

RETENTION OF TITLE

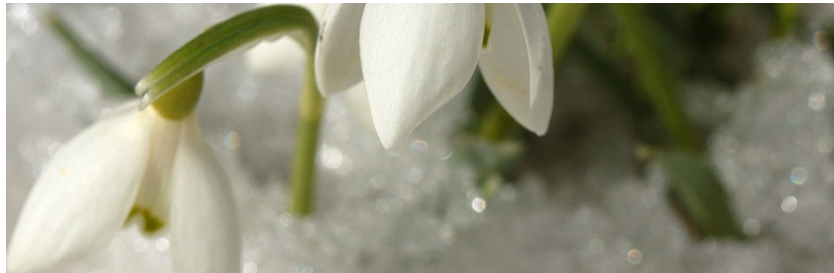
During difficult trading conditions, there is a far greater likelihood that your company will have to rely upon retention of title clauses. It is therefore essential that your retention of title clause is valid and incorporated. This is not always as easy as you might think and you may wish to change your trading procedures in light of the following. Patrick Tedstone reports:

Validity

A retention of title clause must not act as a charge. It is not possible to pass title in an item and then seek to claim it back at a later date. Many retention of title clauses purport to retain title in all goods supplied if any money remains outstanding to the supplier. These clauses may not be as reliable as they appear.

Incorporation

In order to be effective, retention of title clauses must be incorporated into the relevant contract. It is advisable to insist that your customers sign an acknowledgement of the terms and conditions containing your retention of title clause.



Exceptions

Retention of title clauses are unenforceable against a mercantile agent (Section 25 of the Sale of Goods Act). In other words, if you sell goods to a dealer, distributor or retailer, they can legitimately pass title in your goods, without having paid you and in spite of your retention of title clause.

Retention of title clauses are also unenforceable once the goods have become substantially incorporated into another item. This is because title is deemed to pass when the items are subsumed into something else, i.e. when bricks become part of a building.

A claim under a retention of title clause can be frustrated if the goods concerned cannot be identified with reference to the unpaid invoice and delivery notes. This means that if the packaging and documentation supplied with your goods, do not allow specific items that have not been paid for to be identified, the retention of title clause will fail.

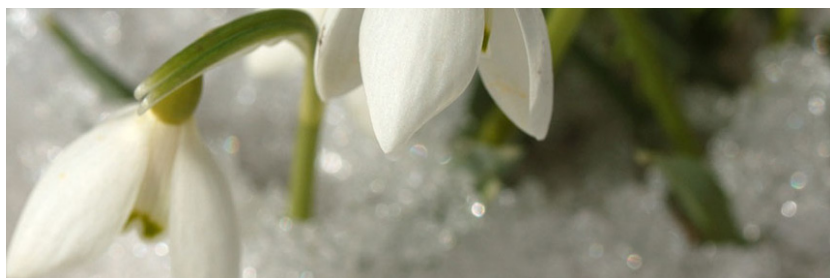
Insolvency

The normal circumstances during which you will need to rely upon retention of title will be the insolvency of a customer. It is important to remember that if title passes and an insolvency practitioner is appointed to handle your customer's affairs, it is very likely that you will recover only a small percentage (if anything) of the goods' value.

RETENTION OF TITLE

Recommended Action Plan

1. Take extra care to ensure that customers acknowledge, agree and sign your terms and conditions;
2. Keep a careful eye on the volume of product that you deliver to dealers, distributors and/or retailers, keeping their inventory as low as reasonably possible; and
3. Ensure that your own coding and documentation, including packaging / delivery / consignment numbers, notes and invoices, are capable of being used to clearly identify items that have not been paid for.



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