Legal aspects connected with Purchase transactions are covered by the Indian Sale of Goods Act 1930 and the Indian Contract Act 1872. The main difference between General Law and Purchase contract is that in the latter, the buyer and the seller lay down laws themselves.

In what follows, we shall examine some basics, outline some salient provisions of these acts and related case laws on the subjects which, we think, will be of some use to purchasing personnel.

1. **WHAT IS A CONTRACT**

   There has to be:
   
a) A proposal or an offer (Terms & Conditions definite and not loosely worded).
b) An acceptance of offer – in toto.
c) Consideration – Act when done, promised to be done or not done.
d) Proposal when accepted becomes a promise.
e) Promise with consideration becomes an agreement.
f) Agreement with enforcement becomes a contract.

2. **OFFER / INVITATION TO OFFER**

   Printed price list and catalogue of price are offers whereas notice of tender or a price on a show room is only an invitation to offer.

3. **YOU CAN’T CHANGE TERMS OF OFFER**

   An offer from a seller become a binding contract only when the buyer accepts it and intimates the seller of such acceptance. The offer must be accepted on the terms on which it is made. Alternations to these terms is tantamount to a rejection of the original offer and the making of a counter offer.

   Acceptance of an offer or counter may not necessarily be by express understanding buy may be implicit in subsequent conduct of either party.

   It follows, therefore, that once you ask a tenderer for reduction of price or modification of any other term that tender is off the look as far as his original offer is concerned. However, a mere enquiry whether the tenderer will modify his terms may not amount to counter proposal.

4. **REVOCATION OF PROPOSAL AND ACCEPTANCE**

   A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, i.e. before the acceptance is put in a course of transmission to his so as to be out of the power of the acceptor, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance comes to the knowledge of the proposer, but not afterwards.
For example, “A” proposes, by a letter sent by post, to sell his property to “B” and “B” accepts the proposal by a letter sent by post. “A” may revoke his proposal at any time before “B” posts his letter of acceptance, but not afterwards, “B” may revoke his acceptance at any time before the letter communicating it reaches “A”, but not afterwards.

A party who gives time to another to accept or reject an offer is not bound to wait till the time expires.

5. ESSENTIALS OF VALID CONTRACT

a) Proposal and acceptance.
b) Consideration – legally enforceable (possibility of performance)
c) Capacity of the person to enter into contract (major in age and sound in mind)
d) Free consent (not be coercion, fraud, mistake, misrepresentation, undue influence).

• Legal impossibility:

Under the Indian Contract Act, an agreement to do an impossible act is a void. However, any unexpected snag does not necessarily mean legal impossibility. Impossibility as an excuse for non-performance must, as a general rule, be physical or legal impossibility and not merely an impossibility with reference to the ability and circumstances of the promisor. The act must be not merely impossible for the promisor but impossible in itself. The law does not grant relief on the plea of impossibility merely because a supplier cannot make a product or do a job at the price he had figured.

6. DISCHARGE OF A CONTRACT

a) A contract terminates by performance.
b) When the time limit or value limit is reached.
c) Discharge by tender or attempted performance.
   (By notifying their inability to perform further)
d) Release – Release by acceptance by the buyer. If delivery schedule for quality stipulation is not maintained, the buyer may revoke the contract and may file a suit for damage.

MEASURE OF DAMAGE

The amount of money to be given for reparation of damages suffered will be as nearly as possible to the amount which will place the aggrieved party in the same position as he would have been if he had not sustained the wrong for which he is getting the damages.

The law, however, requires that the party claiming damages shall have taken all reasonable steps to mitigate the loss consequent on the breach and debar him from claiming any part of the damages resulting from his neglect to take such steps.

Damages which would not arise from a breach according to the usual course of things but which do arise in circumstances peculiar to a special cases are not recoverable unless these special circumstances had been made known to the person who breaks the contract and such damages had been in the contemplation of the parties at the time of entering into the contract.
7. **LIQUIDATED DAMAGES AND PENALTY**

Distinction between liquidated damages and penalty to overcome the difficulty regarding the assessment of damages upon a breach, the parties may, for the sake of convenience, reduce the damages to certainty for themselves by stipulating in the contract itself an agreed sum of a certain rate at which damages are to be assessed. If the amount thus stipulated is the genuine pre-estimate of the damage, it is known as liquidated damages.

If, on the other hand, the amount is extravagant and unconscionable in comparison with the greatest loss that could have followed from the breach, it would be considered a penalty. Also, when a single lump sum is made payable on the occurrence of one or more, or all or several events, some of which, may cause serious and others only trifling, damages, it may be presumed to be a penalty.

The above distinction is according to the English Law. Under the Indian Contract Act, there is no such distinction and the sum mentioned is not to be taken as liquidated damages. It is left to the court to ascertain the actual loss and award the same. The amount, however, is not to exceed the sum stipulated in the contract.

**SALE OF GOODS ACT**

1. Concerns itself with only goods and not services, etc.

**CONTRACT OF SALE:**

A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer.

2. **ESSENTIALS OF SALE OF GOODS ACT**

a) There must be some goods.

b) They must be exchanged for some money considerations called the price.

c) Buyer and seller must be two different persons.

d) Property in the goods must pass from the seller to the buyer.

3. **GOODS**

a) Existing, owned and possessed by seller at the time of the contract.

b) Future goods – to be manufactured or acquired by the seller after contract of sale.

4. **ASCERTAINMENT OF PRICE**

Purchase contract should stipulate the price to be paid or the manner in which the price is to be fixed. There is no contract where the buyer’s promise is to pay a sum to be thereafter agreed upon. If the parties agree that the price shall be as subsequently agreed upon between them, without stipulating the manner in which it will be agreed upon, a contract of sale does not exist, since the parties have reserved an option to themselves as to the price and thus excluded by implication the rule of reasonable price.
5. STIPULATION OF TIME

The Indian Sale of Goods Act lays down that “Unless a different intention appears from the terms of the contract, stipulations as to the time of payment are not deemed to be of the essence of contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contracts”.

The law considers stipulations regarding time of payment as mere warranties and not as conditions. The reason of the rule is that failure in punctual payment does not affect the whole consideration for the sake, i.e. it does not make it without consideration.

However, where the contract is for delivery of goods by instalment and each instalment to be paid for delivery, the failure to pay for one instalment, if time of payment for each instalment is of the essence of the contract, entitles the seller to repudiate the contract.

In determining whether time of payment was of the essence of the contract, the court will consider not only the intention of the parties as expressed in the contract but also the course of dealing between the parties of usage, surrounding circumstances, equitable considerations, etc.

6. CONDITION AND WARRANTY

A stipulation in a contract of sale with reference to goods which are the subject thereof may be either a condition or a warranty.

When the stipulation is essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated, it is a condition. When the stipulation is collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated, is a warranty.

7. SALE BY DESCRIPTION

If a contract is for the sale of goods by description, there is an implied condition that the goods shall correspond to the description. It is always desirable that description in purchase contracts are clear and complete so as to establish, without doubt, what is required. Whenever possible, the description may, with advantage, include reference to:

a) national or international standard specification to which the goods should conform;

b) the intended end-use for which they shall be suitable;

c) tests which the material will have to pass; and

d) drawings giving dimensional tolerances, finish fit, etc. as required.

8. GUARANTEE AND WARRANTY

Warranty has been explained earlier.

Guarantee is an additional, collateral or conditional contract as distinguished from an original or absolute contract. In furnishing a Guarantee, the promiser undertakes to be answerable to the promisee for the debt, default, etc. of another person whose primary liability to the promisee himself exists or be contemplated. Guarantee is usually furnished by a Bank and is called Bank Guarantee.
9. SECURITY DEPOSIT AND EARNEST MONEY

Forfeiture of security deposits / earnest money paid the defaulting party in a contract is not considered as penalty if the amount bears a small reasonable proportion to the price. However, if the earnest money constitutes a large part of the price, stipulation for its forfeiture would be in the nature of a penalty. In such a case, forfeiture may not be permitted and the court may award only reasonable compensation.

10. ARBITRATION

This is a conventional method of settling buyer / seller disputes. It is quicker and less expensive than litigation. Besides, it does not leave the rancour and ill-feeling between parties common after protracted legal proceedings.

To get these benefits, however, your supplier has to agree and you must write an arbitration clause in the purchase contract.

Once such a clause has been stipulated in the contract, the court will not entertain any suit unless the process of arbitration has been exhausted. Arbitrators appointed under the respective law have almost similar authority as the courts to call for evidence, examine witness, etc. The arbitration award is binding and enforceable on the parties concerned.