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Standard Terms and Conditions (ST) on a B-to-B level – The Netherlands (August 2012)

1. How must ST be made applicable on business contracts?	Applicability of ST on a contract must be agreed upon. It is necessary to hand over (or send) the ST to the other party before or upon conclusion of the contract unless this is reasonably impossible. If no sufficient opportunity was offered to the other party to take notice of the contents of the ST, that party can claim annulment of (parts of) the ST.
2. Is there a requirement to highlight unusual, or particularly onerous clauses in ST in order for these clauses to be valid?	No. Small companies however may benefit from consumer protection rules with respect to unreasonably pressing regulations, which at the request of such a small company may be declared void by a court of law.
3. Can clauses in ST be challenged by the contract partner once the contract has been entered into?	Yes. A clause in ST can be challenged before the court on two grounds: a. if the clause (taking into account the nature and the other terms of the contract, how the conditions are established, the knowable mutual interests of the parties and the other circumstances of the case) is unreasonably onerous for the other party; b. if no sufficient opportunity was offered to the other party to take notice of the contents of the ST., that party can claim annulment of (parts of) the ST.
4. Must the ST be registered at the Chamber of Commerce or other authority?	No. It is possible and customary but not required to register ST at a District Court or at the Chamber of Commerce. However such registration is not an alternative to the prescribed handover of the ST as described above. This is only different if handing over a copy of the ST to the other party is reasonably impossible (a common example of which is the purchase of a train ticket). Only in such case reference to ST (either registered at the Court or Chamber of Commerce, or downloadable on internet) may be sufficient.
5. What if the contract is concluded electronically?	Then the ST may be presented electronically as well, in such a way that the ST can be stored electronically and re-opened later. If it is reasonably impossible to send the ST to the other party the user of the ST may refer to an electronic location where the ST are stored and available for downloading.
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?	The second referral to ST does not apply if the referring party does not expressly object to application of the ST first referred to.

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