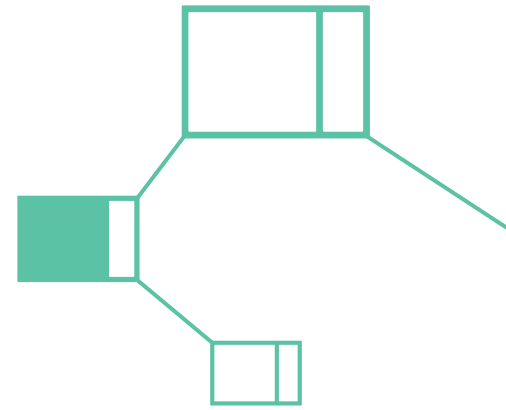


# Retention of title

## Key points for suppliers



Every successful retention of title claimant must establish:

1. Validity	2. Incorporation	3. Identification
<p>&gt; Validity of the ROT clause: even if your terms have been incorporated, the clause must not go too far and offend certain legal principles. For example, a clause that purports to trace the proceeds of sale will amount to a charge and be void. Check that your terms of business work.</p> <p>There are two basic types:            Simple ROT clause: "the goods sold under this contract will remain the property of the seller until they are paid for in full."            All monies ROT clause: "the seller retains title in all goods supplied under this contract until all debts howsoever arising and owed by the buyer to the seller have been settled in full."</p>	<p>&gt; Incorporation of an ROT clause into the contract: did the buyer accept your terms of business? If the buyer stipulated its own terms of business apply, did you nevertheless win the "battle of the forms"? Or can you rely on a course of dealing? Check that your processes are robust.</p> <div style="text-align: center;"> <p>Best</p> <p>Worst</p> </div>	<p>&gt; Identification of goods supplied and that the relevant invoice(s) remain unpaid: this can be the most difficult part. Your approach differs depending on whether you have a "simple" or "all monies" retention of title clause. It is crucial to move quickly and identify your goods. If your goods have been mixed with others or have been manufactured or changed in any way, you may lose your claim.</p>

What should you do if you hear a customer has entered an insolvency procedure and goods you have supplied may remain in its possession?

**Act quickly** – your chances of successfully recovering your goods recede every day you delay: you can only recover the goods that haven't been sold to a third party or otherwise dealt with by the administrators.

**Make contact with the customer or its administrator** – insist on visiting, getting an inventory of the goods you claim counter-signed by the administrator's representative and take photos.

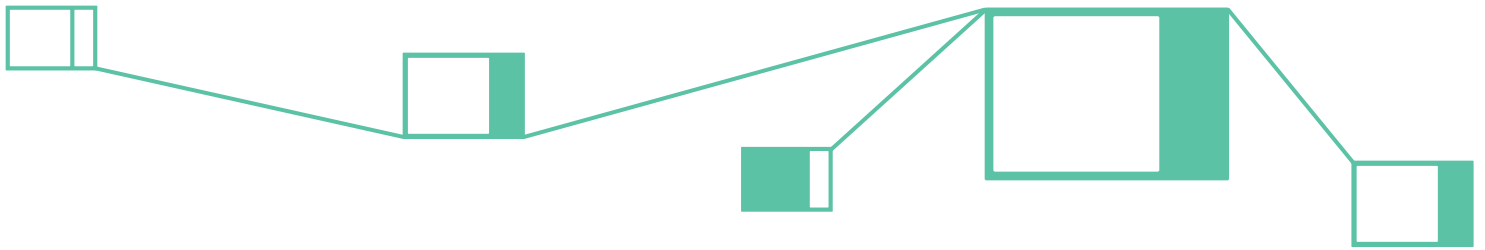
**Require that the administrator provides an undertaking** – you may well need lawyers to present the case for this but, without it, you can find that the goods will be sold without your claim having been agreed and it is subsequently rejected. A model undertaking would be:

"I personally undertake that if your claim to have retained title over any of the goods in the attached inventory (the "ROT Goods") is agreed between us or held by the court to be valid then I will pay to you the invoice value plus interest of any of the ROT Goods which have been used during the administration and pay the invoice value plus interest or return to you any of the ROT Goods which have not been so used."

“ Sources say: You get proactive, prompt advice, and the partners are incredibly responsive and attentive.

Nick Moser is ... 'a great person to resolve a difficult scenario.' ”

*Chambers 2010*



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“ Nick Moser ‘combines a sharp brain with an aura of quiet authority’, while Neil Smyth [is] ‘very accommodating and eager to please.’ ”

*Legal 500 2009*

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