

STATES OF JERSEY



DRAFT SUPPLY OF GOODS AND SERVICES (JERSEY) REGULATIONS 200-

Lodged au Greffe on 11th November 2009
by the Minister for Economic Development

STATES GREFFE



Jersey

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REPORT

Background

On 8th September 2008 the States passed the Supply of Goods and Services (Jersey) Law 2009. The Law was sanctioned by H.M. Privy Council on 11th February 2009 and registered in the Royal Court on 27th March 2009. The Law ([see L.14/2009](#)) was subsequently brought into force on 1st September 2009 by Appointed Day Act ([see R&O.73/2009](#)). The Law sets out a statutory framework of contractual rights and responsibilities in relation to the sale of goods and the supply of services. It provides extra protection to consumer buyers where goods purchased are found not to conform to the contract.

The Law also sets out clearly certain warranties (implied terms) that a seller of goods or supplier of services must provide to the buyer.

In relation to contracts for the sale of goods, the seller in general terms warrants –

- good title to the goods (*Article 21*)
- that the goods match their description (*Article 22*)
- if selling in the course of a business, that the goods supplied are of satisfactory quality (*Article 23*)
- if selling otherwise than in the course of a business, that the seller has disclosed any defects the seller knows about (*Article 24*)
- if selling by sample, that the goods match the quality of the sample in all respects. (*Article 25*).

In the case of hire purchase agreements, the warranties mentioned above apply to the supplier of goods (the finance company) in exactly the same way.

In relation to contracts for the supply of services, the supplier in general terms, if acting in the course of a business, warrants that he or she will carry out the service –

- with reasonable care and skill (*Article 28*)
- within a reasonable time, if a time limit is not fixed by the contract (*Article 29*)

- for a reasonable price, when this is not determined by the contract (*Article 30*).

In common with sale of goods legislation in the United Kingdom, Article 91 of the 2009 Law allows parties to a contract to exclude or vary warranties by agreement. However, in contracts where one party deals as a consumer, it is necessary to maintain the statutory protection and ensure that the implied warranties cannot under any circumstances be unilaterally excluded by businesses. In the United Kingdom, this is achieved by the Unfair Contract Terms Act and these draft Regulations will introduce a similar level of protection.

The power for the States to introduce such legislation is found in Article 94 and specifically Article 94(3) allows Regulations to limit or exclude the operation of Article 91. Such Regulations may prevent or restrict the exclusion or restriction of civil liability in contracts for the sale of goods or the supply of services or in hire purchase agreements. They may also exclude or restrict the effect of unfair terms in such contracts, or specify additional terms to be included in such contracts.

The Regulations

In general terms, legislation which falls under the umbrella of consumer protection tends to make specific or extra provisions where one party clearly deals as a consumer and the other is a business. Where business to business dealings take place, there is more freedom for the parties to bargain before legislation is deemed to intervene. These Regulations are an example of this which is why Regulation 1 defines not just who a 'consumer' is but also what 'deals as a consumer' means.

Thus, under Regulation 2, in relation to consumer contracts, if there is a term in the contract that limits the liability of the seller or supplier for breach of contract or non-performance, that term must be fair and reasonable. If it is not then it will have no effect. In the event of a dispute it will of course ultimately be a court which will determine whether a term is fair and reasonable.

Regulation 3 will ensure that in all contracts –

- the seller's warranties (implied terms) relating to good title (*Articles 21 and 32*)
- the seller's warranty about disclosing any known defects (*Article 24*)
- the supplier's warranty to act with reasonable care and skill (*Article 32*),

cannot be excluded or restricted by the seller or supplier. Any term in the contract that purports to exclude liability for breach of any of those warranties will be void.

Regulation 4 relates to consumer contracts only. It will make void any term in a contract that purports to exclude the seller's/supplier's warranty –

- about the goods matching their description (*Articles 22 and 33*)
- about the goods being of satisfactory quality (*Articles 23 and 34*)
- about the goods matching a sample (*Articles 25 and 35*).

These warranties in the Supply of Goods and Services Law are the basis of what are called consumer statutory rights. Therefore it is extremely important that businesses are not able to exclude these rights, for example, by a sign in a shop which simply

states “no refunds”. If a consumer purchaser finds that goods do not conform to the contract then, in general, he or she may well be legally entitled to claim a refund.

Regulation 5 covers the same warranties in business to business contracts. In this case, a term that tries to exclude the seller’s/supplier’s warranties under those Articles must be fair and reasonable if it is to take effect.

Regulation 6 relates to manufacturer’s guarantees which are provided with goods that are of a type ordinarily supplied for private use or consumption and the protection mirrors that which exists in the United Kingdom. Manufacturers often provide ‘guarantees’ whereby defects in materials may be remedied free of charge. At the same time the manufacturer may seek to exclude or restrict any further liability for loss or damage. This Regulation invalidates such clauses.

Regulation 7 makes it clear that what is ‘fair and reasonable’ is to be determined by reference to what the position was at the time when the contract or agreement was made.

Regulation 8 applies only to contracts for the supply of services and simply defines what is meant by dealing as a consumer in that context.

Regulation 9 specifies some contracts to which the controls in the Regulations do not apply and others to which the controls apply only to a limited extent. The reason for this is that the contracts concerned, for example, transfer of securities, are complex matters covered by other legislation. The exclusions and limitations are based broadly on those contained in the Unfair Contract Terms Act of the United Kingdom.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

The Supply of Goods and Services (Jersey) Law 2009 sets out certain fundamental principles to protect the interests of parties to contracts for the supply of goods or services or hire-purchase agreements.

Article 91 of that Law allows those principles to be cut down in certain circumstances by agreement of the parties.

The object of these Regulations is to limit the extent to which the principles may be cut down, particularly in the case of certain principles (called “warranties” in Jersey law) that protect a customer.

Regulations 2 to 5 operate to save those principles not only where the customer is a consumer (defined in *Regulations 1 and 8*) but also in some cases where the customer is a business customer.

In some cases a term excluding liability can only have effect if it is fair and reasonable (on which, see *Regulation 7*).

Regulation 6 limits the impact of a provision in a manufacturer’s or distributor’s guarantee if it is a provision that purports to limit liability for defective consumer goods.

However, *Regulation 9* excludes from the scope of these Regulations insurance contracts and certain contracts relating to intellectual property, to the formation of corporations, associations or partnerships or to securities.



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Arrangement

Regulation

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Jersey

DRAFT SUPPLY OF GOODS AND SERVICES (JERSEY) REGULATIONS 200-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 94 of the Supply of Goods and Services (Jersey) Law 2009¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“consumer” means, in relation to a contract of sale of goods, a contract for the supply of a service, or a hire-purchase agreement, under which one party deals as a consumer, the party who so deals;

“deal as a consumer” –

- (a) in relation to a contract of sale of goods or to a hire-purchase agreement, has the meaning set out in Article 2 of the Law; or
- (b) in relation to a contract for the supply of a service, has the meaning set out in Regulation 8(1);

“the Law” means the Supply of Goods and Services (Jersey) Law 2009².

2 Avoidance of liability, or of obligation, under consumer contract to be fair and reasonable

(1) A term of a contract under which one party deals as a consumer shall, unless the term is fair and reasonable, have no effect for the purpose of enabling the supplier –

- (a) if the supplier is in breach of an obligation under the contract, to exclude or restrict any liability of the supplier to the consumer in respect of the breach; or
- (b) in respect of an obligation under the contract, to render no performance, or to render a performance substantially different from that which the consumer would reasonably expect from the contract.

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- (2) This Regulation does not limit the operation of Regulations 3 and 4.
- (3) In this Regulation –
- “contract” means a contract of sale of goods, a contract for the supply of a service, or a hire-purchase agreement;
- “supplier” means –
- (a) seller, in the case of a contract of sale of goods;
 - (b) supplier, in the case of a contract for the supply of a service;
 - (c) supplier, in the case of a hire-purchase agreement.

3 Non-avoidance of certain implicit obligations: all contracts

A term of a contract or agreement shall be void if it is a term that purports to exclude or restrict liability for breach of the obligations arising from –

- (a) any of the seller’s warranties under Article 21 or 24 of the Law, in the case of a contract of sale of goods;
- (b) the supplier’s warranty under Article 28 of the Law, in the case of a contract for the supply of a service; or
- (c) any of the supplier’s warranties under Article 32 of the Law, in the case of a hire-purchase agreement.

4 Non-avoidance of other implicit obligations: consumer contracts

- (1) A term of a contract of sale of goods under which one party deals as a consumer shall be void as against the party dealing as a consumer if it is a term that purports to exclude or restrict liability for breach of the obligations arising from the seller’s warranty under Article 22, 23 or 25 of the Law.
- (2) A term of a hire-purchase agreement under which one party deals as a consumer shall be void as against the party dealing as a consumer if it is a term that purports to exclude or restrict liability for breach of the obligations arising from the supplier’s warranty under Article 33, 34 or 35 of the Law.

5 Avoidance of other implicit obligations to be fair and reasonable: non-consumer contracts

- (1) A term of a contract of sale of goods under which no party deals as a consumer shall, unless the term is fair and reasonable, have no effect if it is a term that purports to exclude or restrict liability for breach of the obligations arising from the seller’s warranty under Article 22, 23 or 25 of the Law.
- (2) A term of a hire-purchase agreement under which no party deals as a consumer shall, unless the term is fair and reasonable, have no effect if it is a term that purports to exclude or restrict liability for breach of the obligations arising from the supplier’s warranty under Article 33, 34 or 35 of the Law.

6 Guarantee does not restrict manufacturer's or distributor's liability for consumer goods

- (1) This Regulation applies to a guarantee that –
 - (a) applies in relation to goods that are of a type ordinarily supplied for private use or consumption;
 - (b) is not a guarantee given by one party to the other party to a contract or agreement under or in pursuance of which the ownership or possession of the goods to which the guarantee relates is transferred; and
 - (c) is set out in a contract of sale of the goods to which the guarantee relates or a hire-purchase agreement for such goods, or is set out in a notice to, or agreement with, a party to such a contract or agreement.
- (2) A term of a guarantee to which this Regulation applies shall be void in so far as it purports to exclude or restrict liability for loss or damage –
 - (a) arising from the goods proving defective while –
 - (i) in use otherwise than exclusively for the purposes of a business, or
 - (ii) in the possession of a person for use otherwise than exclusively for the purposes of a business; and
 - (b) resulting from a breach of duty of a person concerned in the manufacture or distribution of the goods.
- (3) For the purposes of paragraph (2), loss includes death and personal injury and damage includes death and personal injury.
- (4) For the purposes of this Regulation, any document is a guarantee if it contains or purports to contain some promise or assurance (however worded or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

7 Fair and reasonable

- (1) In determining for the purposes of these Regulations whether a term of a contract or agreement is fair and reasonable, regard shall be had only to the circumstances that were, or ought reasonably to have been, known to or in the contemplation of the parties to the contract or agreement at the time when the contract or agreement was made.
- (2) The onus of proving that a term of a contract or agreement is fair and reasonable shall lie on the party so contending.

8 Dealing as consumer of services

- (1) For the purposes of these Regulations, one party to a contract for the supply of a service deals as a consumer in relation to another party to the contract if –
 - (a) the other party enters the contract in the course of a business; and

- (b) the one party neither enters the contract in the course of a business nor holds himself or herself out as doing so,
and the service under the contract is of a type ordinarily supplied for private enjoyment.
- (2) The onus of proving that a party does not deal as a consumer shall lie on the party so contending.

9 Regulations do not apply to certain contracts

Regulations 1 to 8 shall not apply to –

- (a) a contract of insurance (including a contract to pay an annuity on human life);
- (b) a contract so far as it relates –
 - (i) to the creation or transfer of a right or interest in any patent, trade mark, copyright or design right, in any registered design, or in any technical or commercial information or other intellectual property, or
 - (ii) to the termination of any such right or interest;
- (c) a contract so far as it relates to the formation, constitution or dissolution of any body corporate or unincorporated association or partnership; or
- (d) a contract so far as it relates to the creation or transfer of securities or of any right or interest in securities.

10 Citation and commencement

- (1) These Regulations may be cited as the Supply of Goods and Services (Jersey) Regulations 200-.
- (2) These Regulations shall come into force on the 7th day after they are made.

¹ *L.14/2009*

² *L.14/2009*