contract. The Law introduces statutory protection for the Jersey consumer and provides clarity of the consumer’s contractual rights in relation to the supply of goods and services.

The Law will affect all businesses operating in Jersey, even those that are branches of UK or international companies which may be reliant on terms and conditions which comply with the laws of England and Wales or other jurisdictions rather than those of Jersey.

The Law applies to any contract for the sale of goods (including conditional sale agreements) and hire purchase agreements and any contract for the supply of services, where such contract is entered into on or after 1 September 2009. It is important to note that the Law is not limited to consumer contracts and that there are distinctions made in respect of contracts entered into between businesses or between private individuals. It is therefore of utmost importance, when considering the Law, to determine if the party is a buyer or a consumer and if the contract of sale or services is entered into in the course of business or not.

It is further important to note that, under the Law, consumer contracts (those entered into between a seller or supplier acting in the course of business and a buyer/hirer not so acting) place increased burdens on the seller/supplier whilst granting more remedies to the buyer/hirer in the event of a breach.

### **Overview of the Law**

The Law is divided into distinct parts, the more relevant of which relate to the supply of goods and services and are outlined below:

**Part 2 (Articles 11-19)** deals with the formation of contracts for the sale of goods and it is interesting to note that the Law provides that a contract for the sale of goods can be made not only in writing but also by word of mouth. Care must therefore be taken to realise that one could be entering into a contract of sale by agreement with a seller notwithstanding that there is no written agreement.

**Part 3 (Articles 20-25)** deals with warranties in sale of goods and more specifically the goods to be of satisfactory quality and fit for purpose. The standard test to be applied is that of the “reasonable person” i.e. what a reasonable person would regard as satisfactory taking into account description, price and all other relevant factors which include advertising, in the case of a consumer contract. There are further warranties as to (i) title, the seller has the right to sell the goods, (ii) that where the goods are sold under a contract of sale with a description of the goods, the goods comply with the description and (iii) that the seller has disclosed to the buyer of the goods all defects in the goods which would render the goods to be of an unsatisfactory quality.

It is important to note that there is generally no warranty as to quality or fitness for a specific purpose, however in a contract where the seller acts in the course of a business, there is a warranty that the goods are of a satisfactory quality in the case where defects in the goods are drawn to the attention of the buyer or where the buyer has examined the goods before entering into the contract. Additionally, where the buyer expressly or impliedly makes known to the seller the specific purpose or proposed use of the goods, then the seller warrants that the goods are fit for the specific purpose.

**Part 4 (Articles 26-30)** deals with the supply of services. The Law provides that a contract for the supply of services is an onerous contract by which a person (the “Supplier”), agrees to carry out a service. Under this part the Law further provides:

- (i) that where a Supplier is acting in the course of a business, the Supplier warrants to carry out the services with reasonable care and skill;
- (ii) that where a Supplier is acting in the course of a business, and the time for the service to be carried out is (a) not fixed by the contract; (b) to be left to be fixed in a manner agreed by the parties to the contract, or (c) determined by the course of dealing between the parties, the Supplier warrants to carry out the services “within a reasonable time”; and
- (iii) that if under contract for the supply of services the price for the services is not (a) determined by the contract; (b) left to be determined in a manner agreed by the parties to the contract; and (c) determined by the course of dealing between the parties, the person contracting with the Supplier is bound to pay a “reasonable price”.

**Part 5 (Articles 31-35)** deals with Hire Purchase contracts, and more specifically with warranties as to satisfactory quality and fitness for purpose in consumer contracts, as well as to title and to description.

It is worthy to note that the specific provisions as to motor vehicles (**Articles 52-54** of the Law) which if read in conjunction with the articles under this Part 5, provide that a private purchaser in good faith without actual knowledge of a hire purchase agreement may acquire good title to a motor vehicle notwithstanding the fact that the person from whom he acquired the vehicles did not have good title.

**Part 6 (Articles 36-51)** deals with the effects of contracts of the sale of goods. This part deals specifically with issues such as intention (that goods must be ascertained) and the passing of risk (where the goods remain at the seller's risk until the property in them is transferred to the buyer) but when the property in turn is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.

**Part 8 (Articles 55-67)** deals with the performance of a contract of sale of goods. In this part the respective duties of the seller and the buyer and the rules relating to the delivery of the goods are set out.

**Part 9 (Articles 68-77)** deals with the rights of an unpaid seller and the seller's remedies for non-payment such as stoppage in transport, retention of goods, rescission and resale etc. It is worthy to note that in the case of insolvency of the buyer the seller has the right of stopping the goods in transit even after the seller has parted with possession of them.

**Part 10 (Articles 78-83)** deals with the additional rights of the consumer. Under this part, if the goods in a contract for the sale of goods do not conform (goods do not conform if there is a breach of warranties in Articles 22, 23, 24 and/or 25 under Part 3) a consumer may have the right to (i) require repairs or replacement, (ii) a reduction of the purchase price, or (iii) rescind the contract. Otherwise an action for a fundamental breach of contract may lie in which case the buyer may be able to reject the goods and/or claim damages.

**Part 11 (Articles 84-90)** deals with actions for breach of contract and remedies pursuant thereto. Additionally this part deals with damages for non acceptance and non delivery of goods and also specific performance of contract of sale of goods.

**Part 12** deals with miscellaneous provisions. It is worthy to note that **Article 91** of the Law allows rights, duties and liabilities arising under the Law to be negated and varied by express agreement or implication by the course of dealing between the parties or by such usage as binds both parties to the contract.

It is the clear intention of the Law to provide additional protection for the consumer of goods and services and accordingly it is imperative for those providing such goods and services in Jersey to conduct a full review and amendment of all contracts, agreements, policies and terms and conditions, so as to ensure that these reflect and comply with the rights, duties and liabilities under the Law.

Should you require a review (and potential amendment) of your documentation and current procedures and/or advice in dealing with complaints and/or advice in due course on the effect of proposed Regulations and further legislation which may impact on your business, please contact us via email at: [enquiries@legallais-luce.com](mailto:enquiries@legallais-luce.com) or on (01534) 760760 and ask to speak to Roy Slater or any other member of our Local Business Team.

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