

LAY-BY SALES AGREEMENTS.

No. 9 of 1963.

An Ordinance relating to the Sale of Goods under Lay-by Sales Agreements.

Short title. 1. This Ordinance may be cited as the *Lay-by Sales Agreements Ordinance 1963*.*

Commencement. 2. This Ordinance shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.†

Interpretation. 3.—(1.) In this Ordinance, unless the contrary intention appears—

“goods” includes all chattels personal other than things in action and money;

“lay-by sale agreement” means—

(a) a sale of goods; or

(b) an agreement to sell goods,

under which it is agreed expressly or impliedly that—

(c) the goods will not be delivered to the buyer until the purchase price or a specified part of the purchase price is paid, whether or not any charge is payable for storage of the goods; and

(d) the purchase price or, where a deposit is paid, the balance of the purchase price—

(i) is to be paid by instalments, whether the number of instalments or the amount of all or any of the instalments is fixed by the agreement or is left to the option of the buyer; or

* Made on 25th April, 1963; notified in the *Commonwealth Gazette* on 9th May, 1963.

† The date fixed was 1st July, 1963; see *Commonwealth Gazette*, 9th May, 1963, p. 1617.

- (ii) is to be paid at the expiration of a fixed or ascertainable period with an option, expressed or implied, for the purchaser to make payments in respect of the purchase price during that period, but does not include an agreement to sell goods to which section eighteen of this Ordinance applies.

(2.) For the purposes of this Ordinance, the purchase price of goods shall be deemed to be the total amount of the moneys paid or payable for the goods and the value of any other consideration provided or to be provided to complete the purchase of the goods.

4.—(1.) Subject to this section, a person shall not agree to sell goods under a lay-by sale agreement unless the goods are in his possession at the time at which the agreement is made.

Agreements for lay-by sales of goods not in seller's possession.

Penalty: Where the offence is committed by a body corporate, Two hundred pounds; in any other case, One hundred pounds or imprisonment for six months, or both.

(2.) A person may agree to sell under a lay-by sale agreement goods not in his possession at the time at which the agreement is made if the agreement provides that—

- (a) the seller shall not accept any payment, other than a deposit not exceeding one-fifth of the purchase price of the goods, until the goods have been received into the possession of the seller, and have been inspected and approved by the buyer; and
- (b) any time fixed for the payment of the purchase price (other than the deposit) shall commence to run as from the day upon which the goods are so inspected and approved by the buyer.

(3.) The seller shall hold the moneys received in respect of a lay-by sale agreement of goods referred to in the last preceding sub-section exclusively for the benefit of the buyer to be disbursed as he directs.

Penalty: Where the offence is committed by a body corporate, Two hundred pounds; in any other case, One hundred pounds or imprisonment for six months, or both.

Terms and conditions to be reduced to writing.

5.—(1.) The seller under a lay-by sale agreement shall, at the time at which the agreement is made, reduce to writing the terms and conditions of the agreement, not being terms and conditions implied by this Ordinance or by the *Sale of Goods Ordinance 1954*.

Penalty: One hundred pounds.

(2.) An agreement made between the seller and the buyer under a lay-by sale agreement that varies, or adds to, the terms and conditions of the lay-by sale agreement as reduced to writing is voidable at the option of the buyer.

Records.

6.—(1.) A seller under a lay-by sale agreement shall keep the prescribed records and shall preserve those records for a period of twelve months after the completion or termination of the agreement.

Penalty: Where the offence is committed by a body corporate, Two hundred pounds; in any other case, One hundred pounds or imprisonment for six months, or both.

(2.) The prescribed particulars for the purposes of the last preceding sub-section are—

- (a) the name and address of the buyer of the goods;
- (b) a description of the goods;
- (c) the purchase price of the goods;
- (d) the date on which the lay-by sale agreement was made;
- (e) the amount of each payment made to him, under the lay-by sale agreement, by the buyer and the value of any other consideration provided to complete the purchase of the goods;
- (f) the date on which the goods were inspected and approved by the buyer; and
- (g) a number for the lay-by agreement.

7. A seller under a lay-by sale agreement shall deliver to the buyer, at the time the agreement is made—

Documents to be furnished to buyer.

- (a) a sales docket containing the following particulars:—
- (i) a description of the goods including, where the goods are second-hand goods, a statement that the goods are second-hand goods;
 - (ii) an itemised statement of the purchase price of each article comprising the goods; and
 - (iii) the recorded number of the lay-by sale agreement in the record kept by the seller under section six of the Ordinance; and
- (b) a copy, printed in type not smaller than ten-point Times and signed by the seller or by the person who enters into the agreement on his behalf, of the terms and conditions of the agreement as reduced to writing; and
- (c) a notice in writing containing a summary, in accordance with the form set out in the Schedule to this Ordinance, of the provisions of sections five, seven, twelve, fifteen, sixteen and seventeen of this Ordinance.

Penalty: One hundred pounds.

8.—(1.) A provision of a lay-by sale agreement whereby—

Avoidance of certain provisions.

- (a) the right conferred on the buyer by this Ordinance to determine a lay-by sale agreement is excluded or restricted or a liability in addition to the liability imposed by this Ordinance is imposed on the buyer by reason of the termination of a lay-by sale agreement;
- (b) the buyer is, after the determination of the lay-by sale agreement, subject to a liability that exceeds the liability to which he would have been subject if the lay-by sale agreement had been determined by him under this Ordinance;
- (c) a person acting on behalf of the seller in connexion with the formation or conclusion of any lay-by sale agreement is treated as, or deemed to be, the agent of the buyer; or

- (d) the seller is relieved from liability for the acts or defaults of any person acting on his behalf in connexion with the formation or conclusion of a lay-by sale agreement,

is void.

(2.) In this section, “lay-by sale agreement” includes an agreement supplementary to, or collateral with, a lay-by sale agreement.

Provision*for
“awards,” to
be void.

9.—(1.) A provision of a lay-by sale agreement made after the commencement of this Ordinance or of an agreement supplementary to, or collateral with, a lay-by sale agreement whereby the seller undertakes to deliver the goods sold or agreed to be sold without further payment or to release the buyer from liability for all or any of the payment due or to become due under the lay-by sale agreement upon conditions specified in the lay-by sale agreement or the agreement supplementary to or collateral with it shall be void.

(2.) A seller shall not enter into an agreement containing a provision referred to in the last preceding sub-section.

Penalty: Where the offence is committed by a body corporate, Two hundred pounds; in any other case, One hundred pounds or imprisonment for six months, or both.

Appropriation
of payments in
respect of lay-by
sales
agreements.

10.—(1.) Where a buyer is liable to make payments in respect of two or more lay-by sales agreements to the same seller and he pays to the seller in respect of the agreements a sum that is not sufficient to discharge the total amount due under all the agreements, the buyer may, notwithstanding any agreement to the contrary, direct the seller—

- (a) to appropriate the sum paid in or towards the satisfaction of the sum due under any one of the agreements;
- (b) to appropriate the sum paid in or towards the satisfaction of the sums due under two or more of the agreements in such proportions as the buyer specifies; or
- (c) to appropriate such portions of the sum paid as the buyer specifies in or towards the satisfaction of the sums due under such of the agreements as the buyer specifies,

and, if the seller fails to comply with the direction, the sum shall, notwithstanding the failure, be deemed to have been appropriated by the seller accordingly.

(2.) If the buyer does not give a direction under the last preceding sub-section, the sum paid by him shall be appropriated by the seller towards the satisfaction of the sums due under the respective lay-by sales agreements in the proportions that those sums bear to the total amount due under all the agreements, and, if the seller fails so to appropriate the sum, it shall, notwithstanding the failure, be deemed to have been so appropriated.

(3.) This section applies to, and in relation to, lay-by sales agreements whether the lay-by sales agreements were entered into before, or are entered into after, the commencement of this Ordinance.

11.—(1.) Subject to this Ordinance, the *Sale of Goods Ordinance* 1954 applies to a lay-by sale agreement.

Other laws
and conditions
and warranties.

(2.) In every lay-by sale agreement there is—

(a) an implied warranty that the buyer shall, after delivery to him of the goods, have and enjoy quiet possession of the goods;

(b) an implied condition on the part of the seller—

(i) in the case where the goods are in the possession of the seller at the time when the lay-by sale agreement is made—that he has a right to sell the goods; and

(ii) in the case where the goods are not in the possession of the seller when the lay-by sale agreement is made—that he will have the right to sell the goods which are inspected and approved by the buyer when they are inspected and approved;

(c) an implied warranty—

(i) in the case where the goods are in the possession of the seller at the time when the lay-by sale agreement is

made—that the goods are free from any charge or incumbrance in favour of a third party that is not declared or known to the buyer before or at the time when the contract is made; and

- (ii) in the case where the goods are not in the possession of the seller at the time when the lay-by sale agreement is made—that the goods when inspected and approved by the buyer will be free from any charge or encumbrance in favour of a third party that is not declared or known to the buyer before or at the time of inspection and approval; and

(d) subject to the next succeeding sub-section, an implied condition that the goods will, upon delivery, be of merchantable quality.

(3.) The condition referred to in paragraph (d) of the last preceding sub-section shall not be implied—

(a) where—

- (i) the goods are second-hand goods; and
- (ii) the sales docket relating to the lay-by sale agreement contains a statement that the goods are second-hand goods; or

(b) as to defects—

- (i) which the seller could not reasonably have been aware of at the time when the property in the goods passed; or
- (ii) which, where the seller has examined the goods, ought to have been revealed by the examination.

(4.) The seller under a lay-by sale agreement is not entitled to rely on a provision of the agreement excluding or modifying the condition specified in sub-section (2.) of section nineteen of the *Sale of Goods Ordinance* 1954 unless he proves that, before the agreement was made, the provision was brought to the notice of the buyer and its effect made clear to him.

12.—(1.) The seller under a lay-by sale agreement shall—

- (a) where the goods are in the possession of the seller at the time when the lay-by sale agreement is made—at that time; or

Seller to label and set aside goods after approval by buyer.

- (b) where the goods are not in the possession of the seller when the lay-by sale agreement is made—
at the time when they are inspected and approved by the buyer,

securely label the goods in the prescribed manner and shall set aside and keep the goods in his possession.

Penalty: One hundred pounds.

(2.) The prescribed manner, for the purposes of the last preceding sub-section is to attach securely—

- (a) where the goods are unwrapped—to the goods; or

(b) where the goods are wrapped—to the wrapping, a label stating the recorded number of the lay-by sale agreement in the records kept by the seller under section five of this Ordinance.

(3.) The seller shall, when requested to do so by the buyer or a member of the Police Force of the Territory, produce the goods and the records kept by him relating to the lay-by sale agreement for the inspection of the buyer or member of the Police Force.

Penalty: One hundred pounds.

(4.) Where a seller under a lay-by sale agreement fails to comply with sub-section (1.) or sub-section (3.) of this section, the lay-by sale agreement is voidable at the option of the buyer and, if the buyer avoids the lay-by sale agreement, the buyer is entitled to recover, as a debt due and payable to him by the seller, any moneys, being part of the purchase price, paid by the buyer under the lay-by sale agreement.

13.—(1.) The property in goods, the subject of the lay-by sale agreement, passes to the buyer—

- (a) where the goods are in the possession of the seller at the time when the lay-by sale agreement is made—at that time; or

(b) where the goods are not in the possession of the seller when the lay-by sale agreement is made—
at the time when they are inspected and approved by the buyer.

(2.) The passing of property in goods, the subject of a lay-by sale agreement, under the last preceding sub-section is conditional upon its re-vesting in the seller upon the determination of the lay-by sale agreement.

Passing of property and goods which have perished.

Non-delivery.

14. Where—

- (a) the time fixed for delivery by a seller of goods the subject of a lay-by sale agreement has passed; and
- (b) the seller does not deliver the goods upon request by the buyer,

the buyer may recover from the seller the amount that the buyer has paid under the agreement as a debt due and payable by the seller to the buyer, and, where the market or current price of the goods at the time fixed for delivery exceeds the purchase price, the amount of that excess.

Manner in which seller may determine lay-by sale agreement.

15.—(1.) A seller under a lay-by sale agreement shall not, in the exercise of a power expressly or impliedly conferred on him under the terms of the lay-by sale agreement, determine the lay-by sale agreement unless—

- (a) he has given notice of his intention so to do by serving on the buyer, at the last address of the buyer known to him, a notice of his intention to determine the lay-by sale agreement;
- (b) he has specified, in the notice, the date, not being a date earlier than fourteen days after the service of the notice, upon which he intends to determine the lay-by sale agreement; and
- (c) he has served on the buyer, at the time of serving the notice of his intention to determine the lay-by sale agreement, a statement in writing signed by him specifying—
 - (i) the purchase price of the goods under the lay-by sale agreement;
 - (ii) the amount of the storage charge, if any, at the date on which it is intended to determine the lay-by sale agreement;
 - (iii) the total amount of moneys paid, or the value of any other consideration provided, towards the purchase price by the buyer;
 - (iv) the amount that the seller estimates is sufficient to recoup him for selling costs in respect of the lay-by sale agreement;
 - (v) the balance payable by the buyer to complete the lay-by sale agreement; and

- (vi) the balance, if any, that the seller estimates to be the amount to be due, under section seventeen of this Ordinance, to the buyer or to the seller.

(2.) If, on or before the date specified in the notice as the date on which the seller intends to determine the lay-by sale agreement, the buyer tenders to the seller the balance due in respect of the purchase price of the goods and the storage charge under the lay-by sale agreement, if any, the seller shall deliver the goods to the buyer.

Penalty: One hundred pounds.

16.—(1.) A buyer under a lay-by sale agreement may, at any time before the lay-by sale agreement is completed or determined, determine the lay-by sale agreement by serving, at the place of business of the seller, a notice in writing of his intention to determine the lay-by sale agreement and, if the buyer so serves such a notice, the lay-by sale agreement shall be determined from the date of service of the notice, or, where a date later than the date of service is specified in the notice as the date on which the lay-by sale agreement shall be determined, from that later date.

Manner in which buyer may determine lay-by sale agreement.

(2.) Where—

- (a) the buyer has served a notice under the last preceding sub-section;
- (b) the buyer has served on the seller a request that the seller furnish him with a statement under this sub-section; and
- (c) the buyer has paid or tendered to the seller the sum of Two shillings,

the seller shall, within seven days after receiving the request, make available to the buyer a statement signed by the seller stating—

- (d) the purchase price of the goods under the lay-by sale agreement;
- (e) the amount of the storage charge, if any, at the date on which it is intended to determine the lay-by sale agreement;
- (f) the total amount of moneys paid, or the value of any other consideration provided, towards the purchase price by the buyer;

- (g) the amount that the seller estimates is sufficient to recoup him for selling costs in respect of the lay-by sale agreement;
- (h) the balance payable by the buyer to complete the lay-by sale agreement; and
- (i) the balance, if any, that the seller estimates to be the amount to be due, under the next succeeding section, to the buyer or to the seller.

Penalty: Ten pounds.

(3.) This section does not prejudice any right a buyer has under a lay-by sale agreement to determine the lay-by sale agreement otherwise than by virtue of this section.

Effect of
determination
of lay-by sale
agreement.

17.—(1.) Where, at the time of the determination of a lay-by sale agreement, the total of—

- (a) the amount of moneys paid by the buyer under the lay-by sale agreement;
- (b) the value of any other consideration provided by the buyer under the lay-by sale agreement; and
- (c) the value of the goods at the time of the determination of the lay-by sale agreement,

exceeds the total of—

- (d) the proportionate amount of the storage charge, if any, under the lay-by sale agreement, for the period for which the agreement has been in force;
- (e) an amount sufficient to recoup the seller for his selling costs in respect of the lay-by sale agreement; and

(f) the purchase price of the goods,

the buyer is entitled to recover from the seller the amount of the excess as a debt due and payable by the seller to the buyer.

(2.) If the total of the amounts specified in paragraphs (d), (e) and (f) of the last preceding sub-section exceeds the total of the amounts specified in paragraphs (a), (b) and (c) of that sub-section, the seller is entitled to recover from the buyer the amount of the excess as a debt due and payable by the buyer to the seller.

(3.) Except as provided by the last preceding sub-section, where a lay-by sale agreement is determined, the buyer ceases to be liable to make any further payments under the lay-by sale agreement.

(4.) Where a lay-by sale agreement has been determined under sections fifteen or sixteen of this Ordinance, the value of the goods at the time of the determination of the lay-by sale agreement shall be deemed to be—

- (a) the purchase price of the goods; or
- (b) the retail market selling price of the goods at the time of the determination, assuming, in a case where the condition of the goods has deteriorated since the time when the property in the goods passed to the buyer, that their condition has not deteriorated,

whichever is the less.

18.—(1.) In this section—

“buyer” includes a person to whom the rights and liabilities of a buyer have passed by assignment or by operation of law;

“seller” includes a person to whom the rights and liabilities of a seller have passed by assignment or by operation of law.

Moneys received under certain agreements to be maintained in trust account.

(2.) This section applies to an agreement to sell goods under which it is agreed, expressly or impliedly, between the seller and the buyer that—

(a) the purchase price, or, where a deposit is paid, the balance of the purchase price—

(i) is to be paid by instalments, whether the number of instalments or the amount of all or any of the instalments is fixed by the agreement or is left to the option of the buyer; or

(ii) is to be paid at the expiration of a fixed or ascertainable period with an option, express or implied, for the buyer to make payments in respect of the purchase price during that period; and

(b) the buyer shall, at a time subsequent to the date of the agreement, make a selection of the goods to be accepted by him in pursuance of the agreement, whether or not the buyer indicates at the date of the agreement a choice or preference in relation to the goods or the type or class of goods to be selected by him.

(3.) The seller shall be deemed to hold all moneys received by him under an agreement to which this section applies in trust for the buyer to be disbursed as the buyer directs, and, until the

moneys are so disbursed, the seller shall maintain them in a trust account, whether general or separate, with a bank in the Australian Capital Territory.

(4.) Moneys maintained in a trust account in accordance with the last preceding sub-section are trust moneys and are not available for the payment of the debts of the seller to any other creditor of the seller or liable to be attached or taken in execution under an order or process of any court at the instance of any such other creditor, but nothing in this section takes away or affects any just claim or lien that the seller may have against or upon those moneys.

(5.) Subject to the next succeeding sub-section, a bank shall not, in connexion with any transaction in relation to any account of a seller kept with it or with any other bank, incur any liability or be under any obligation to make an inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to such an account that it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it, but nothing in this sub-section relieves a bank from any liability or obligation to which it would be subject apart from this Ordinance.

(6.) Notwithstanding anything in the last preceding sub-section, a bank at which a seller keeps an account for buyers' money shall not, in respect of any liability of the seller to the bank, not being a liability in connexion with that account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against moneys standing to the credit of that account, but nothing in this sub-section deprives a bank of any right existing at the commencement of this Ordinance.

Penalty: Where the offence is committed by a body corporate, Two hundred pounds; in any other case, One hundred pounds or imprisonment for six months, or both.

Contracting
out
prohibited.

19. The provisions of this Ordinance apply notwithstanding any stipulation to the contrary whether made before or after the commencement of this Ordinance.

Regulations.

20. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters that by this Ordinance are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance and, in particular, prescribing penalties not exceeding Fifty pounds for offences against the regulations.

THE SCHEDULE.

Section 7.

AUSTRALIAN CAPITAL TERRITORY.

SUMMARY OF SECTIONS 5, 7, 12, 15, 16 AND 17 OF THE LAY-BY SALES AGREEMENTS ORDINANCE.

1. The seller of goods under a lay-by sale agreement is required to hand to the buyer, at the time the agreement is made, the following documents:—

- (a) a sales docket stating a description of the goods including, where the goods are second-hand goods, a statement that the goods are second-hand goods, the price of the goods and the recorded number of the lay-by sale agreement;
- (b) a copy, signed by the seller or the person who enters into the agreement on his behalf, of the terms and conditions of sale, not being terms and conditions implied by law; and
- (c) a copy of this Summary.

2. Any agreement made between the seller and buyer varying, or adding to, the terms and conditions of the lay-by sale agreement, as stated in the copy of them handed to the buyer at the time of the making of the agreement, is voidable at the option of the buyer.

3. The buyer has the right to inspect, at any reasonable time, the goods that have been labelled and set aside for him under the lay-by sale agreement and the entry relating to the lay-by sale agreement in the records of lay-by sales agreements kept by the seller. If the seller fails to label and set aside the goods after they have been approved by the buyer or to allow the buyer to inspect the goods or the records relating to the lay-by sale agreement, the buyer may avoid the lay-by sale agreement and claim the return of any moneys he has paid to the seller.

4. Notwithstanding any agreement to the contrary, a seller shall not, in the exercise of a power expressly or impliedly conferred on him under the terms of a lay-by sale agreement, determine the lay-by sale agreement unless—

- (a) he gives notice of his intention so to do by serving on the buyer, at the last address of the buyer known to him, a notice of his intention to determine the lay-by sale agreement;
- (b) he specifies, in the notice, the date, not being a date earlier than fourteen days after the service of the notice, upon which he intends to determine the lay-by sale agreement;
- (c) he serves on the buyer, at the same time as he serves the notice of his intention to determine the lay-by sale agreement, a statement in writing signed by him specifying—
 - (i) the purchase price of the goods under the lay-by agreement;
 - (ii) the amount of the storage charge, if any, at the date on which it is intended to determine the lay-by sale agreement;
 - (iii) the total amount of moneys paid, or the value of any other consideration provided, towards the purchase price by the buyer;
 - (iv) the amount that the seller estimates is sufficient to recoup him for selling costs in respect of the lay-by sale agreement;
 - (v) the balance payable by the owner to complete the lay-by sale agreement; and
 - (vi) the balance, if any, which the seller estimates to be the amount to be due to the buyer in accordance with clause 8 of this Summary.

5. If, on or before the date specified, in the notice of intention to determine the lay-by sale agreement as the date on which the seller intends to determine the lay-by sale agreement, the buyer tenders to the seller the balance due in respect of the purchase price of the goods and the storage charge under the lay-by sale agreement, if any, the seller shall deliver the goods to the buyer.

6. Notwithstanding any agreement to the contrary, the buyer may, at any time before the lay-by sale agreement is completed or determined, determine the lay-by sale agreement by serving, at the place of business of the seller, a notice in writing of

his intention to determine the lay-by sale agreement and, if the buyer so serves such a notice, the lay-by sale agreement shall be determined from the date of service of the notice, or, where a date later than the date of service is specified in the notice as the date on which the lay-by sale agreement shall be determined, from that later date.

7. If—

- (a) the buyer serves on the seller a notice in writing of his intention to determine the lay-by sale agreement;
- (b) the buyer requests the seller to furnish him with a statement under subsection (2.) of section 16 of the Lay-by Sales Agreements Ordinance; and
- (c) the buyer pays or tenders to the seller the sum of Two shillings,

the seller shall, within seven days after receiving the request, make available to the buyer a statement signed by the seller stating the same particulars in respect of the lay-by sale agreement as are required in the statement that the seller is required to serve on the buyer if the seller intends to terminate the lay-by sale agreement (see paragraph (c) of clause 4 of this Summary).

8. Where, at the time of the determination of a lay-by sale agreement, the total of—

- (a) the amount of moneys paid by the buyer under the lay-by sale agreement;
- (b) the value of any other consideration provided by the buyer under the lay-by sale agreement; and
- (c) the value of the goods at the time of the determination of the lay-by sale agreement,

exceeds the total of—

- (d) the amount of the storage charge, if any, under the lay-by sale agreement;
- (e) an amount sufficient to recoup the seller for his selling costs in respect of the lay-by sale agreement; and
- (f) the purchase price of the goods,

the buyer is entitled to recover from the seller the amount of the excess as a debt due and payable by the seller to the buyer.

9. Where the total of the amounts specified in paragraphs (d), (e) and (f) of clause 8 exceeds the total of the amounts specified in paragraphs (a), (b) and (c) of that clause, the seller is entitled to recover from the buyer the amount of the excess as a debt due and payable by the buyer to the seller.

10. Except as provided in clause 9, where a lay-by sale agreement is determined, the buyer ceases to be liable to make any further payments under the lay-by sale agreement.

11. Where a lay-by sale agreement has been determined under sections 15 or 16 of the Lay-by Sales Agreement Ordinance, the value of the goods at the time of the determination of the lay-by sale agreement shall be deemed to be—

- (a) the purchase price of the goods; or
- (b) the retail market selling price of the goods at the time of the determination, assuming, in a case where the condition of the goods has deteriorated since the time when the property in the goods passed to the buyer, that their condition has not deteriorated,

whichever is the less.