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Fact Sheet: Terms and Conditions on a B-to-B level – GERMANY (July 2012)

1. How must ST be made applicable on business contracts?	Standard T & C are incorporated when a copy of the T & C is provided to the contracting partner or if the contracting partner has the opportunity to take notice of the T & C <u>before</u> or at closing of the contract. On a B-to-B level it is sufficient if the contracting partner refers to the T & C on the website. (If CISG applies, a copy needs to be handed over!)
2. Is there a requirement to highlight unusual, or particularly onerous clauses in ST in order for these clauses to be valid?	Yes. According to § 305 c German Civil Code (BGB) clauses are considered invalid, which are unusual or surprising for the contracting party.
3. Can clauses in ST be challenged by the contract partner once the contract has been entered into?	Yes. The contracting partner has the possibility to have the validity of a clause examined by a court. As a general rule, the court weighs up the conflicting interests to establish whether the user of the T & C has a unilateral unfair advantage which conflicts with the regulations of the German Civil Code. In this case the clause may be mitigated or nullified.
4. Must the ST be registered at the Chamber of Commerce or other authority?	No, there are no obligations to register terms and conditions.
5. What if the contract is concluded electronically?	The user may refer the contract partner to a web page where the ST can be found and downloaded. If the contracting partner requests a copy of the T & C the user has to provide him with a copy of the T & C.
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?	If both parties incorporate contradicting T & C only German statutory provisions apply.

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