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**Standard Terms and Conditions (ST) on a Business to Business (B2B) level  
England /United Kingdom - September 2012**

1. How must ST be made applicable on business contracts?	<p>Standard terms will only be effective if they have been properly incorporated into the contract, even in B2B situations.</p> <p>If standard terms are set out or expressly referred to in a contract that both parties sign, it can be assumed that the standard terms have been so incorporated. In practice, more often than not, this will not be the case, and the owner of the standard terms will therefore need to establish that the standard terms were communicated to the other party before the agreement was concluded and that the other party accepted their incorporation. Often, agreement will not be express but implied by subsequent conduct of the parties – so that evidence of conduct may be critical to the outcome of any dispute resolution process.</p>
2. Is there a requirement to highlight unusual or particularly onerous clauses in ST in order for these clauses to be valid?	<p>If a contract contains a particularly onerous or unusual clause, this clause should be brought to the attention of the other party. There are no specific requirements as to how this should be done. There are however many examples of “best practise” guides published from various sectors which demonstrate that a clear advance reference to such onerous terms is desirable in the event of later legal challenge.</p>
3. Can clauses in ST be challenged by the contract partner once the contract has been entered into?	<p>Clauses that fail the reasonableness test set out in the Unfair Contracts Terms Act may be challenged.</p>
4. Must the ST be registered at the Chamber of Commerce or other authority?	<p>No.</p>
5. What if the contract is concluded electronically?	<p>The legal analysis whether the STs are applicable is based on contract law (offer and acceptance) and the analysis is not different in principle in this scenario.</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>When faced with a battle of the forms, the courts will apply the traditional English offer and acceptance analysis, which holds that a contract is formed when an offer is made by one party and is unequivocally accepted by another party in words or by conduct.</p>

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