Title:
IV.3.3 - No surprising standard terms

Content:
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No term contained in standard terms which is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party. In determining whether a term is of such a character regard shall be had to its content, language and presentation.

Commentary:
1 The Principle provides some protection for the party which concludes the contract and accepts the standard forms of its counterparty. Because that party is bound by these terms even if it has not read them, the Principle excludes from the contract those standard terms which are of such a character that the other party could not reasonably have expected them. This is a consequence of the Principle of good faith and fair dealing. While the law accepts that parties may use standard terms to save costs and time, a party may not misuse its standard terms to surprise the other side unless that side expressly accepts these surprising terms.

2 The question whether a standard term is surprising or not depends on the circumstances of each individual case, including the usages of the trade, in which the parties are operating, the practices established between them and their contract negotiations. The second sentence lists three circumstances which can be taken into account when determining whether a standard term is surprising. For example, the "presentation" of a standard term relates to situations in which a specific term is "hidden" in a large number of unclear and confusing standard terms or in which the standard term is printed in extremely small letters so that it is barely legible for the other side. Also, standard forms written in the English language may not contain terms in another language which the other party is not capable of understanding.