IV.3.2 - Inclusion of standard terms

(a) Standard terms are included in the contract where the parties have expressly or impliedly agreed to their inclusion at the time of the formation of the contract and the other party had a reasonable opportunity to take notice of the terms.

(b) Amongst others, a party is deemed to have had a reasonable opportunity to take notice of the standard terms:

i) Where the terms are attached to a document used in connection with the formation of the contract or printed on the reverse side of that document;

ii) Where the terms are available to the parties in the presence of each other at the time of negotiating the contract;

iii) Where, in electronic communications, the terms are made available to and retrievable electronically by that party and are accessible to that party at the time of negotiating the contract;

iv) Where the parties have had prior agreements subject to the same standard terms.

(c) Standard terms cannot be incorporated after the formation of the contract, unless the contract is modified by agreement.

(d) A reference to the inclusion of standard terms and the standard terms themselves must be clear to a reasonable person of the same kind as the other party and in the same circumstances.

(e) A reference to the inclusion and the standard terms will be regarded to be clear where:

i) They are readable and understandable by a reasonable person; and

ii) They are available in a language that the other party could reasonably be expected to understand. Such a language includes the language of the negotiated part of the contract, the negotiations or the language ordinarily used by that party.