

Conditions & Warranties (Sec. 11-17)

- In a contract of sale, parties make certain stipulations, i.e., agree to certain terms regarding the quality of the goods, the price and the mode of its payment, the delivery of goods and its time and place
- All stipulations cannot be treated on the same footing
- Some may be intended by the parties to be of a fundamental nature, eg. Quality of the goods to be supplied, the breach of which therefore will be regarded as a breach of the contract
- Some may be intended by the parties to be binding, but of a subsidiary or inferior character, eg., time of payment, so that a breach of these terms will not put an end to the contract but will make the party committing the breach liable to damages
- The former stipulations are called 'conditions' and the latter 'warranties' Stipulations as to time Stipulations as to time in a contract of sale fall under the following two heads:
 1. Stipulation relating to time of delivery of goods.
 2. Stipulation relating to time of payment of the price As regards the time fixed for the delivery of goods, time is usually held to be the essence of the contract'. Thus, if time is fixed for delivery of the goods and the seller makes a delay, the contract is voidable at the option of the buyer. In case of late delivery, therefore, the buyer may refuse to accept the delivery and may put an end to the contract. As regards the time fixed for the payment of the price, the general rule is that

‘time is not deemed to be the essence of the contract’, unless a different intention appears from the terms of the contract (sec. 11).

Thus, even if the price is not paid as agreed, the seller cannot avoid the contract on that account. He has to deliver the goods if the buyer tenders the price within reasonable time before resale of the goods. The seller may, however, claim compensation for the loss occasioned to him by the buyer’s failure to pay on the appointed day.

- Sec. 12(2) defines a ‘condition’ as, ‘a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated’ (denied),
- Sec 12(3) defines a ‘warranty’ as, ‘stipulation collateral to the main purpose of the contract, the breach of which gives rise to claim for damages but not to a right to reject the goods and treat the contract as repudiated’.
- The effect of a breach of a ‘condition’ is to give the aggrieved party a right to treat the contract repudiated, i.e., if price has been paid, the buyer can claim the refund of price plus damages for breach
- In case of breach of ‘warranty’, only damages can be claimed, i.e., the buyer must accept the goods and claim damages for the breach of warranty
- Whether a stipulation in a contract of sale is a ‘condition’ or a ‘warranty’ depends in each case on the construction of the contract
- A stipulation may be a condition though called a warranty in a contract [sec. 12(4)]

Example: 1 Kaushal asks a dealer to supply him a shirt which would not shrink after use and wash. The dealer supplies a shirt which shrinks after use and wash. Kaushal can reject the shirt or keep the shirt and claim damages. Here the stipulation to supply a shirt which would not shrink after use and wash is a condition. Now, if Kaushal buys a particular shirt which is warranted by the dealer to be one which would not shrink after use and wash and the shirt does shrink after use and wash, Kaushal’s only remedy is to claim damages.

Example:

2 A man buys a particular horse which is warranted quiet to ride and drive. If the horse turns out to be vicious, the buyer's only remedy is to claim damages. But if instead of buying a particular horse, a man asks a dealer to supply him with a quiet horse and the dealer supplies him with a vicious one, the stipulation is a condition, and the buyer can return the horse and can also claim damages for breach of contract. The illustrations are a clear proof of the fact that an exactly similar term may be a condition in one contract and a warranty in another depending upon the construction of the contract as a whole.

Condition & Warranty Distinguished 1. As to value: A condition is a stipulation which is essential to the main purpose of the contract, whereas a warranty is a stipulation which is collateral to the main purpose of the contract.

2. As to breach: The breach of a condition gives the aggrieved party the right to repudiate the contract and also to claim damages.

3. As to treatment: A breach of condition may be treated as a breach of warranty. But a breach of warranty cannot be treated as a breach of condition.

Caveat Emptor

- Let the "buyer be aware"
- A warning that notifies a buyer that the goods he or she is buying are "as is," or subject to all defects.
- When a sale is subject to this warning the purchaser assumes the risk that the product might be either defective or unsuitable to his or her needs. This rule is not designed to shield sellers who engage in Fraud or bad faith dealing by making false or misleading representations about the quality or condition of a particular product.

- It merely summarizes the concept that a purchaser must examine, judge, and test the product considered for purchase himself or herself.

Duties of the buyer

- Duty to accept the goods and pay for them in exchange of possession.
- Duty to apply for delivery of goods.
- Duty to demand delivery at a reasonable hour.
- Duty to accept installment delivery and pay for it.
- Duty to take risk of deterioration in the course of transit.
- Duty to intimate the seller where he rejects the goods.
- Duty to take delivery.
- Duty to pay the price.
- Duty to pay damages for non-acceptance.

Unpaid Seller

The seller of goods is deemed to be an "unpaid" seller –

- when the whole of the price has not been paid or tendered; or
- when a bill of exchange or other negotiable instruments has been received as conditional payment
- the conditions has not been fulfilled by reason of the dis honour of the instrument or otherwise. [Sec 45(1)]

Rights of Unpaid Seller

- Notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller, has, by implication of law
 - a) a lien on the goods for price while he is in possession of them;

b) in case of insolvency of the buyer a right of stopping the goods in transit; and
c) a right of resale. [Sec 45(1)]