#### Bierens Law

1

3

Webinar: Legal proceedings, general conditions and insolvencies : Dutch & French perspectives

French Desk Bierens Law, December 8, 2020



2

#### **Terms & conditions**

Poll 1: From your Dutch flower bulb company you have been in contact with a company in France that was interested in buying 100,000 flower bulbs. You have drawn up an agreement in which, among other things, reference is made to the general terms and conditions. The general terms and conditions have been sent with the agreement by email to the French company. The agreement states that half of the purchase price must be paid down and the other half must be paid after delivery. The French buyer has paid half of the purchase price.

The contract has been concluded. The only question is, do the terms and conditions apply? Yes or no?



## **Terms & conditions - Netherlands**

- What are terms and conditions General arrangements (6:231 BW)
  Limiting risks
- Non-payment
   Procedures

  - Insolvencies



Bierens Lav

4





#### **Terms & conditions**

· What you can arrange in the general terms and conditions

- Competent court
- Applicable law Interest (1-1,5% per month)
- (Collection) Costs (up to 15% of outstanding amount) Retention of Title
- Limitation of liability .
- Force majeure

Bierens Lav

7

# **Terms & conditions - Netherlands** What you can arrange in the general terms and conditions Competent court • Benefits • Distance • Language • Costs • Duration • Interpretation Applicable law • Benefits • Knowledge • Interpretation Bierens 8

### Terms & conditions - France · What are Terms and conditions? A unilateral contract established by the seller to regulate contractual relations. Contractual relations. B2B: article L.444-1 du Code de commerce Mandatory or not? Yes if the client is a consumer (Article L.111-1 and following of Code de la consommation)

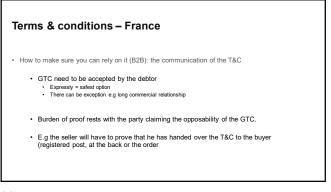


9

#### Terms & conditions - France

- · How to make sure you can rely on it
  - · No form required by law
  - · However, a verbal information is not sufficient.
  - Take into consideration wether you have a contract with the buyer for the legal act e.g
     the sell or not.
  - · Make sure they are known by the debtor before the sell itself

10





#### Terms & conditions- comparison

#### Netherlands

- · Easy applicability
- Easy acceptance (explicitly and tacitly) · Before or together with the agreement
- France
- Proof of knowledge and acceptance of the GTC's is required.
   In some cases it can be implicit (long business relations, GTC on the back of a paid invoice ...)
- Before the agreement
- Strict conditions for applicability.

Answer poll 1

14

#### And international law?

- Vienna Sales Convention (CISG)
- European Directive
- Battle of forms ?

15

13

#### Procedures

Poll 2:

The Dutch flower bulb company has a dispute with the French company. Where do you think the court fees are lowest, the Netherlands or France?

16



# **Procedures - Netherlands** Compensation of procedural costs Actual compensation for bailiff and court fees Fixed fee for lawyer costs (depending on the amount of the claim)



Bierens La

#### **Procedures - France**

- Order of payment (injonction de payer)
- Fast track procedure (Référé provision)
- Proceedings on the merits (Procédure au fond)
- Summons for bankruptcy proceedings (Assignation en redressement/liqudiation judiciaire)

19



#### **Procedures – France**

- Compensation of procedural costs
  - Article 700 : It is an article that allows te judge to decide freely how much money the loosing party should pay to the winning one. It is often used topunish those who start a procedure without trying to solve the problem out of court. For really disputed cases it is often symbolic. Made to compensate lawyers fee (usually between 1500 and 2500 €)
  - Dépens : These are the costs paid to the court. In France it is almost free to start a judicial procedure (costs vary between 30 and 80 € depending on the procedure and th court)

20

Procedures - comparison

 Netherlands

 • Oral or in writing

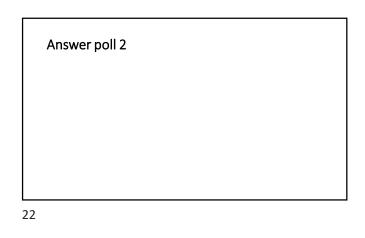
 • Administrative procedure

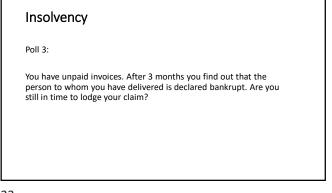
 • Lawyers and parties are heard

 • Much higher court fees

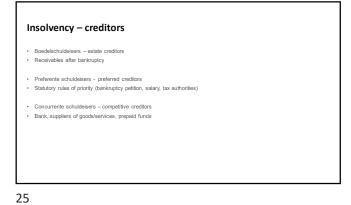
 • Much higher court fees

• Only the lawyers are heard by the court (not the parties)
• Almost no court fees
• Use the second s







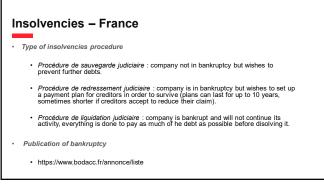


Insolvency - Netherlands • What if my supplier or customer goes (almost) bankrupt? • Alternative supplier? • Fnancial consequences • Contractual • Insolvency clause • Damage clause • Guarantees (bank, group, personal) • Collateral clause • Unbind and pick up?

26









- What to do if my customer goes bankrupt ?
  - Publication of the bankruptcy on BODACC
  - The debtor is forbidden to pay any debt dating before the opening of the bankruptcy proceedings (Art L 622.7 French Commercial code)

DEBT

Register the claim (2 months for a french to french company – 4 months for a company established outside France)

#### **Insolvency – Creditors**

· Order of the creditors

- 1. Creditors with a retention of title
- 2. Creditors prior to the opening of the insolvency proceedings
  3. Creditor post opening of the insolvency proceedings

31

#### Insolvency - Retention of title - Clause de réserve de propriété

- · Why is a retention of title clause in the terms and conditions relevant
  - Debtor is forbidden to pay. However, rentention of title can lead to a right of reclamation droit de revendication
  - Clause needs to be agreed by the parties in writting at the latest during the delivery of the goods (L 624-16 French commercial code).
  - This clause can be in the Terms and conditions (Cass com, 2 november 2016; n°14-18898) and be sufficiently obvious (Cour d'appel de Caen, 12 septembre 1996, n°1996-056826)

32

