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Fact Sheet

Standard Terms and Conditions (ST) on a B-to-B level Denmark (per September 2012)

1. How must ST be made applicable on business contracts?	<p>The legal analysis whether the STs are applicable is based on general principles of contract law (offer and acceptance).</p> <p>The court's interpretation will be based on the facts before it. Is the content of the ST unusual/onerous the courts will be strict in their interpretation as to whether they are applicable. It therefore often requires a clear agreement before the courts finds unusual/onerous ST agreed between the parties.</p> <p>If the ST on the other hand is commonly adopted in the industry the courts will more relaxed when reviewing the ST.</p>
2. Is there a requirement to highlight unusual, or particularly onerous clauses in ST in order for these clauses to be valid?	<p>As mentioned above the courts will be strict in their interpretation of whether unusual/onerous ST are applicable.</p> <p>It is therefore advisable to highlight unusual/onerous ST if you want to ensure that the ST are applicable as intended.</p>
3. Can clauses in ST be challenged by the contract partner once the contract has been entered into?	<p>If the ST are agreed between the parties it comes down to general contract law whether or not the clauses in the ST can be challenged by the contract partner once the contract has been entered into.</p> <p>The relevant section in this context is section 36 of the Contracts Act. According to this an agreement including ST can be revised or set aside if they are considered unfair.</p> <p>It should be pointed out that the courts are reluctant to use this provision in agreements between businesses.</p>
4. Must the ST be registered at the Chamber of Commerce or other authority?	No
5. What if the contract is concluded electronically?	<p>As a starting point the validity of contracts including ST concluded electronically is based on the general rules in the Contracts Act.</p> <p>Therefore it comes down to whether or not the courts finds that the ST have been agreed between the parties. With contracts concluded electronically including ST the courts will look at content of the ST (are they unusual/onerous or not) and whether it was clear for the counterparty that the ST formed a part of the agreement.</p> <p>It is important to note when contracts are concluded electronically with consumers the consumers are in general protected by a different set of statutory rules.</p>
6. How does the law deal with a "battle of the forms", meaning a situation in which both parties seek to incorporate their own ST into the contract	<p>It is not possible to give a general answer to this question as it will depend on an analysis of the individual case.</p> <p>Bearing this in mind the starting point will be that the ST applicable will be those sent last in the exchange of terms that have remained uncontested.</p>

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