

## **FACTSHEET – Retention of Title**

If you are a creditor who has supplied materials or goods to an individual or Company and have not been paid for these goods, you may be able to claim title of the goods and recover these.

If the individual or Company has entered into an insolvency procedure, you will need to make it clear to the Insolvency Practitioner dealing with the case that you wish to recover your goods and you should do this as soon as possible.

The Insolvency Practitioner will then need to determine whether you have the rights to do this and will send you a questionnaire in order to gather the information that they will need to make an informed decision.

Below is an example of a questionnaire that you may receive. The text in **bold** is the actual questionnaire and my comments, which explain what is needed and why, are in *italic*.

### **Reservation of title claim - Questionnaire**

**Case name (i.e. individual/Company in the insolvency procedure) - (in liquidation (or other procedure))**

**Our reference: Reference No.**

**Please complete the following questionnaire to enable the (Insolvency Practitioner) to consider your reservation of title claim.**

**Your name:** *If you are a company that is claiming back, you would put your company name here*

**Address:** *Address for correspondence – add your email address if you wish to be communicated to via email.*

**Contact:** *Contact name*

**Your reference:** *Your reference*

**If you have instructed Solicitors to present the claim:**

**Solicitors name:** *Solicitor Firms name*

**Address:** *Solicitor Firms address*

**Telephone:** *Solicitor Firms telephone number*

**Reference:** *Solicitors reference*

**1 Please give full particulars of the goods which are the subject of your claim, including quantity.**

*You need to state what items you are claiming back. You can list these.*

*If there are a lot of items, you could attach documents which list them. These may be listed on an invoice or delivery note – in which case, attach these as evidence to this document and write something like*

*All items are listed on the attached invoice/delivery note/etc.*

*The more information that you can provide to help identify the items you are claiming back, the better. If you are able to show any identification marks such as batch numbers or serial numbers – include this.*

**2 How was the contract for the sale of the goods made? If your claim relates to goods supplied under more than one contract please give details of each contract.**

*This is asking for the procedure of ordering. An example would be*

*An order was received by email on DATE and an order acknowledgement was sent. The items were delivered on DATE and an invoice was sent on DATE.*

*If there are a lot of different orders, you can set the ordering procedure out in general terms such as;*

*“When an order is placed by a customer, we send out an order acknowledgement. Delivery is usually made 3 business days later and invoiced on the date of the delivery. “*

**3 Please supply copies of all relevant documents, including, where applicable:**

- a) quotation(s)
- b) order(s)
- c) acknowledgment(s) of order
- d) consignment note(s)
- e) delivery note(s)
- f) invoice(s)

*Supply everything on this list that you have. The Insolvency Practitioners can only make their decisions based on documentary evidence you supply.*

**4 If you trade on standard terms and conditions please supply a copy and state how the terms were incorporated in to the contract(s).**

*In order to have a valid Retention of Title claim, you will need to have incorporated your rights to this in your terms and conditions. Provide the documents (or state which ones they are if already provided as part of the earlier question).*

*These may be on an*

- *account application form; or an*
- *order acknowledgement; or*
- *within a Contract; or*
- *within or on the back of a Delivery Note; or*
- *within or on the back of an Invoice.*

**5 Have you taken an inventory of goods at the company’s premises? If so, please supply a copy indicating where your goods were located.**

*Provide a list of items and their location and the date of the inventory. Also include who was present when the list was drawn up. A copy of the list would be very helpful.*

**6 How can goods supplied by you be distinguished from goods supplied by others?**

*This is about being able to identify that you supplied these goods (rather than somebody else). Serial numbers, batch numbers, branding, and other identification marks are always good indicators.*

*If you are the only supplier of the items, state this here.*

**7 Is it possible to distinguish between goods supplied by you for which you have been paid and those for which you have not been paid? If so, how?**

*This is asking if the items that you supplied can be identified to an invoice – one that has not been paid for rather than an invoice which has been settled. It is asking how you can identify that the item is the one on a specific invoice, i.e. is there any way of linking the item with the unpaid invoice, such as an identification number.*

*An example would be that you supplied 2 televisions and the invoice sent says 2 televisions on order number ORD012 but does not specify anything else. This alone would not be sufficient to say that if two televisions are found, that they relate to your unpaid invoice. However, the delivery note for ORD012 that was sent when the televisions were delivered has serial numbers on it. This would enable you to say that the TV you have identified relates to the unpaid invoice.*

*Whether this is necessary, will depend on the wording of your terms and conditions. If your terms and conditions refer to “all monies due”, you may not need to identify items to an unpaid invoice.*

**8 Please supply a copy of your sales ledger account showing the past 12 months trading.**

*This is so that the Insolvency Practitioner can see that there has been a trading history with you over time.*

We hope this assists you with your claim and encourages you to make your claim against your insolvent customer.