What is a "Romalpa" Clause?

A "Romalpa" Clause is a "retention of title" clause commonly used in sale of goods contracts, which reserves ownership of goods sold to the seller until the buyer has paid for the goods (or all goods the subject of a particular contract).

This means that a seller of goods has priority over mortgages, charges and debenture registered against a buyer's assets. If the buyer agrees that ownership of goods does not pass until, for example, full payment to the seller and also that the seller may retake possession of the goods if the buyer goes insolvent, then the seller may retake possession in that instance and the goods would be secure against a liquidator or bankruptcy trustee.

A seller should consider whether to register a charge against the goods the subject of the contract in order to have evidence of this to the world at large.

If goods have become mixed with those of other suppliers or lose their identity and can't be identified as belonging to the seller, then a Romalpa clause will not help a seller.

A typical Romalpa clause could read:

> "*Property in and title to the goods shall remain with the seller and does not pass to the customer until all monies payable pursuant to this contact (including any interest, freight or insurance charges) have been paid to the seller. The goods shall be at the customer's risk immediately upon delivery.*"

> ***Case Study***
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> *Our client designed and built housings for large plasma screens for in-store installations in a major retail chain. The major retailer was a blue chip client, but our client was dealing with an intermediary who was much smaller and who had the contract to do the shop fit-out. Our client built the housings and delivered them to the intermediary, who accepted them and in turn transported them to the retailer. So far so good - but the items were delivered to the intermediary on 30 day terms, and after the 30 days had elapsed no payment was forthcoming.*
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> *After a number of increasingly terse exchanges between our client and the intermediary it became apparent that the intermediary had been paid for the housings but had used the money for other purposes and was not in a position to pay our client the amount due. Our client's only remedy was to take action to collect the amount of the debt outstanding, but if the intermediary proved to be insolvent then it would be in the same queue as all other creditors and would only be entitled to payment on a pro-rata basis from any money generated by the liquidation. Liquidations typically produce a very low return for creditors, so this was not a good position for our client. As at the date of this article the matter remains unresolved between the parties.*

If our client had incorporated a Romalpa clause in its contract of sale (needless to say we didn't draft that contract) then it would have been able to lay claim to the actual housings which had been built, as property in those housings would not have passed to the intermediary and therefore couldn't pass to the retailer. If our client had been able to negotiate with the blue-chip retailer on the basis that the housings still belonged to our client then there would have been an opportunity to either work with the retailer to put pressure on the intermediary to pay the amount due, or to have the retailer pay our client directly for the housings and for the retailer to then seek recovery of the double payment from the intermediary.

Romalpa clauses do create some interesting enforcement issues, but they have the potential to considerably improve a creditor's position in a debt collection scenario and they are generally not complicated to add into a company's existing contracts.

Every contract involving the delivery of physical goods should contain a Romalpa clause.

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