LAWS OF SOUTHERN SUDAN

THE SALE OF GOODS ACT, 2011

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LAWS OF SOUTHERN SUDAN

THE SALE OF GOODS ACT, 2011

In accordance with the provisions of Article 59 (2) (b) read together with Article 85 (1) of the Interim Constitution of Southern Sudan, 2005, the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan hereby enacts the following-

CHAPTER I
PRELIMINARY PROVISIONS

1. Title and Commencement.

This Act may be cited as "the Sale of Goods Act, 2011" and it shall come into force on the date of its signature by the President.

2. Repeal and Savings.

(1) Any provision of existing legislation in force in Southern Sudan which is governed by this Act, is hereby repealed, provided that all proceedings or Acts and regulations taken or made there under, except to the extent they are expressly or necessarily revoked or cancelled by this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.

(2) Where any case relating to any provision of the existing legislation was pending before the court prior to the coming into force of this Act, that case shall continue to be heard by that court until completion.

3. Purpose.

The purpose of this Act is to provide for the law governing formation, effect of performance and breach of contracts for the sale of goods.

4. Authority and Application.

(1) This Act is made in accordance with the provisions of Article 55, and paragraph 9 and 19(1) of Schedule B of the Interim Constitution of Southern Sudan, which grants the Government of Southern Sudan the authority over commerce, trade and commercial regulation and to engage in the types of activities provided for in this Act.

(2) This Act applies to contracts of sale of goods made on or after the date of coming into force of this Act.

(3) In relation to contracts made before this Act, this Act shall apply subject to modification of those contracts.

(4) The rules on insolvency relating to contracts of sale apply, notwithstanding anything contained in this Act.

(5) The law on contract and the law on agency save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake or other invalidating cause, shall apply to contracts for the sale of goods.

(6) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

(7) Nothing in this Act shall affect any customary law relating to contracts for sale or the sale of goods.

5. Interpretation.

(1) In this Act, unless the context otherwise requires, the following words and expressions shall carry the meanings assigned to them as follows —

"action" includes a counterclaim and set-off;

"bulk" means a mass or collection of goods of the same kind which is contained in a defined space or area and is such that any goods in bulk are interchangeable with any other goods therein of the same number or quantity;

"consumer contract" means a contract in which one party to the contract deals, and the other party to the contract, the consumer, does not deal or hold himself or herself out as dealing, in the course of a business; and the goods are of a type ordinarily supplied for private use or consumption, and for the purpose of this Act –

(i) the onus of proving that a contract is a consumer contract shall lie on the party so contending;

(ii) the expression " a consumer contract" does not include a contract in which the buyer is an individual and the goods are second hand goods sold by public auction at which individuals have the opportunity of attending in person; and

(iii) **t**he expression consumer contract does not include a contract in which the buyer is not an individual and the goods are sold by auction or competitive tender.

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

"contract of sale" includes an agreement to sell and a sale;

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

"document of title to goods" includes a bill of lading, dock warrant, warehouse-keeper's certificate or warrant or Act for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods represented by that document;

"fault" means wrongful act or default;

"future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale;

"goods" includes all chattels other than things in action and money, and all produce, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

"plaintiff" means the party who brings a civil suit in a court of law and includes a defendant counterclaiming;

"property" means the general property in goods, and not merely a special property;

"repair" means in cases where there is lack of conformity in goods for purposes of this Act, to bring the goods in conformity with the contract;

"seller" means a person who sells or agrees to sell goods;

"specific goods" means goods explicitly identified and agreed upon at the time a contract of sale is made;

"warranty" means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

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

(3) A person is deemed to be "insolvent" within the meaning of this Act if he or she has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due, in line with the law on insolvency.

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

CHAPTER II
FORMATION OF CONTRACT OF SALE.

Contract of Sale.

6. Sale and Agreement to Sell.

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.

(2) A contract of sale may be concluded between one part owner and another.

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

(4) Where under a contract of sale the property in goods is transferred from a seller to a buyer, the contract is called a sale.

(5) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition to be fulfilled, the contract is called an agreement to sell.

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

7. Capacity to Buy and Sell.

(1) Capacity to buy and sell is regulated by the general law concerning capacity to contract, to transfer and to acquire property.

(2) Where necessaries are sold and delivered to a child, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he or she must pay a reasonable price for the goods.

(3) In this section, "necessaries" means goods suitable to the condition in life of the child or other person, and to his or her actual requirements at the time of the sale and delivery.

Formation of Contract of Sale

8. Making a Contract of Sale.

(1) Subject to the provisions of this Act and of any other written law, a contract of sale may be made in writing, with or without seal, or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

(2) Nothing in this section shall affect the law relating to making of contracts by corporations.

9. Written Contract for Sale of Goods.

(1) A contract for the sale of goods is in writing if it is –

(a) in the form of a data message;

(b) accessible in a manner usable for subsequent reference; and

(c) otherwise in written words.

Subject Matter of Contract.

10. Existing or Future Goods.

(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

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

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

11. Sale of Goods Which Have Perished.

Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have, at the time when the contract is made, perished, the contract is void.

12. Goods Perishing Before Sale but After Agreement to Sell.

Where there is an agreement to sell specific goods, and the goods, without any fault on the part of the seller or buyer, perish after the agreement is made but before the risk passes to the buyer, the agreement is thereby avoided.

The Price.

13. Ascertainment of Price.

(1) The price in a contract of sale may be fixed by the contract, or may be left to be determined in a manner agreed upon in the contract, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with subsection (1) above, the buyer shall pay a reasonable price.

(3) For the purposes of this section, to determine what a reasonable price is, is a question of fact dependent on the circumstances of each particular case.

14. Agreement to Sell at Valuation.

(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and the third party cannot or does not make a valuation, the agreement is avoided.

(2) Where under sub-section (1) the goods or any part of the goods have been delivered to and appropriated by the buyer, he or she must pay a reasonable price for the goods.

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

Implied Terms, etc.

15. Stipulations as to Time.

(1) Unless a different intention appears, from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale.

(2) Whether any other stipulation as to time is of the essence to a contract or not shall depend on the terms of the contract.

(3) In a contract of sale, "month" means, calendar month.

16. When Condition to be Treated as Warranty.

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

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

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

(4) Nothing in this section shall affect a condition or warranty, whose fulfilment is excused by law by reason of impossibility or otherwise.

17. Conditions and Warranties Implied in a Contract of Sale.

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

(a) an implied condition on the part of the seller that in the case of a sale he or she has a right to sell the goods, and that in the case of an agreement to sell he or she shall have a right to sell the goods at the time when the property is to pass;

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

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

18. Sale by Description.

(1) Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond exactly with the description.

(2) Where the sale is by sample as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

19. No Implied Warranty or Condition About Quality or Fitness.

(1) Except as provided in this section and section 20 and subject to any other enactment, there is no implied warranty or condition about the quality or fitness for any particular purpose of goods supplied under a contract of sale.

(2) Where the seller sells goods in the course of a business, there is an implied warranty that the goods supplied under the contract are of satisfactory quality.

(3) For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking into account any description of the goods, the price, where relevant and all the other relevant circumstances;

(4) Also for the purposes of this Act, the quality of goods includes their state and condition and the following, among others, are in appropriate cases or aspects of the quality of goods –

- **(a)** fitness for all purposes for which goods of the kind in question are commonly supplied;
- **(b)** appearance and finish;
- **(c)** freedom from minor defects;
- **(d)** safety; and
- **(e)** durability.

(5) The terms implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory –

- **(a)** which is specifically drawn to the buyer's attention before the contract is made;
- **(b)** where the buyer examines the goods before the contract is made, which such examination ought to reveal; and
- **(c)** in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample.

(6) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the

seller's skill or judgment, and the goods are of a description which is in the course of the seller's business to supply, whether or not he or she is the manufacturer, there is an implied condition that the goods shall be reasonably fit for that purpose.

(7) Notwithstanding subsection (6) above, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(8) Where goods are bought by description from a seller who deals in goods of that description, whether he or she is the manufacturer or not, there is an implied condition that the goods shall be of satisfactory quality.

(9) Notwithstanding subsection (8) above, if the buyer has examined the goods, there shall be no implied condition as regards defects which that examination ought to have revealed.

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

(11) An express warranty or condition does not negate a warranty or condition implied by this Act unless the implied warranty or condition is inconsistent with the express warranty or condition.

(12) The provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other person is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.

20. Sale by Sample.

(1) A contract of sale is a contract for sale by sample where there is an express or implied term in the contract that the goods are sold by sample.

(2) In every contract for sale by sample there is—

(a) an implied condition that the bulk shall correspond with the sample in quality; and

(b) an implied condition that the goods shall be free from any defect rendering them un-merchantable which would not be apparent on reasonable examination of the sample.

21. Modification of Remedies for Breach of Condition in Non-Consumer Cases.

(1) In the case of a contract of sale, the buyer has a right to reject the goods by reason of a breach on the part of the seller of a term implied by sections 18, 19 or 20, but except

where the breach is so minimal that it would be unreasonable for him or her to reject the goods.

(2) Where the buyer is not a consumer, the breach may be treated as breach of warranty but not as a breach of condition.

(3) This section applies unless a contrary intention appears in, or may be implied from the contract.

(4) It is the responsibility of the seller to prove that a breach is so minimal and should be treated as provided for by subsection (1) above.

CHAPTER III
EFFECTS OF THE CONTRACT

Transfer of Property from a Seller to a Buyer.

22. Property in Unascertained Goods.

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

23. Property in Specific or Ascertained Goods Passes When Intended to Pass.

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

(2) For the purpose of ascertaining the intention of the parties, regard shall be made to the terms of the contract, the conduct of the parties and the circumstances of each case.

24. Rules for Ascertaining Intention as to Time When Property Passes.

Unless an intention is proved contrary, the following rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer shall apply—

(a) where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment is, or the time of delivery is, or both are postponed;

(b) where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until that thing is done, and the buyer has been given notice that it has been done;

(c) where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until that act or thing is done, and the buyer has been given notice that it has been done; and

(d) when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property in the goods passes to the buyer—

(i) when he or she signifies his or her approval or acceptance to the seller or does any other act adopting the transaction; or

(ii) if he or she does not signify his or her approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of that time, or, if no time has been fixed, on the expiration of a reasonable time;

(e) where there is a contract for the sale of unascertained or future goods by description, and goods of that description, in a deliverable state, are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer; and assent may be express or implied, and may be given either before or after the appropriation is made; or

(f) where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodian, whether named by the buyer or not, for the purpose of transmission to the buyer, and does not reserve the right of disposal, he or she is deemed to have unconditionally appropriated the goods to the contract.

25. Reservation by Seller of Right of Disposal.

(1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled; and in that case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee or custodian for the purpose of transfer to the buyer, the property in the goods shall not pass to the buyer until the conditions imposed by the seller are fulfilled.

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

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

26. Passing of Risk.

(1) Unless otherwise agreed, the goods remain at the seller's risk until the property in the goods is transferred to the buyer, but when the property in the goods is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.

(2) Notwithstanding subsection (1), where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party at fault as regards any loss which might not have occurred if the fault had not occurred.

(3) Nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.

(4) In the case where the buyer deals or acts as a consumer, subsection (1) to (3) above shall not apply and the goods shall remain at the seller’s risk until they are delivered to the consumer.

Transfer of Title.

27. Sale by Person not the Owner.

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

(2) Nothing in this Act shall affect—

(a) the provisions of any enactment enabling the apparent owner of goods to dispose of them as if he or she were the true owner of the goods; and

(b) the validity of any contract of sale under any special common law or statutory power of sale or under the Act of a court of competent jurisdiction.

28. Sale under Voidable Title.

When the seller of goods has a voidable title to the good, but his or her title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he or she buys the goods in good faith and without notice of the seller's defect of title.

29. Vesting of Property in Stolen Goods on Conviction of Offender.

(1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen vests in the person who was the owner of the goods, or his or her personal representative, notwithstanding any intermediate dealing with them, whether by sale or otherwise.

(2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in the goods shall not vest in the person who was the owner of the goods or his or her personal representative, by reason only of the conviction of the offender.

30. Seller in Possession after Sale.

Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him or her, of the goods or documents of title, under any sale, pledge or other disposition thereof, to any person receiving the goods in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

31. Buyer in Possession after Sale.

Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him or her, of the goods or documents of title, under any sale, pledge or other disposition thereof, to any person receiving them in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

32. Supplementary to Sections 30 and 31.

For the purposes of section 30 and 31 above, "mercantile agent" means a mercantile agent having, in the ordinary course of his or her business as agent, authority either –

(a) to sell goods;

(b) to consign goods for the purposes of sale;

(c) to buy goods; or

(d) to raise money on the security of goods.

33. Effect of Warrant of Execution.

(1) A warrant of attachment or other warrant of execution against goods shall bind the property in the goods of the executing debtor as from the time when the warrant is delivered to the proper officer to be executed; and, for the better record of that time, the proper officer shall, without fee, upon the receipt of the warrant, endorse upon the back of the warrant the hour, day, month and year in which he or she received it.

(2) Notwithstanding subsection (1), no warrant shall prejudice the title to goods acquired by any person in good faith and for valuable consideration, unless that person had at the time when he or she acquired his or her title, notice that the warrant or any other writ by virtue of which the goods of the executing debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the proper officer.

(3) In this section, “proper officer" includes any officer charged with the enforcement of a warrant of execution, and includes a bailiff.

CHAPTER IV
PERFORMANCE OF THE CONTRACT

34. Duties of Seller and Buyer.

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

35. Payment and Delivery *Prima-Facie* Concurrent Conditions.

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

36. Rules of Delivery to Buyer.

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer, is a question depending, in each case, on the contract, express or implied, between the parties.

(2) In the absence of any stipulation in the contract, express or implied, on the place of delivery, the place of delivery is the seller's place of business, if he or she has one, and if not, his or her residence.

(3) Notwithstanding subsection (2) above, if the contract is for the sale of specific goods which, to the knowledge of the parties at the time when the contract is made, are in some other place, then that place is the place of delivery.

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

(5) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to the buyer unless and until the third person acknowledges to the buyer that he or she holds the goods on his or her behalf.

(6) Nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(7) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour and what is a reasonable hour is a question of fact.

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

37. Delivery of Wrong Quantity or Description.

(1) Where the seller delivers to the buyer a quantity of goods less than he or she contracted to sell, the buyer may reject the goods if the shortfall is material, but if the buyer accepts the goods delivered, he or she must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he or she contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he or she may reject the whole if the excess is material; and if the buyer accepts the whole of the goods so delivered he or she must pay for them at the contract rate.

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

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

38. Delivery by Instalments.

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

(2) Where there is a contract for the sale of goods to be delivered by stated instalments and to be separately paid for –

(a) and the seller makes defective deliveries in respect of one or more instalments; or

(b) the buyer neglects or refuses to take delivery of or pay for one or more instalments,

it is a question of fact in each case, depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

39. Delivery to Carrier as Buyer's Agent.

(1) Where, in performance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to the carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller must make a contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case and if the seller omits so to do, and the goods are lost or damaged in the course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or herself, or may hold the seller responsible in damages.

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

40. Risk Where Goods Delivered Elsewhere than at Place of Sale.

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

41. Buyer's Right to Examine the Goods.

Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he or she is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract, and in the case of a contract for sale by sample, on comparing the bulk with the sample.

42. Acceptance.

(1) Subject to subsection (2) below, the buyer is deemed to have accepted the goods –

(a) when he or she communicates to the seller that he or she has accepted them; or

(b) when the goods have been delivered to him or her and he or she does any act in relation to them which is inconsistent with the ownership of the seller.

(2) Where goods are delivered to the buyer, and he or she has not previously examined them, he or she is not deemed to have accepted them under subsection (1) above until he or she has had a reasonable opportunity of examining them for the purpose –

(a) of ascertaining whether they are in conformity with the contract; and

(b) in the case of a contract of sale by sample, of comparing the bulk with the sample.

(3) Where the buyer is a consumer, the buyer does not lose his or her right to rely on subsection (2) above by agreement, waiver or otherwise.

(4) The buyer is deemed to have accepted the goods when after the lapse of a reasonable time he or she retains the goods without communicating to the seller that he or she has rejected them.

(5) The questions that are material in determining, for the purposes of subsection (4) above, whether a reasonable time has elapsed include whether the buyer has had a reasonable opportunity of examining the goods as provided for in subsection (2) above.

(6) The buyer is not, by virtue of this section, deemed to have accepted the goods merely because –

(a) he or she asks for, or agrees to their repair by or under an arrangement with the seller, or

(b) the goods are delivered to another person under a sub-sale or other disposition.

(7) Where the contract is for the sale of goods making one or more commercial units, a buyer accepting any goods included in a unit.

(8) In subsection (7) above, "commercial unit" means a unit, the division of which would materially impair the value of the goods or the character of the unit.

43. Right of Partial Rejection.

(1) If the buyer has the right to reject the goods by reason of a breach on the part of the seller that affects some or all of them, but accepts some of the goods, including where there are any goods unaffected by the breach, he or she does not lose his or her right to reject the rest.

(2) In the case of a buyer having the right to reject an instalment of goods, subsection (1) above applies as if references to the goods were references to the goods comprised in the instalment.

(3) For the purposes of subsection (1) above, goods are affected by a breach if by reason of the breach they are not in conformity with the contract.

(4) This section applies unless a contrary intention appears in, or is to be implied from the contract.

44. Buyer is Not Bound to Return Rejected Goods.

(1) Unless otherwise agreed, where goods are delivered to the buyer, and he or she refuses to accept them, having the right to do so, he or she is not bound to return them to the seller.

(2) It is sufficient if the buyer communicates to the seller that he or she refuses to accept them.

45. Buyer's Liability for Neglecting or Refusing to Take Delivery of Goods.

(1) When the seller is ready and willing to deliver the goods, and requests the buyer to take the goods, and the buyer does not within a reasonable time after the request, the buyer takes the goods, he or she is liable to the seller for any loss occasioned by his or her neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.

(2) Nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

CHAPTER V
RIGHTS OF UNPAID SELLER AGAINST THE GOODS

Preliminary.

46. Definition of Unpaid Seller.

(1) The seller of goods is deemed to be an unpaid seller within the meaning of this Act—

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

(b) when a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this section, **"seller"** includes any person who is in the position of a seller, or an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself or herself, paid or is directly responsible for the price.

47. Rights of Unpaid Seller.

(1) Subject to the provisions of this Act, and any other written law regarding rights of an unpaid seller, and notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, by implication of law has—

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

(b) in case of insolvency of the buyer, a right to stop the goods in transit after he or she has parted with the possession of the goods; and

(c) a right of resale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his or her other remedies, a right of withholding delivery similar to and coextensive with his or her rights of lien and stoppage in transit where the property has passed to the buyer.

Unpaid Seller's Lien.

48. Seller's Lien.

(1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of the goods is entitled to retain possession of the goods until payment or tender of the price is made in the following cases—

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

(b) where the goods have been sold on credit, but the term of credit has expired; or

(c) where the buyer becomes insolvent.

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

49. Lien after Part Delivery.

Where an unpaid seller has made part delivery of the goods, he or she may exercise his or her right of lien or retention on the remainder unless the part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

50. Termination of Lien.

(1) The unpaid seller of goods loses his or her lien or right of retention of the goods—

(a) when he or she delivers the goods to a carrier or other bailee or custodian for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

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

(c) by waiver of the lien or right of retention of the goods.

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

Stoppage of Goods in Transit.

51. Right of Stoppage of Goods in Transit.

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

52. Duration of Transit.

(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land, air or water, or other bailee or custodian for the purpose of transfer to the buyer, until the buyer or his or her agent in that behalf takes delivery of goods from the carrier or other bailee or custodian.

(2) If the buyer or his or her agent obtains delivery of the goods before their arrival at the appointed destination, the transit comes to an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodian acknowledges to the buyer, or his or her agent, that he or she holds the goods on his or her behalf and continues in possession of goods as bailee or custodian for the buyer or his or her agent, the transit comes to an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

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

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

(6) Where the carrier or other bailee or custodian wrongfully refuses to deliver the goods to the buyer or his or her agent; in that respect, the transit is deemed to have come to an end.

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

53. Mode of Stoppage of Goods in Transit.

(1) The unpaid seller may exercise his or her right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his or her claim to the carrier or other bailee or custodian (who is in possession of the goods.

(2) The notice may be given to the person in actual possession of the goods or to his or her principal.

(3) In the case of the notice being given to the principal, for the notice to be effectual, it must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his or her servant or agent in time to prevent a delivery to the buyer.

(4) When notice of stoppage of goods in transit is given by the seller to the carrier, or other bailee or custodian in possession of the goods, he or she must redeliver the goods to, or according to the directions of the seller and the expenses of re-delivery must be borne by the seller.

Re-Sale etc. by the Buyer or Seller.

54. Effect of Sub-Sale or Pledge by Buyer.

(1) Subject to this Act, the unpaid seller's right of lien or retention or stoppage of goods in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented to the sale or other disposition.

(2) Notwithstanding subsection (1) above, where a document of title to goods is lawfully transferred to any person as a buyer or owner of the goods, and that person transfers the document to another person who takes the document in good faith and for valuable consideration, then –

(a) the last-mentioned transfer is by way of sale, and the unpaid seller's right of lien or retention or stoppage in transit is defeated; and

(b) the last-mentioned transfer was by way of pledge or other disposition for value, and the unpaid seller's right of lien or retention or stoppage in transit can only be exercised subject to the rights of the transferee.

55. Sale Not Generally Rescinded by Lien or Stoppage in Transit.

(1) Subject to the provisions of this section, a contract of sale is not rescinded by a mere exercise by an unpaid seller of his or her right of lien or retention or stoppage in transit.

(2) Where an unpaid seller who has exercised his or her right of lien or retention or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his or her intention to resell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell the goods and recover from the original buyer damages for any loss incurred by his or her breach of contract.

(4) Where the seller expressly reserves a right of resale in case the buyer should default, and, on the buyer making default, resells the goods, the original contract of sale is thereby rescinded.

(5) Rescission of a contract under subsection (4) above does not prevent the seller from claiming damages.

CHAPTER VI
ADDITIONAL RIGHTS OF BUYER IN CONSUMER CONTRACTS

56. Application.

(1) This section applies where the buyer is a consumer and the goods do not conform to the contract of sale at the time of delivery.

(2) Goods do not conform to a contract of sale; if there is, in relation to the goods, a breach of an express term of the contract or a term implied by sections 18, 19 or 20.

(3) Goods which do not conform to the contract of sale at anytime within the period of six months starting from the date on which the goods were delivered to the buyer, must be taken not to have conformed at that date.

(4) Subsection (3) above shall not apply where it is established that the goods do confirm to that date.

(5) Subsection (2) shall not apply if its application is incompatible with the nature of the goods or the lack of conformity with the contract of sale.

57. Right to Repair or Replacement of the Goods.

(1) The buyer shall have the right to request or require the seller to repair or replace the goods.

(2) Where the buyer requests or requires the seller to repair or replace the goods, the seller must –

(a) repair, or as the case may be, replace the goods within a reasonable time but without causing significant inconvenience to the buyer; or

(b) bear any necessary costs incurred in doing so, including the cost of labour, material or postage.

(3) The buyer shall not request or require the seller to repair or, as the case may be, to replace the goods if that remedy is –

(a) impossible;

(b) disproportionate in comparison to such other remedies; or

(c) disproportionate in comparison to an appropriate reduction in the purchase price under paragraph (a) above, or under section 59 below.

(4) A remedy is disproportionate in comparison to the other if such other remedy imposes costs on the seller which, in comparison to those imposed on him or her by the other, are unreasonable, taking into account –

(a) the value which the goods would have, if they- conformed to the contract of sale;

(b) whether lack of conformity is significant; and

(c) whether the other remedy could be effected without significant inconvenience to the buyer.

(5) Any question as to what is a reasonable time or significant inconvenience is to be determined by reference to –

(a) the nature of the goods, and

(b) the purpose of which the goods were acquired.

58. Right to Reduction of Purchase Price or Rescission of Contract.

(1) The buyer may require the seller to reduce the purchase price of the goods in question by an appropriate amount; or rescind the contract with regard to those goods if the condition in subsection (2) is satisfied.

(2) The condition is that –

(a) by virtue of section 57 (3), the buyer seeks neither repair nor replacement of the goods; or

(b) the buyer has required the seller to repair or replace the goods, but the seller is in breach of the provisions of section 57 (2) (a) to do so within a reasonable time and without significant inconvenience to the buyer.

(3) For the purposes of this Chapter, if the buyer rescinds the contract, any reimbursement to the buyer may be reduced to take into account of the use he or she has had of the goods since they were delivered to him or her.

59. Relation to Other Remedies etc.

(1) Where the buyer requires the seller to repair or replace the goods, the buyer may not act under subsection (2) until he or she has given the seller a reasonable time in which to repair or replace the goods, as the case may be.

(2) The buyer acts under this subsection if he or she –

(a) rejects the goods and terminates the contract for breach of condition; or

(b) requires the goods to be replaced or repaired, as the case may be.

60. Power of the Court.

The court may make an Act under this Chapter unconditionally or on such terms and conditions as is deems appropriate, with respect to damages, payment of the price and other reasonable remedies.

CHAPTER VII
ACTION FOR BREACH OF CONTRACT

Remedies of the Seller.

61. Action for Price.

(1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him or her for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a certain day irrespective of delivery, and the buyer wrongfully neglects or refuses to pay the price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

62. Action for Non-Acceptance and Measure of Damages.

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him or her for damages for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

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

Remedies of the Buyer.

63. Action for Non-Delivery and Measure of Damages.

(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

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

64. Right to Specific Performance.

(1) In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.

(2) The plaintiff's application may be made at any time before judgement or decree.

(3) The judgment or decree may be unconditional, or upon such terms and conditions as the court may deem just, with respect to damages, payment of the price, and, or other available remedy.

65. Remedy for Breach of Warranty and Measure of Damages.

(1) Where there is a breach of warranty by the seller, or where the buyer elects or chooses, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of the breach of warranty entitled to reject the goods; but he or she may—

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

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

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

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

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

Interest and Special Damages.

66. Interest and Special Damages.

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

CHAPTER VIII
SUPPLEMENTARY PROVISIONS

67. Exclusion of Implied Terms.

(1) Where any right, duty or liability arises under a contract of sale by implication of law, it may be denied or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

(2) An express term does not negate a term implied by this Act unless inconsistent with it.

68. Reasonable Time.

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

69. Rights, etc., Enforceable by Action.

Any rights, duties or liabilities conferred by this Act may, unless otherwise provided by this Act, be enforced by action.

70. Auction Sales.

(1) Until such time as a substantive law on auction sales is enacted, the provisions in this section shall apply to auction sales.

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

(3) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner; and until the announcement is made any bidder may retract his or her bid.

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

(5) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it is unlawful for the seller to bid himself or herself or to employ any person to bid at the sale, or for the auctioneer knowingly to take any bid from the seller or any such person.

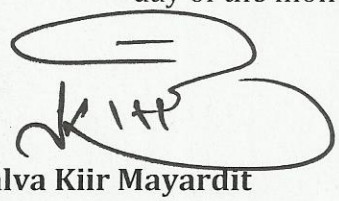
(6) A sale contravening subsection (4) above may be treated as fraudulent by the buyer.

(7) Where, in respect of a sale by auction a right to bid is expressly reserved, but not otherwise, subject to any existing law, the seller, or any one person on his or her behalf, may bid at the auction.

Assent of the President of the Government of Southern Sudan

In accordance with the provision of Article 85 (1) of the Interim Constitution of Southern Sudan, 2005, I, Gen. Salva Kiir Mayardit, President of the Government of Southern Sudan, hereby Assent to the Sale of Goods Act, 2011 and sign it into law.

Signed under my hands in Juba, this----7th----day of the month of ----JULY----in the year 2011.



Gen. Salva Kiir Mayardit
President
Government of Southern Sudan
GoSS/ Juba.