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Doing Business in France

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CHAPTER 7 Sales of Personal Property

1-7 Doing Business in France § 7.02

§ 7.02 Obligations of Seller

[1] Introduction

The obligations imposed on a seller of personal property arise from the contract for the sale of goods which he concludes with the buyer and the imperative rules of law which are applicable to such contract.

It should also be noted that a professional seller is bound to give proper information and advice to its client. n1 Inasmuch as the nature and scope of the obligations which may be contractually prescribed are limited only by such imperative rules of law, the discussion that follows will not attempt to summarize said obligations; this subsection will analyze those rules of French law which apply to all contracts for the sale of goods irrespective of the provisions of such contracts and those which apply in the absence of a contractual disposition. It is nevertheless to be noted that where the obligations of the seller may be and are contractually defined, it is in the best interest of the seller to clearly indicate the exact scope and nature of such obligations because, if the terms of the contract for the sale of goods are obscure or ambiguous, they will be interpreted and enforced in a manner which is advantageous for the buyer and disadvantageous for the seller. n2 Moreover, when the professional seller contracts with a consumer, courts are generally favorable towards consumers.

[2] Delivery

[a] Introduction. The first obligation imposed on the seller of personal property is the obligation to deliver the goods referred to in the contract for the sale of goods. n3 According to French case law, the duty is only fulfilled if the item sold conforms to the agreed specifications between the parties. n4

The delivery of goods may be effectuated by either a transfer of possession thereof, a transfer of possession of the keys to a building in which they are located or by an agreement between the parties that delivery will be deemed to have been made; such latter method of delivery may be used, for example, where the transportation of the goods sold is not possible at the time the contract of sale is concluded or where the goods are already in the possession of the buyer. n5 The purpose of this subsection is to analyze the various elements of this delivery obligation: the obligation to deliver conforming goods, the place where delivery must be made, the time when delivery must be made and the treatment of delivery costs. In addition, this subsection will discuss the remedies available to the buyer upon an imperfect or non-conforming delivery due to either the breach of the seller or a loss which occurs in the absence of breach.

[b] Conformity of Goods Delivered

[i] Quality of Goods Delivered. The seller is obligated to deliver the goods sold to the buyer in the same state in which they were at the time the contract of sale was concluded; the burden of proof of the non-conformity of the goods delivered to such standard must be borne by the buyer. n6 For example, it has been judged that the seller of a vehicle which would be non-conforming to the compulsory testing does not respect his obligation to deliver the good referred to in the contract, whereas the warranty against hidden defects is not at stake. n7 It is to be noted that when the quality of the goods delivered by the seller is inferior to such standard, but not so inferior as to render the goods unfit for the use to which they are to be put, the court may refuse to permit the buyer to avoid the contract and may order the latter to accept the non-conforming goods in consideration of a reduction of the purchase price therefor. n8

In the event that the goods have been identified to the contract, the seller is obligated to deliver said goods and may not substitute other goods therefor. n9 Nevertheless, judges have a sovereign power to determine what the appropriate terms for the compensation of damages are in case of non-conforming delivery. n10 Where the goods sold have not been identified to the contract and are fungible, they must conform to any sample presented by the seller n11 and must be of merchantable quality. n12 The determination of whether or not the goods delivered conform to the goods ordered is within the exclusive competence of the trial court. n13

[ii] Quantity of Goods Delivered. The seller is obligated to deliver to the buyer the quantity of goods specified in the contract of sale; the buyer is therefore justified in rejecting a tender of a quantity of goods which is less than the contractually specified quantity. n14 The seller is also obligated to deliver to the buyer any fruits ensuing from the goods sold since the conclusion of the contract of sale as well as all accessories of such goods and all objects which are necessary to permit the use thereof. n15

Except for transactions between a French national and a national of a state which is not a Member State of the European Community, it is prohibited to measure the goods sold in any unit of measurement other than a metric unit; failure to respect this prohibition may be sanctioned by a maximum fine of [Euro]450 in case of an individual, and [Euro]2,250 in case of a legal entity. n16

[c] Place of Delivery. The parties to a contract for the sale of goods are free to contractually specify where the goods are to be delivered; n17 however, in the event that they do not specify the place of delivery in the contract, the goods to be sold must be tendered by the seller at the place where they were located at the time of the conclusion of the contract of sale. n18 Thus, where the goods are not to be transported, tender thereof is usually made at the place of business of the seller; n19 where the goods sold are to be transported, the place of tender is usually deemed to be at the place where the transportation thereof on behalf of the buyer is to start. n20

[d] Time of Delivery. The parties to a contract for the sale of goods are free to fix the time at which the goods must be delivered by the seller. n21 Where the parties have agreed upon a specific date for delivery, such delivery date must be scrupulously respected; n22 the buyer may not demand an earlier delivery n23 and the seller may neither unilaterally postpone the delivery nor obtain a judicial order authorizing such postponement. n24 Unlike the case where no time for delivery is specified in the contract of sale, the buyer need not serve a request for delivery on the seller unless the sales contract so expressly provides. n25 Where, however, the sales contract specifically states that delivery will be made upon the demand of the buyer, the latter must make such demand within a reasonable period of time. n26

Where a contract for the sale of goods contains a provision requiring delivery, not a specific date, but "upon production" or "as soon as possible," the seller must nonetheless make delivery within a reasonable time. n27 Where the contract of sale mentions a suggested, non-binding date for delivery, the buyer will not, in principle, be entitled to damages simply because the seller has not delivered on or before the non-binding date specified in the contract; n28 the buyer must therefore serve a demand for delivery on the seller and allow the latter a reasonable period of time in which to perform. n29

Where the contract for the sale of goods does not specify a time for delivery, the parties are usually not presumed to have agreed that delivery will take place immediately; n30 in most instances, trade practices require that a demand for delivery be served by the buyer on the seller. n31 Where such a demand for delivery is served upon the seller, the latter must respect the delivery date requested by the buyer if such date is reasonable. n32

If a provision of the agreement sets forth that the seller should not be liable for its delay, the provision is improper and the courts generally deem it null and void. n33 For example in the particular case of a furniture agreement entered into between a professional and a consumer where the price exceeds [Euro]500, and the delivery is delayed, the law provides that the seller should indicate the delivery date and that the consumer may annul the agreement if the product has not been delivered within 7 days following the specified delivery date. n34

It has been judged that, since the buyer has an obligation to accept a proper delivery, this obligation starts when the seller's obligation of delivery stops. n35

[e] Delivery Costs. Where the contract for the sale of goods is silent on the issue, the expenses incurred in order to make a tender of goods at the place of delivery are borne by the seller and the expenses incurred in order to take possession thereof are borne by the buyer. n36 Most international contracts for the sale of goods, however, stipulate where the goods are to be delivered and which party shall bear the cost of delivery; the allocation of such costs may be freely negotiated and is often made according to the various options set forth in the Incoterms except if the delay is due to an act of God. n37 n38

[f] Transfer of Risk and Title. As a general rule, the risk of loss will pass from the seller to the buyer when title to such goods passes to the buyer. n39 Even where actual delivery has not been made, title to and the risk of loss of the goods sold is deemed to pass to the buyer upon the conclusion of the contract for the sale of goods unless the seller has agreed to assume the risk of loss until actual delivery is made. n40 Numerous exceptions to this general rule exist however. First, where the goods have not been identified to the contract, title thereto is not deemed to pass, and consequently the risk of loss remains with the seller, until the goods are so identified. n41 Similarly, title to goods sold by weight, unit or measure is not deemed to pass, and consequently the risk of loss remains with the seller, until such time as the goods have been weighed, itemized or measured. n42 Finally, where the sale is made subject to a condition precedent (*e.g.*, tasting of wine before acceptance, a sale to become definitive only after the expiration of a trial period), title is not deemed to pass, and the risk of loss remains with the seller, until such time as the condition is satisfied. n43

[g] Excuses for an Improper or Non-Conforming Delivery and the Remedies Available to the Buyer

[i] Introduction. In the event that the seller fails to deliver or improperly delivers the goods called for in the contract of sale, or in the event that the goods delivered are non-conforming, the law prescribes certain remedies available to the buyer if such improper or non-conforming delivery is not excused. The discussion that follows will analyze the excuses recognized by the law for improper or non-conforming delivery and the remedies available to the buyer where such excuses are not established.

[ii] Excuses for Improper or Non-Conforming Delivery. The seller is excused from his obligation to deliver the goods called for in the contract of sale in three cases. First, such an excuse can result from the buyer not having tendered the purchase price therefor, unless of course the seller has agreed to accept payment at a later date. n44 Even if the seller has so agreed, however, his failure to deliver will be excused if the buyer has been the subject of a declaration of bankruptcy or is in a financial situation which places the seller in immediate danger of not receiving the purchase price; n45 where the buyer has been the subject of a declaration of bankruptcy, the seller may require that the transporter delivering the goods return them to him if they are not already in the possession of the bankrupt buyer. n46

Secondly, where the seller is unable to deliver the goods called for by the contract of sale because of their destruction, his failure to deliver will be excused if the risk of loss had passed to the buyer before such destruction. n47

Similarly, the seller is released from its obligation in case of an event arising which fulfills the conditions for a *force majeure* thus making the delivery impossible, this event shall have to be compelling, unforeseeable and not imputable to the seller. However, if the *force majeure* is temporary it shall only bring about a suspension of the agreement. n48 Thirdly, the seller can also justify the non-completion of its obligation in showing that this non-fulfillment, or faulty execution is because of the buyer.

[iii] Remedies Available to the Buyer Upon an Unexcused, Improper or Non-Conforming Delivery. Where, in the absence of a legally recognized excuse, the seller makes an improper or non-conforming delivery, the buyer has two options: n49 to affirm the contract and demand due performance thereunder or to avoid the contract. The buyer is free to elect either of these courses of action; in the event that he initially elects one course of action, he may subsequently change his mind and elect the other. n50 Where, however, delivery has been made, the buyer must inform the seller of the improper or non-conforming delivery within a reasonable period of time lest he be deemed, by his inaction, to have accepted the delivery tendered by the seller. Even where the buyer is so precluded from claiming that the goods delivered were non-conforming, he may nevertheless bring suit against the seller under the latter's warranty against hidden defects if indeed the goods contain a hidden defect, if he was unable to notice the defect at the time he took delivery and if he brings suit within a short period of time from discovery of the hidden defect. n51

In all instances, the buyer may claim damages from the seller in order to be compensated for the injury he suffered as a result of the unexcused improper or non-conforming delivery. n52 Reference should be made to *Section 6.03[5] supra* for the discussion of the various remedies which are available to the buyer upon a breach of the contract of sale by the seller.

[3] Warranties of Seller

[a] Introduction. The seller of personal property must, by law, give three warranties. These warranties, however, are not exclusive and may be supplemented by negotiated representations and warranties.

[b] Warranty Against the Acts of the Seller. The seller of personal property must warrant that he will not engage in any activity which may hinder the possession by the buyer of the goods sold. n53 For example, it has been held that a seller violates this warranty where, after selling goods to the buyer, he organizes and implements a promotional campaign for goods similar to the ones he sold to the buyer and, because of such campaign, the buyer is unable to sell the goods he purchased or can only do so at a loss. n54 It is to be noted that the warranty against the acts of the seller is mandatory and perpetual and that the seller and the buyer may not stipulate in the contract for the sale of goods that it will not be applicable or that it will be limited in time. n55

[c] Warranty of Quiet Enjoyment. The seller of personal property must warrant to the buyer thereof that no third party has a right to the goods purchased which would prohibit the buyer from using same or benefiting from the quiet enjoyment thereof. n56 In the event that the buyer is totally dispossessed of all of his rights to the goods he purchased from the seller, the latter must refund the purchase price paid by the buyer and pay to the latter any damages he suffered as a result of such dispossession. n57 In the event of a partial dispossession, the buyer may sue for the rescission of the contract of sale and the restitution to him of the purchase price only where such dispossession is so substantial that, had the buyer known thereof before entering into the contract of sale, he would not have entered into such contract; n58 where the partial dispossession is not so substantial, the buyer may only recover damages--the contract for the sale of goods is upheld. n59 If a lawsuit is brought by a third party against the buyer alleging a cause of action which would permit the latter to make a claim under the warranty of quiet enjoyment, the buyer must notify the seller thereof and offer the seller an opportunity to take part therein. n60

Unlike the case with the other warranties imposed by law, the buyer may contractually waive his right to the warranty of quiet enjoyment or, contrariwise, the parties may agree to extend the scope thereof. n61 Unless the contract for the sale of goods specifically provides that the buyer acquires the goods "at his peril and risk," or unless he acquires the goods with full knowledge of the rights of third parties thereto, the buyer may, notwithstanding his waiver of his right to

the warranty of quiet enjoyment, rescind the contract for the sale of goods at any time if he is totally deprived of his rights to the goods sold because of the legally recognized rights of third parties thereto. n62

[d] Warranty Against Hidden Defects. The seller of personal property must warrant to the buyer thereof that said property is free of all hidden defects which would render it unfit for commercial use or which would make such use so difficult that the buyer would not have acquired the goods upon the agreed terms had he been informed thereof. n63 If the buyer fails to be indemnified on the ground of nullity for *erreur sur la substance*, the judge must examine, in the alternative, the potential existence of a hidden defect. n64

In order for the warranty against hidden defects to be applicable, the two following conditions must be fulfilled. First, the item has to be unsuitable for its normal use. The warranty against hidden defects is not applicable in the case of a minor defect only having minor effects on the item. n65

The defect must also have existed at the moment of the transfer of property and must not be imputable to the buyer.

Secondly, the defect has to be hidden. At the moment of the transfer of property, if the buyer is aware that the item has a defect, he can not use the legal argument of the warranty against hidden defects. n66 For example, the buyer can not use this legal argument when the defect is obvious or the seller made the buyer aware of the hidden defect. However, a professional buyer in a similar field of specialty as the seller n67 is presumed to be aware of the defects of the item that he buys n68 except in the two following cases: fraudulent misrepresentation by the seller, who concealed the defect, or in the case of an undetectable defect, n69 where the professional buyer shall be able to use the legal argument of the warranty against hidden defects.

It does not matter that the seller was not aware of the defect: he is obliged to be warrantor, even if he is acting in good faith. n70 But the seller acting in good faith is not obliged to pay damages n71 and the liable exemption provisions are valid should the buyer be a professional acting in a similar field of specialty to that of the seller. However, where the buyer is a non-professional or a professional not acting in a similar field of specialty as the seller, the courts usually refuse to enforce such a contractual provision. n72

Normally, the buyer must prove the defect, and must prove that this defect was hidden at the time of purchase. If he wants to obtain damages in consideration for the harm caused by the defect, he must also prove that the seller was acting in bad faith (i.e. that the seller was aware of the existence of the defect at the time of sale). However, he does not have to prove this if the seller is a professional, who is presumed to be aware of the defects.

Upon discovery of the hidden defect, the buyer may either sue for rescission of the contract of sale and the restitution of the entire purchase price or affirm the contract and sue for restitution of that portion of the purchase price which corresponds to the damages he suffered as a result of the hidden defect. n73 The buyer must begin proceedings within two years since the discovery of the hidden defect. n74 However, it has been judged that the buyer who sells the property he formerly bought still profits by the right of action on the ground of the warranty for hidden defects, only if the time limit set forth in Article 1648 for this action is respected. n75

When goods are affected by a defect that is both a breach of the legal warranty against hidden defects and a breach of the conforming delivery obligation, the buyer has no other choice but to bring an action for warranty against hidden defects. n76

On the one hand, the action for warranty against hidden defects under article 1641 sanctions the unsuitability of the item for its normal use, and is subject to the two years limit set forth in article 1648. The hidden defect should be hidden within the good before the sale but discovered after the sale. This action is based on the obligation of warranty of the seller. Moreover, this action has the important characteristic of being transmitted with the item, for example in the case of resale.

On the other hand, the action for the non-fulfillment of the conforming delivery obligation sanctions the non-conformity of the item to the specifications agreed by the parties, i.e. the specifications incorporated within the contractual scope, and is not subject to any time limit. The defect should be apparent at the time of the sale. This action is based on the sellers' delivery obligation.

The *EC Directive No. 1999/44 of May 25, 1999*, incorporated into national law by the *Ordinance No. 2005-306* n77 provides for a single warranty action for consumers, whose statute of limitation is two years from the delivery date n78. However, it must be noted that European Union State Members can continue use of the existing actions in addition to this new action being adopted. n79 Therefore, consumers will be presented with the option between the different actions.

The scope of this new regime is limited to the sale of tangible, moveable items between a professional seller and a consumer.

Under Article L.211-4 of the Consumer Code, the seller "is required to deliver a product which conforms to the contract and is held liable for any lack of conformity which exists upon delivery".

The seller is also held "liable for any lack of conformity caused by the packaging or the assembly instructions".

To conform to the contract, the product must meet the conditions set down by article L.211-5 of the Consumer Code. It must be "suitable for the purpose usually associated with such a product, and if applicable correspond to the description given by the seller and have the features that the seller presented to the buyer in the form of a sample or model; have the features that a buyer might reasonably expect it to have considering the public statements made by the seller, the producer or his representative, including advertising and labeling".

Pursuant to article L.211-7 of the Consumer Code in the absence of proof to the contrary brought by the seller, any lack of conformity which becomes apparent within six months of delivery of the product is presumed to have existed at the time of delivery.

Finally under this new regime, the consumer may choose between repair and replacement of the product. However, if that choice gives rise to disproportionate costs, the seller may decide not to proceed in accordance with the consumer's choice. n80 When neither of these is possible, the consumer may request a price reduction or he may rescind the contract (except when the lack of conformity is minor). n81

In addition, pursuant to article 1386-18 of the French civil code, in cases of product liability, the victim may opt between the general actions discussed above--actions for warranty against hidden defects or for non-conforming delivery--as well as the specific action introduced by the law of May 19, 1998. n82

FOOTNOTES:

(n1)Footnote 1. *See § 8.02[3][ii] infra* (information and advice duties that each professional seller is bound under French law).

(n2)Footnote 2. *C. civ.*, art. 1602. *Judgment of April 13 1999*, Cass. civ., Bull. civ. I, n degrees139

(n3)Footnote 3. *Id.*, art. 1603.

(n4)Footnote 4. *Judgment of March 20, 1989*, Cass. com., [1989] Dalloz I.R. 178 (According to the Cour de Cassation, the duty is only fulfilled if the seller puts "at the disposal of the purchaser an item which fully corresponds to intended purpose expected by the buyer").

(n5)Footnote 5. *Id.*, art. 1606.

(n6)Footnote 6. *Id.*, art. 1614; *Judgment of December 3, 1980*, Cass. civ. com., [1980] *Bulletin des Arrêts de la Cour de Cassation, chambres civiles* [Bull. Civ.] IV 328. *Judgment of May 7 2008*, Cass. civ. 1re, n degrees 06-20.408, the non-conformity must be assessed in terms of technical data known or predictable at the date of sale and not to standards subsequently developed.

(n7)Footnote 7. *Judgment of January 29, 2002*, Cass. civ. com., 2002 Bull. Civ. I No. 35.

(n8)Footnote 8. *Judgment of December 1, 1875*, Cass. req., [1877] *Dalloz, Periodique et Critique* [D.P.] I 450.

(n9)Footnote 9. *Judgment of November 26, 1980*, Cass. civ. com., [1981] *Dalloz-Sirey, Jurisprudence* [D.S. Jur.] I.R. 439.

(n10)Footnote 10. *Judgment of March 8, 2000*, Cass. civ. com., 2000 Bull. Civ. III No. 50.

(n11)Footnote 11. *Judgment of December 29, 1956*, Cass. civ. com., [1956] Bull. Civ. III 317.

(n12)Footnote 12. *C. civ.*, art. 1246. Where the parties to the contract of sale are Traders, the merchantability of the goods sold is determined in function of trade usages. *Judgment of January 18, 1972*, Cass. civ. com., [1972] *Jurisclasseur Periodique* [J.C.P.] II No. 17072; *see § 5.10[4][a] supra* (definition of Trader).

(n13)Footnote 13. *Judgment of June 10, 1974*, Cass. civ. com., [1974] Bull. Civ. IV 148.

(n14)Footnote 14. *Judgment of March 28, 1905*, Cass. req., [1905] D.P. I 192.

(n15)Footnote 15. *C. civ.*, arts. 1614(2) and 1615. Very often, the packaging of the goods sold is deemed an accessory thereof and consequently becomes the property of the buyer. *Judgment of March 20, 1959*, Cour d'appel, Paris, [1959] D.S. Jur. 268 note Mazeaud. The parties to the contract of sale may, however, agree that the packaging will only be loaned to the buyer and that the latter must return same to the seller. *Judgment of March 2, 1954*, Cass. civ., [1954] J.C.P. II No. 8117 obs. Hemard (butane gas bottles).

(n16)Footnote 16. *Decree No. 61-501 of May 3, 1961*, arts. 8 and 14(1), *reprinted in C. com.*, app. The use of measuring instruments calibrated in a system which is not metric may be sanctioned by the seizure of such instruments. *Id.*, art. 14(3).

(n17)Footnote 17. *Judgment of June 4, 1991*, Bull. civ. IV p. 145.

(n18)Footnote 18. *C. civ.*, art. 1609. In the event that the goods to be sold were not identified to the contract at the time the contract of sale was concluded, delivery must be made at the place of business of the seller. *Id.*, art. 1247(3).

(n19)Footnote 19. *Judgment of December 17, 1952*, Cass. civ., [1952] Bull. Civ. III 310.

(n20)Footnote 20. *Judgment of November 20, 1964*, Cour d'appel, Douai, [1965] D.S. Jur. 506.

(n21)Footnote 21. *C. civ.*, art. 1610.

(n22)Footnote 22. *Judgment of June 16, 1952*, Cour d'appel, Paris, [1952] *Gazette du Palais* [Gaz. Pal.] II 281.

(n23)Footnote 23. *Judgment of January 14, 1958*, Cass. civ. com., [1958] Bull. Civ. III 20.

(n24)Footnote 24. *Judgment of December 19, 1903*, Cour d'appel, Besançon, [1904] Gaz. Pal. I 22.

(n25)Footnote 25. *Judgment of January 17, 1961*, Cour d'appel, Rouen, [1962] D.S. Jur. som. 30.

(n26)Footnote 26. *Judgment of December 9, 1903*, Cour d'appel, Besancon, [1904] Gaz. Pal. I 22. That which constitutes a reasonable period of time is determined in function of trade usages. *Id.*

(n27)Footnote 27. *Judgment of January 4, 1978*, Cour d'appel, Reims, [1978] *Revue Trimestrielle de Droit Commercial* 591.

(n28)Footnote 28. *Judgment of June 15, 1981*, Cass. civ. com., [1981] Bull. Civ. IV 214. Where, however, the seller did not make delivery for a period of three months after the non-binding delivery date, it has been held that he unilaterally and tacitly terminated the contract of sale. *Judgment of June 24, 1980*, Cass. civ. com., [1981] D.S. Jur. I.R. 40.

(n29)Footnote 29. *Judgment of June 2, 1958*, Cass. civ. com., [1958] Bull. Civ. III 183.

(n30)Footnote 30. *Judgment of April 4, 1960*, Cour d'appel, Paris, [1960] D.S. Jur. 410.

(n31)Footnote 31. *Judgment of June 15, 1981*, Cass. civ. com., [1981] Bull. Civ. IV 214.

(n32)Footnote 32. *Judgment of November 27, 1961*, Cass. civ. com., [1961] Bull. Civ. III 380.

(n33)Footnote 33. *Judgment of July 16, 1987*, Cass. civ. 1, [1988] Dalloz 88.49, note J. Calais-Auloy.

(n34)Footnote 34. C. Consommation, art. L.114-1.

(n35)Footnote 35. *Judgment of October 24, 2000*, Cass. civ. com., 2002 Dalloz, Somm. p. 997.

(n36)Footnote 36. C. civ., art. 1608.

(n37)Footnote 37. *Judgment of January 8, 2002*, Cour d'appel, Besancon, 2002 Contrats-Concurrence-Consommation, No. 149.

(n38)Footnote 38. Incoterms are the model terms and conditions drafted by the International Chamber of Commerce designed to assist parties to international contracts for the sale of goods in negotiating and selecting the terms and conditions of their agreement. They are often incorporated by reference into such contracts and thereby acquire binding effect.

(n39)Footnote 39. C. com., art. L.132-7; see § 7.03[3][c] *infra* (title retention clauses).

(n40)Footnote 40. C. civ., arts. 1138(2) and 1583; C. com., art. L.132-7.

(n41)Footnote 41. *Judgment of November 7, 1962*, Cour d'appel, Amiens, [1963] J.C.P. II No. 13018 obs. Voirin.

(n42)Footnote 42. C. civ., art. 1585.

(N43)Footnote 43. *Id.*, arts. 1587-88. This principle is also applicable where the seller retains title to the goods sold pending payment of the full purchase price. *Judgment of October 29, 1980*, Cour d'appel, Metz, [1981] D.S. Jur. 138 note Guyon; see § 7.03[3][c] *infra* (title retention clauses).

(n44)Footnote 44. C. civ., art. 1612. Where a single contract of sale which calls for multiple deliveries stipulates that the seller's obligation to make subsequent deliveries is subject to the buyer's due payment for deliveries which have already been made, the seller may refuse to make subsequent deliveries if the buyer has failed to pay for preceding deliveries. *Judgment of January 23, 1961*, Cour d'appel, Grenoble, [1961] D.S. Jur. 300. Where, however, multiple deliveries are to be made pursuant to a contract of sale which has not specified that all deliveries are inter-related, the failure of the buyer to pay for one delivery does not excuse the seller's failure to make subsequent deliveries. *Judgment*

of July 2, 1924, Cass. civ., [1926] D.P. I 95. *Judgment of May 31, 1994*, Cass. com., Bull. Civ. IV, n degrees 195

(n45)Footnote 45. *C. civ.*, art. 1613; *C. com.*, art. L.624-14.

(n46)Footnote 46. *C. com.*, art. L.624-13; The Administrator (*administrateur*) may, however, demand that delivery be made if he tenders the purchase price of the goods to be delivered; *C. com.*, art. L.622-13.

(n47)Footnote 47. *C. com.*, art. L.132-7; *See § 7.02[2][f] supra* (transfer of risk).

(n48)Footnote 48. *Judgment of January 18, 1950*, Cass. civ. com., [1950] Gaz. Pal. I 320; *see § 6.03[4][c][i] supra* (force majeure).

(n49)Footnote 49. *C. civ.*, art. 1610.

(n50)Footnote 50. *Judgment of July 22, 1953*, Cass. civ. com., [1953] *Dalloz, Jurisprudence* 587.

(n51)Footnote 51. *Judgment of June 3, 1981*, Cass. civ. com., [1981] Bull. Civ. IV 209; *see § 7.02[3][d] infra* (warranty against hidden defects).

(n52)Footnote 52. *Judgment of April 23, 1980*, Cass. civ., [1980] Bull. Civ. I 101 (The buyer must cause a demand for performance to be served on the seller.).

(n53)Footnote 53. *C. civ.*, art. 1628.

(n54)Footnote 54. *Judgment of July 5, 1967*, Cour d'appel, Paris, [1967] D.S. Jur. 730 note Guyenot.

(n55)Footnote 55. *C. civ.*, art. 1628; *Judgment of May 13, 1912*, Cass. civ., [1913] D.P. I 143. *Judgment April 14, 1992*, Cass com., Bull civ. IV n degrees 160.

(n56)Footnote 56. *C. civ.*, art. 1626. Such warranty only applies, however, if the right of the third party came into existence before the conclusion of the contract for the sale of goods. *Judgment of December 12, 1972*, Cass. civ. com., [1972] Bull. Civ. IV 307.

(n57)Footnote 57. *C. civ.*, art. 1630.

(n58)Footnote 58. *Id.*, art. 1636.

(n59)Footnote 59. *Id.*, art. 1637.

(n60)Footnote 60. *Id.*, art. 1640.

(n61)Footnote 61. *Id.*, art. 1627.

(n62)Footnote 62. *Id.*, art. 1629; *Judgment of July 17, 1962*, Cass. civ., [1962] D.S. Jur. 534.

(n63)Footnote 63. *C. civ.*, art. 1641.

(n64)Footnote 64. *Judgment of July 12, 2001*, Cass. civ. com., 2001 J.C.P. I No. 370.

(n65)Footnote 65. *Judgment of July 4, 2001*, Cass. civ., [2001] *Contrats-Concurrence-Consommation*, p.12; *Judgment of November 22, 1926*, Cass. civ., S., 27.I.169.

(n66)Footnote 66. *C. civ.*, art 1642. *Judgment of October 27 2006*, Cass Ass Plen; JCP G 2007, I, 104, JCP N 2007, 1101. *Judgment of January 30 2008*, Cass civ. Jurisdata n degrees 07-10.133

(n67)Footnote 67. *Judgment of December 20, 1983*, Cass. civ., 1, B.I. No. 308.

(n68)Footnote 68. *Judgment of December 18, 1962*, Cass. civ. 1, D., 63.114.

(n69)Footnote 69. *Judgment of November 15, 1983*, Cass. com., B. IV., no. 311.

(n70)Footnote 70. *C. civ.*, art 1643. *Judgment of June 8, 1999*, Cass. civ., [1980] *Juris-Data* No. 002353 (the professional seller is deemed to be aware of the defect, even when his role was limited to having the item delivered from his supplier to his client).

(n71)Footnote 71. *C. civ.*, art 1645.

(n72)Footnote 72. *See § 8.02[3][a][i] infra.*

(n73)Footnote 73. *C. civ.*, arts. 1644-46.

(n74)Footnote 74. *Id.*, art. 1648. The *Ordinance No. 2005-306 dated 17 February 2005 relating to the warranty of conformity of the good to the contract due by the seller to the consumer*, OJ 18 February 2005; D.2005, p.555, ratified by the *Law No. 2006-406 dated 5 April 2006* (hereinafter referred to as *Ordinance No. 2005-306*) modified the provision of *C. civ.*, art. 1648 by defining the period during which such lawsuit may be brought as two years from the date where the defect has been discovered.

(n75)Footnote 75. *Judgment of June 27, 2001*, Cass. civ. com., 2002 Dalloz, Somm. p. 1005.

(n76)Footnote 76. *Judgment of April 24, 2003*, Cass. civ., No. 515 FS-PB.

(n77)Footnote 77. These provisions have been codified in *C. cons.*, arts. L. 211-1 to L. 211-18.

(n78)Footnote 78. *C. cons.*, art. L. 211-12.

(n79)Footnote 79. *See Chapter 8, § 8.02[4] supra .*

(n80)Footnote 80. *C. cons* art. L.211-9.

(n81)Footnote 81. *C. cons* art. L.211-10.

(n82)Footnote 82. *See Chapter 8--Product liability infra* for a further discussion on the liability to which a seller may be exposed as a result of the law of products liability.