

# Making the sale: Quality of your goods

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## Overview

Selling your customers top-quality goods is basic business sense – and it keeps them coming back for more. But what are your legal obligations when selling forestry goods to businesses or the public?

Whenever a person buys goods, there is a contract between the buyer and the seller. To ensure there is no doubt as to the terms of the contract, it would be best if every contract was in writing, addressing all the likely issues. While we might do this for 'big ticket' contracts, for many others this may not be the case! Then the law has to imply terms – either from some statutory base or from the intention between the buyer and the seller. It is important then for the buyer and seller to at least clarify all the major terms either in writing or orally, and it is usual to cover things like the identity of the buyer and seller, the price, the delivery date etc. Something that is not always addressed, and is fundamental, is the issue of quality.

## Introduction to the issue of quality

The law can imply quality requirements, in relation to forestry goods supplied to another business, and generally does imply quality requirements in relation to forestry goods supplied to an ordinary consumer. Further, the Fair Trading Act 1986 (FTA) prohibits making false representations about goods or services being of a particular quality.

When selling forestry related goods to another business, if the contract does not address quality issues, the Sale of Goods Act 1908 (SGA) will imply into the arrangement that the goods supplied must be of merchantable quality and that they are fit for the purpose communicated to the seller by the buyer (if this is done!).

Written contracts rarely exist if you are selling forestry-related goods designed for personal, domestic or household use or consumption to a consumer. However, under the Consumer Guarantees Act 1993 (CGA), the goods supplied generally must be of an acceptable quality and reasonably fit for the purpose specified by the consumer or represented by the supplier.

If these statutory terms are not intended or acceptable, then even more reason for the buyer and seller to be clear between themselves on this issue! However, sellers should be aware that it is usually an offence to contract out of the CGA.

## Selling forestry related goods to another business

### 1. The Contract

If parties have a written contract for the supply of the goods, then – unless patently obvious to both parties – they should clarify the quality expectations of the goods,



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and – if possible – the buyer should ensure that the contract records the purpose for which the goods are being purchased. This practice will ensure that there is a clear and enforceable understanding of quality expectations and should help to reduce the possibility of arguments occurring at a later stage due to the buyer's quality expectations not being met.

If the contract does not deal with quality expectations, then the provisions of the SGA relating to quality (amongst other things) are implied into the supply arrangement.

From an evidence point of view, it is best that the contract is in writing – but if 'oral', then adequate notes should be taken so if necessary, the agreed terms can be proved.

### 2. Sale of Goods Act 1908

The SGA governs the sale of goods in New Zealand as between the buyer and the seller. Such goods could include felled trees (including trees subject to an agreement which includes an obligation to fell the trees being purchased – if the obligation to fell does not exist, it is unclear whether the SGA will apply to the trees), processed wood, and harvesting equipment such as haulers and skidders.

The provisions of the SGA do not apply to transactions where corresponding provisions of the CGA apply (see below). Also, the SGA will not apply if it is expressly excluded by the particular supply contract, or if the supply contract contains terms that differ from what the SGA provides.

The following terms, and there are others which we have not listed below, will be implied by the SGA, unless the supply contract contains different terms:

#### (a) Merchantable quality

When goods are bought from a dealer in that type of goods, there is an implied condition that the goods will be of merchantable quality (unless the buyer has examined the specific goods and has not discovered a defect that the buyer should have discovered).

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*(b) Fitness for purpose*

When the buyer tells the seller the purpose for which the goods are being acquired, so as to demonstrate that the buyer is relying on the seller's skill and judgment, there is an implied condition that the goods will be reasonably fit for that purpose.

*(c) Sale by description*

When goods are sold by description, there is an implied condition that the goods will correspond with the description.

*(d) Sale by sample*

When goods are sold by sample, there are implied conditions that:

- the bulk of the goods will correspond with the sample in quality;
- the buyer will have a reasonable opportunity to compare the goods with the sample; and
- the goods will be free from defects rendering them unmerchantable that would not be reasonably apparent from an examination of the sample.

If it is not intended that these sort of terms are to apply, then the parties need to agree to the alternative terms.

**3. Fair Trading Act**

The FTA is designed to ensure business is conducted in a fair manner. Among its provisions, the FTA prohibits misleading and deceptive conduct; false representations concerning goods, services, land and trademarks; and a number of unfair trading practices. In terms of quality, the FTA prohibits false representations about:

- goods or services being a particular kind, standard, quality or quantity;
- goods or services having any sponsorship, approval, endorsement, performance, characteristics, accessories, uses or benefits.

A "representation" may be something said or written, something unsaid or an impression created.

**Selling forestry related goods to consumers****1. Consumer Guarantees Act 1993***(a) Overview*

The CGA imposes obligations on suppliers, manufacturers and some importers of goods – whether by way of gift, sale, exchange, lease, hire or hire purchase – and services to give as a matter of law (not as a matter of choice) certain guarantees in respect of the goods and/or services they supply.

Not all goods or services are covered by the guarantees in the CGA as its provisions protect "consumers". This term "consumer" has a special definition under the CGA and means a person who acquires, from a supplier, goods or services ordinarily acquired for personal, domestic or household use or consumption (note – a business could be regarded as a consumer under this definition). In the forestry context, this would include, for example, items

such as wooden furniture.

A person or business cannot seek the protection of the CGA where any goods or services are acquired for the purpose of:

- resupplying them in trade; or
- consuming them in the course of a process of production or manufacture; or
- in the case of goods, repairing or treating in trade other goods or fixtures on land.

It is an offence to contract out of the CGA unless selling goods to a consumer who acquires, or holds himself or herself out as acquiring, under the agreement, goods or services for the purposes of a business – in which case in some circumstances the seller can contract out of the CGA.

Private sales and goods supplied by auction or by competitive tender are excluded, as are goods and services supplied by charitable organisations for the purpose of benefiting the person to whom the supply is made.

*(b) Guarantees**(i) Guarantees given by suppliers*

Under the CGA every "supplier" of goods gives the following guarantees (there are also others which we have not listed below) about the goods supplied:

- that they are of "acceptable quality";
- that they are reasonably fit for the purpose specified by the consumer or represented by the supplier (except where the circumstances show that the consumer does not rely on the suppliers skill or judgment or it is unreasonable for the consumer to do so);
- that where goods are supplied by description they correspond with that description;
- where goods are supplied by reference to a sample or demonstration model that the goods correspond in quality with the sample or model and that the consumer has or will have a reasonable opportunity to compare them.

*(ii) Guarantees given by manufacturers*

The CGA imposes obligations on manufacturers and defines the term "manufacturer" as "a person who carries on the business of assembling, producing or processing goods". This includes persons holding themselves out to the public as the manufacturer of the goods and any person that attaches its brand or mark or allows its brand or mark to be attached to goods.

If goods are manufactured outside New Zealand and the foreign manufacturer does not have an ordinary place of business in New Zealand, the term "manufacturer" also includes a person who imports or distributes those goods.

Under the CGA every "manufacturer" gives the following guarantees (there are also others which we have not listed below) about its goods:

- That the goods are of "acceptable quality";
- Where the goods are supplied by description, that the goods correspond with that description.

*(c) Acceptable Quality**(i) General*

The guarantee both by suppliers and manufacturers that goods are of "acceptable quality" means that the goods must be fit for all the purposes for which the goods of that type are commonly supplied; are acceptable in appearance and finish; free from minor defects; safe; and durable having regard to:

- the nature of the goods;
- the price;
- any statements on the packaging or label;
- representations made about the goods by the supplier or manufacturer;
- all other relevant circumstances.

The overall test for acceptable quality is what a reasonable consumer fully acquainted with the state and condition of the goods would regard as acceptable.

*(ii) Exceptions*

There are a number of exceptions to the guarantee of acceptable quality from suppliers and manufacturers, for instance:

- where the goods have been used in a way inconsistent with the way a reasonable consumer would use the goods; or
- in the case of a manufacturer, it will not be liable if the reason the goods fail to comply with the guarantees of acceptable quality and correspondence with description is because of an act or default or omission of, or representations made by, others or because of something outside human control.

*(d) Consequences of Breach*

Where goods fail to comply with the guarantees implied by the CGA (apart from the guarantee as to price) the consumer may have the following remedies against the supplier:

- Where the failure may be remedied the supplier may be required to remedy within a reasonable time. This may involve the supplier repairing or replacing defective goods or alternatively, where this cannot be done, by giving the consumer a refund.
- Where the supplier is unable to remedy a failure or fails to do so within a reasonable time the consumer may have the failure remedied elsewhere and recover reasonable costs from the supplier or alternatively reject the goods and seek a refund or replacement goods.
- Where the failure cannot be remedied or amounts to a "substantial failure" the consumer may reject the goods, obtain a refund or damages.
- Where other loss is suffered as a result of the failure to comply with the guarantee additional damages may be obtained for losses which were reasonably foreseeable.

*(e) Important issues to consider*

- It is generally an offence to contract out of the CGA. Organisations should review their standard form supply contracts to ensure that they comply with the requirements of the CGA.
- The CGA does permit consumers to claim damages

against suppliers or manufacturers. This may include damages for consequential loss.

- Specific advice should be sought in relation to the particular nature of the guarantees implied under the CGA and how they affect individual companies.
- Consideration should be given to whether or not a company's existing insurance cover is adequate to cover repercussions which may arise for breach of the CGA, and whether staff have been given sufficient training in respect of their obligations under the CGA.

**2. Fair Trading Act**

The FTA requirements (as briefly outlined above) must also be complied with when selling forestry related goods to ordinary consumers.

**Concluding comments**

Organisations should be aware of the quality requirements implied by law when making a sale. When entering into any sale contract – whether in standard form or not – organisations should ensure that:

- where necessary, the quality requirements/expectations are clearly defined in the contract;
- in respect of supplying goods to other businesses, it is clear whether or not the SGA applies, or whether or not any of the SGA provisions are modified;
- in respect of supplying goods to consumers, they comply with the requirements of the CGA.

This might mean amending your standard form supply contract.

## Directory Promotes Professional Forestry Consultants

Ensuring professional forestry advice is readily available to meet the demands of a burgeoning forest resource is a key aim of a newly produced Directory of Registered Forestry Consultants.

The Directory has been produced by the NZIF Registration Board. Board Chairman and NZIF President Tim Thorpe said it was becoming increasingly important for all sectors dealing with forestry to be aware of the registered forestry consultants' process.

The Directory has been sent to a wide range of professionals, including accountants, lawyers, planners, resource managers and valuers, as well as libraries.

"With the New Zealand forest resource growing so rapidly over the next decade, it is imperative that those wishing to seek professional advice on forestry matters use the services of a registered forestry consultant."

The Directory lists only those forestry consultants who are registered with the NZIF. Listings are in alphabetical order and also by region, for ease of access by anybody wishing to contact a registered forestry consultant.