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Fact Sheet Standard Terms & Conditions (ST) – Spain (2013, March)

<p>1. How must ST be made applicable on business contracts?</p>	<p>According to the article 5 of the Spanish Law on the General Terms and Conditions, the ST will only become effective if the acceding party agrees and the document is signed by both parties.</p> <p>When the contract does not require the written form, and the user of the terms and conditions provides a justification of the consideration received, it will be enough if the acceding party had the possibility of knowing about the existence and the content of the ST during the conclusion of the contract.</p>
<p>2. Is there a requirement to highlight unusual or particularly onerous clauses in ST in order for these clauses to be valid?</p>	<p>There is no particular provision in the Spanish Law in this sense.</p> <p>However according to the law those unreadable, ambiguous, unclear or incomprehensible clauses – therefore surprising – must be considered as “not incorporated”, except if the acceding party has expressly accepted them.</p>
<p>3. Can clauses in ST be challenged by the contract partner once the contract has been entered into?</p>	<p>Yes. There is the possibility to issue legal action in case the clauses do not comply with ST law or other imperative laws, normally consumer law.</p> <p>In some particular cases, the Spanish Law considers clauses in ST, such as choice of jurisdiction clauses, as not valid.</p>
<p>4. Must the ST be registered at the Chamber of Commerce or other authority?</p>	<p>There is the possibility but it is not an obligation. All the ST can be registered in the Registry of General Conditions, which is a section of the Registry of Movable Assets.</p>
<p>5. What if the contract is concluded electronically?</p>	<p>In this case, it is necessary to prove the acceptance of all the terms of the contract. The contracting party must receive a written communication concerning the contract conclusion that contains all the contractual terms.</p> <p>The Spanish e-commerce law (Law for the Information Society and Electronic Commerce Service) regulates the obligations of the “service provider” in the electronic commerce in detail.</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?

First of all we must remark that the solution will depend on the particular circumstances of the case.

Although there are many positions in the Doctrine, the Spanish Supreme Court has applied the following rule: The form received in second place has to be considered a counteroffer. Therefore, if accepted by the other part, either expressly or tacitly, it will be considered the final text of the contract.

This would also apply for international sales of goods (article 19 of the 1980 Vienna Convention).

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