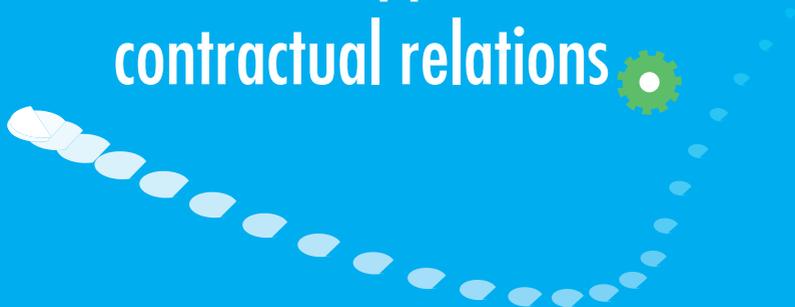


# Guide for the quality of client-supplier contractual relations



**médiateur**

DES RELATIONS  
INTER-ENTREPRISES  
INDUSTRIELLES  
ET DE LA SOUS-TRAITANCE





**D**uring the industrial consultative assembly (*États généraux de l'industrie* – “EGI”), numerous business representatives emphasised the imbalance in relations between clients and suppliers, which reduces the competitiveness of the French economy. This state of affairs sets France apart from certain other European States, such as Germany, where a more balanced approach has been achieved.

Yet, while freedom of trade and industry is fundamental, it is not absolute. It is exercised within the limits set forth by statutory and regulatory provisions, which, in particular, are taken from the Civil Code, the Commercial Code and the 1975 law on subcontracting.

The report filed by the business relations Mediator on 30 August 2010 revealed the extent of imbalanced practices in contractual relations between undertakings. This can be explained, in particular, by the parties’ insufficient knowledge of the regulatory and legislative context.

This guide illustrates various types of abusive behaviour or non-compliant practices that are regularly observed in businesses and contains a concise presentation of the applicable rules.

There are six sections:

- orders;
- contractual relations;
- prices;
- receipt and invoicing;
- payment;
- intellectual property.

The aim of this guide is to help improve business relations by making the law that is applicable to relations between industrial undertakings as visible and as clear as possible.

**Communication/press contacts:**

**Helen O'REILLY** Email : [helen.oreilly@finances.gouv.fr](mailto:helen.oreilly@finances.gouv.fr)

**Caroline HARDY** Email : [caroline.hardy@finances.gouv.fr](mailto:caroline.hardy@finances.gouv.fr)

**Website:**

[www.mediateur.industrie.gouv.fr](http://www.mediateur.industrie.gouv.fr)

## Part one

# ORDERS

Negotiating the order is the initial stage in establishing business-to-business relations. All too frequently, order negotiations reveal the imbalance that exists between structured undertakings with legal departments that have anticipated potential difficulties in the implementation of the manufacturing processes and small subcontractors or suppliers that are focused on the resolution of technical problems. Illegal practices should be avoided, even in this early phase.

### General conditions of sale limited by general conditions of purchase

Even though general conditions of sale constitute the basis for negotiations, the supplier's general conditions of sale are sometimes completely cancelled out by the general conditions of purchase imposed by the client; no commensurate consideration is offered and any reservations expressed by the supplier are rejected outright. Thus, some general conditions of purchase explicitly state that the supplier will be deemed to have accepted them as soon as the client receives an order acknowledgement from the supplier, or, absent an order acknowledgment, that if the supplier starts to fill the order it will be deemed to have expressly accepted the general conditions of purchase and waived its own general conditions of sale.

### What the law says

---

Article L. 441-6-I of the Commercial Code stipulates:

*"All producers, service providers, wholesalers or importers are required to disclose their general conditions of sale to all purchasers of products or all persons who request services for a professional activity. These conditions constitute the basis for business negotiations and include:*

- the conditions of sale;
- the scale of unit prices;
- price reductions;
- conditions of payment.

General conditions of sale may differ according to the categories of product purchasers or persons who request services. In this case, the disclosure obligation set forth in paragraph one covers the general conditions of sale that are applicable to purchasers of products or persons who request services in the same category [...].”

### In practice

When the law states that general conditions of sale constitute the basis for business negotiations, this does not mean that general conditions of sale prevail over general conditions of purchase, but merely that they are the starting point for business negotiations.

## Non-compliance with the conditions that prevailed when costing an order

The following examples may constitute illegal practices:

- within the scope of open order contracts, the client does not comply with the order cycles and the quantities agreed in the initial contract, with no adjustment of clauses to absorb non-recurring development costs or tooling costs;
- in the field of the design and manufacture of tooling, certain clients withdraw without notice and without indemnifying the supplier for changes requested by them that are not included in the specifications.

### What the law says

---

Article 1134 of the Civil Code provides:

*“Agreements lawfully entered into take the place of the law for those who have made them. They may be revoked only by mutual consent, or for causes authorised by law. They must be performed in good faith”.*

## Obligation to transfer business activities abroad

The fact that a client threatens its usual supplier with terminating business relations or not placing an order if the supplier does not transfer all or part of its business activity abroad is a reprehensible practice.

### What the law says

---

Article L. 442-6-I-4 of the Commercial Code stipulates:

*“The fact that any producer, trader, manufacturer or person recorded in the trade register:*

*4) Obtains or attempts to obtain, under the threat of a sudden total or partial termination of business relations, conditions that are clearly abusive concerning prices, payment times, terms of sale or services that are not part of the purchase and sale obligations, shall trigger the liability of the perpetrator thereof and shall obligate said perpetrator to compensate the harm caused thereby”.*

### In practice

The threat must be characterised. Case law has confirmed the applicability of this provision of law, even in the absence of a written contract.

## Part two

# CONTRACTUAL RELATIONS

A significant imbalance in the rights and obligations of the parties to a contract and the sudden termination of established business relations are some of the difficulties that SME frequently encounter in their business relations. Yet, the current legal framework prohibits these practices.

### **Business contracts where the obligations fall on one party alone while the other party derives all the benefits**

The following may constitute non-compliant practices:

- requiring a supplier to provide insurance to cover all forms of damage that may arise from improper performance of the contract or a lack of product safety, whereas the amount of damage is not proportionate to the value of the product;
- unilaterally amending the contract (specifications or order) without readjusting the price;
- applying excessive default penalties (penalties to cover all direct or indirect expenses);
- refusing to make fair payment for efforts made by the supplier with regard to the client in terms of software, studies, know-how, etc. (asymmetric obligations);
- imposing excessive confidentiality obligations, specifically the obligation for the supplier not to disclose its business relation with the client (situation encountered, for example, in the fashion world for image-related reasons). These confidentiality clauses, which involve not disclosing certain industrial or other information (obligation to refrain) are not illegal per se, but are nonetheless liable to cause a significant imbalance

inasmuch as no consideration is provided for the associated disadvantages (e.g. loss of commercial value or hindrance to business development).

## What the law says

---

Article L. 442-6-I-2 of the Commercial Code stipulates:

*“The fact that any producer, trader, manufacturer or person recorded in the trade register:*

*2) Subjects or attempts to subject a business partner to obligations that create a significant imbalance in the rights and obligations of the parties, shall trigger the liability of the perpetrator thereof and shall obligate said perpetrator to compensate the harm caused thereby”.*

### Commentary

Legal opinion has identified three criteria, which are not exhaustive. Accordingly, any clause or practice *via* which an operator imposes on its business partner, with no consideration:

- an obligation;
  - an asymmetric obligation; or
  - a restriction on rights;
- is liable to create a significant imbalance.

## The sudden termination of business relations (even established tacitly)

The sudden termination of business relations (even when they were established tacitly) is liable to be non-compliant when the termination takes the following form, for example:

- sudden withdrawal by the client, which means the supplier has problems, in particular given investments in tools or machines with a view to performing the contract or loans taken out;
- the sudden termination of the subcontracting of an activity in order to perform it in house;
- the termination without notice of a business relationship established on the basis of tacit contracts;

■ the cancellation of an order without indemnity (partial sudden termination).

## What the law says

---

Article L. 442-6-I-5 of the Commercial Code stipulates:

*“The fact that any producer, trader, manufacturer or person recorded in the trade register:*

*5) Suddenly terminates an established business relationship, even partially, without written notice that takes into account the duration of the business relationship and without complying with the minimum notice period specified, with reference to customary business practices, by multi-industry agreements, shall trigger the liability of the perpetrator thereof and shall obligate said perpetrator to compensate the harm caused thereby.*

*When the business relationship is for the supply of products under the distributor’s brand, the minimum notice period is double that which would be applicable if the product was not supplied under the distributor’s brand. Absent such agreements, orders issued by the minister for the economy may, for each category of products and taking into account customary business practices, stipulate a minimum notice period and provide a framework for the conditions under which business relations are terminated, in particular in light of their duration. The preceding provisions shall not rule out the option of termination without notice in the event that the other party fails to fulfil its obligations or in the event of force majeure. When the termination of the business relations results from a call for tenders with remote bidding, the minimum notice period term shall be double that which results from the application of the provisions of this paragraph in cases where the duration of the initial notice period is less than six months, and at least one year in the other cases”.*

## Commentary

This article only refers to abusive termination. Case law is plentiful and settled in this area and, in particular, has specified the following criteria:

- there must be an established business relationship;

- the termination must be sudden;
- there are limits on the types of harm and loss suffered.

## Abuse of its dominant position by a stakeholder (supplier or purchaser)

In practice, in the field of subcontracting, the following practices could be deemed to be wrongful, provided that a dominant market position is characterised:

- squeezing out competitors;
- contractual provisions imposed on economic partners that reinforce the power of the dominant undertaking on the market;
- all practices with regard to clients or competitors of the dominant undertaking that seek to grant or maintain unjustified advantages;
- the unilateral amendment of the contract (specifications or orders with no price readjustment) and/or reduced prices imposed unilaterally for multi-year programmes. This includes immediate requests for disproportionate security deposits.

### What the law says

---

Article L. 420-2, paragraph 1 of the Commercial Code states:

*“Under the conditions provided for in Article L. 420-1, the abuse by an undertaking or group of undertakings of a dominant position on the internal market or a substantive part thereof is prohibited. These abuses may involve, in particular, a refusal to supply, tying practices or discriminatory conditions of sale, as well as the termination of established business relations, on the sole ground that the partner refuses to submit to unjustified business conditions”.*

### Commentary

In order to demonstrate the existence of a dominant position within the meaning of Article L. 420-2, three conditions must be met:

- a dominant position must exist on the market concerned;
- this position must be used abusively;

- this position must have a restrictive purpose or effect on market competition. The existence of actual effects is not essential; potential effects are enough to demonstrate the existence of the practice.

## Economic dependency or de facto management

Interference by the client in the management of a supplier, whose revenues depend almost exclusively on its orders, constitutes a non-compliant practice.

### What the law says

---

Article L. 420-2 paragraph 2 of the Commercial Code stipulates:

*“Inasmuch as it is liable to affect competitive functioning or structure, the wrongful exploitation by an undertaking or a group of undertakings of the state of economic dependence in which a client or supplier undertaking finds itself with regard to them is moreover prohibited. These abuses may, in particular, involve a refusal to supply, tying practices or the discriminatory practices referred to in section I of Article L. 442-6 or agreements that oblige distributors to stock entire product ranges”.*

### Commentary

In the same way as for the dominant position, economic dependency is not prohibited per se. In general, the extent to which one undertaking is dependent on another is assessed by determining whether the “dependent” undertaking is unable to find other business opportunities or suppliers under comparable economic or technical conditions.

In order for the relationship to be deemed to be abusive, three conditions must be met, and the courts have sometimes interpreted these requirements strictly:

- there must be a situation of economic dependency;
- the co-contracting party (client or supplier) must be exploiting this situation abusively;
- there must be an effective or potential impact on competitive functioning or structure.

## Part three

# PRICES

Rising prices of raw materials or polymers have shown the limitations of contracts that do not have price revision clauses. The same is true for reductions in price that are imposed with rates that are unrelated to productivity gains.

### **Kickbacks or price reductions without consideration or long-term, non-revisable contracts**

The following practices are therefore liable to be reprehensible:

- entering into a long-term contract without a price revision clause, even though it is difficult for a supplier to anticipate and control all the economic parameters, such as variations in the cost of raw materials, changes in regulatory obligations, exchange rates, etc.; the client refuses to assume the cost of the raw materials and leaves its supplier to absorb all the additional costs;
- price reductions imposed unilaterally on contracts with a term of more than 3 months with a schedule for price reductions that has no connection with the actual capacity to generate productivity gains and without, in return, making any volume or duration commitments;
- French contracts in foreign currencies or the absence of a clause to update the contract in light of foreign currency fluctuations;
- amended specifications with no price readjustment;
- insertion of a competitiveness clause in the contract that is triggered automatically (or a competing bid clause) that allows its beneficiary to ask the other party to align itself with the offer made by a competitor;
- lack of remuneration for efforts made by the supplier with regard to the client in terms of software, studies, know-how, etc.

## What the law says

---

Article L. 442-6-II-a) of the Commercial Code states:

*“Clauses or contracts are null and void if they provide for a producer, trader, manufacturer or person recorded in the trade register to have the possibility:*

*a) Of benefiting retroactively from discounts, rebates or commercial cooperation agreements [...]*

*d) Of benefiting automatically from conditions that are more favourable and granted to competing undertakings by the co-contracting party”.*

### In practice

Do not forget to include provisions in contracts to cover the impossibility of procuring raw materials that are required for the process and to stipulate price revision clauses in the event that certain thresholds are exceeded.

## Part four

# RECEIPT AND INVOICING

The rules on invoicing mean that invoices tend to be used to prove and control the transparency of the prices invoiced and to verify the reality and substance of the service supplied by the service provider after the fact. Case law precedent emphasises that the mere content of an invoice must allow the person or entity that pays the invoice to know in which way, on which date, in which place and in accordance with which specific terms the co-contracting party fulfilled its obligations.

### Failure to comply with invoicing rules

The following may constitute practices that do not meet the requirements of the Commercial Code:

- self-billing imposed by the supplier on the client, when the client uses this technique to make unjustified invoice deductions (debit notes) or take unjustified action with regard to the price itself; this practice of self-billing is sometimes accompanied by the client unilaterally imposing a flat rate fee per invoice on suppliers in order to pay for the client's automation of its own process;
- the unilateral deduction of the costs of product repair: attributing to a supplier the cost of a design defect, even though the supplier scrupulously complied with the general specifications;
- issuing credit notes unilaterally, without consulting the other party;
- making unjustified returns of goods or returning goods after an unacceptable period of time has elapsed following delivery;
- the unilateral deduction of unjustified penalties, e.g. for unconfirmed quality defects.

## What the law says

---

Article L. 441-3 of the Commercial Code stipulates:

*“All purchases of products or all provisions of services for a professional activity must be covered by an invoice.*

*The seller shall be required to raise the invoice when the sale is made or when the service is provided. The purchaser must demand this. The invoice must be prepared in duplicate. The seller and purchaser shall each keep one original. The invoice must indicate the names of the parties and their addresses, the date of the sale or service provision, the quantity, precise description and the unit price excluding VAT of the products sold and services provided and also any price reduction applying on the date of the sale or provision of services and directly linked to this sale or service provision, excluding discounts not specified on the invoice.*

*The invoice shall also indicate the date when payment must be made. It shall specify the discount conditions applying in the event of payment on a date prior to that resulting from the application of the general conditions of sale and the rate of the penalties due from the day after the payment date entered on the invoice. Payment shall be deemed to be made on the date when the funds are made available, by the client, to the beneficiary or the latter’s subrogate”.*

Moreover, Article L. 442-6-I-8 of the Commercial Code stipulates:

*“The fact that any producer, trader, manufacturer or person recorded in the trade register: [...]*

*8) Refuses or returns goods or unilaterally deducts from the amount of the invoice raised by the supplier, penalties or rebates that correspond to non-compliance with a delivery date or non-compliance of the goods, when the debt is not certain, of a fixed amount and due, even if the supplier was not in a position to control the reality of the corresponding grievance”.*

*shall trigger the liability of the perpetrator thereof and shall obligate said perpetrator to compensate the harm caused thereby”.*

### In practice

Sanctions such as penalties or rebates should not be applied without the agreement of the supplier.

## Part five

# PAYMENT

The general reduction in payment times initiated by the “LME” law on economic modernisation has made it possible to align payment conditions with those in force in Germany or in Northern European countries. This generates a competitive advantage for the cash flow of small businesses, which should be protected from attempts by multinationals to avoid complying with the law.

### Avoiding the rules on payment times

The following practices constitute an offence under the regulations:

- failure to comply with the payment times stipulated by the LME law. Very often, payment times of 60 days end of month or even 90 days continue to be used;
- a delay between raising invoices or purchase orders and the actual date of delivery or collection;
- avoiding French law via orders placed from abroad, even though the delivery takes place in France;
- placing stock on consignment with the aim of avoiding the law, as the starting point of the payment times is not the date of delivery by the supplier to the warehouse but that on which the client comes to collect the items;
- the practice of excessive discount rates in consideration for meeting payment times;
- withholding unreasonable amounts on the grounds of a dispute;
- failing to inform a supplier in the event of a dispute and intentionally delaying the resolution of a dispute.

## What the law says

---

Article L. 441-6 §8 stipulates:

*"[...] Except as otherwise provided for in the conditions of sale or the conditions agreed between the parties, the timeframe for the payment of the monies owed shall be set at the thirtieth day following the date of receipt of the goods or the performance of the service requested."*

Article L. 441-6 §9 stipulates:

*"[...] The timeframe agreed between the parties for payment of the monies owed cannot exceed forty-five days end of month or sixty days as from the date of raising the invoice".*

Moreover, Article L. 441-6 §11 stipulates:

*"[...] Notwithstanding the preceding provisions, for the road transport of goods, for the rental of vehicles with or without drivers, for transport commission and for the activities of forwarding agent, shipping agent or air freight agent, freight broker or customs broker, the payment times agreed cannot under any circumstances exceed thirty days as from the date of raising the invoice".*

In addition, Article L. 442-6-I-7 of the Commercial Code states:

*"The fact that any producer, trader, manufacturer or person recorded in the trade register: [...]*

*7) Subjects a partner to payment conditions that do not comply with the limit set in paragraph 9 of Article L. 441-6 or that are clearly abusive, in light of best practices and customary business practices, and deviate to the detriment of the creditor, with no objective reason, from the timeframe stipulated in Article L. 441-6, shall trigger the liability of the perpetrator thereof and shall obligate said perpetrator to compensate the harm caused thereby. In particular, it is abusive for the debtor to ask the creditor to defer the date of raising the invoice for no objective reason".*

## In practice

Pursuant to Article 21-III of the law on economic modernisation of 4 August 2008, 39 professional agreements that derogate from the legal limit on payment terms were entered into. They will no longer be effective as from 1 January 2012.

## Part six

# INTELLECTUAL PROPERTY

The difficulties encountered by SMEs arise primarily from the lack of protection of their intellectual property or from their intellectual property rights being used by third parties without their consent.

In Books V and VI of the Intellectual Property Code, the current legal framework defines the conditions under which intellectual property rights are acquired and exploited.

### Lack of protection of inventions, designs or models

Using the information contained in response to a call for tenders in order to have a product manufactured by a foreign workshop, for example, is a non-compliant practice.

#### What the law says

---

Applications for patents, designs or models are made to the National Industrial Property Institute (“INPI”).

Article L. 611-10, 1) of the Intellectual Property Code stipulates:

*“New inventions that involve an inventive step and that have a potential industrial application are eligible for patents in all technological fields”.*

And Article L. 511-1 of the Intellectual Property Code stipulates:

*“The appearance of a product or of part of a product may be protected in the form of a design or model, in particular as characterised by its lines, its contours, its colours, its shape, its texture or its materials. These characteristics may be those of the product itself or of its ornamentation”.*

## In practice

In the field of subcontracting, inventions that have the following characteristics may be eligible for patent applications:

- new inventions, i.e. inventions that do not cover an innovation that has already been made accessible to the public, regardless of the author, the date, the place, the means and the form. Consequently, until applications have been filed, suppliers must maintain absolute secrecy concerning their inventions. Within the scope of pre-filing business negotiations, suppliers must thus ensure that their partners do not reveal inventions by having them sign a confidentiality agreement;
- inventions that involve an inventive step, i.e. innovations that are not an obvious continuance of the existing state of the art for a person skilled in the art;
- inventions that can potentially be used in industry, i.e. the purpose thereof can be manufactured or used, regardless of the field of industry.

In the field of subcontracting, the following could lead to an application for a design or model: car bodywork, a sport jersey, product conditioning or a decorative motif.

Before making an application, designers should ensure that they hold the copyright to the design or model and check that there are no prior designs that could destroy the novelty or the specific character of the application, it being specified that prior designs are in principle not limited in time or in space. For example, designs or models can be protected,

- that are new, i.e. no identical or quasi-identical designs or models have been disclosed prior to the date of protection granted at the time of the application (date of application or of priority claimed);
- that have their own specific characteristics, i.e. do not give an impression of déjà vu as a whole, compared to a design or model that was disclosed prior to the date of protection granted at the time of the application.

## Appropriating the intellectual property of suppliers

The “forced”, exclusive assignment of industrial or intellectual property rights with no consideration is another example of a practice that constitutes an offence. Thus, certain contracts provide that if the order is cancelled for any reason whatsoever, the supplier authorises its client to complete the tooling or arrange for the completion of the tooling, as well as to maintain or arrange for the maintenance thereof and/or produce the parts the tooling is designed to manufacture, notwithstanding any intellectual and/or industrial property rights the supplier could claim, the benefit of which the supplier agrees to relinquish to its client. Moreover, the supplier undertakes to disclose all the blueprints, technical documents and know-how relating to the tooling as soon as it is requested to do so.

### What the law says

---

With regard to claiming intellectual property rights, Article L. 611-8 of the Intellectual Property Code states:

*“If an application was made for an industrial property title, either for an invention appropriated from an inventor or his assigns, or, in breach of a legal or contractual provision, the injured person may claim the ownership of the application or of the title issued”.*

In the same way, Article L. 511-10 of the Intellectual Property stipulates:

*“If a design or model was registered in illicit violation of the rights of a third party or in breach of a legal or contractual obligation, the person who considers that he has a right to the design or model may claim title thereto before the courts”.*

Moreover, Article L. 615-12 of the Intellectual Property Code provides:

*“Whosoever unduly claims to have the capacity of owner of a patent or a patent application shall be punished with a fine of 7,500 euros”.*

### In practice

The law therefore allows suppliers who are also inventors or designers to go before the courts and claim title to their invention or design when an unscrupulous third party makes an application for a patent, design or model in the supplier's place. The effect of the action to claim title is retroactive and means that any forms of licence granted by the initial registrant are cancelled and that any royalties paid must be reimbursed.

### Exploitation of intellectual property rights with no consideration

The law prohibits exploiting a patent or know-how without the supplier's agreement. This includes situations where a client uses a patent or know-how in a call for tenders, in particular, without the supplier's agreement and without paying any remuneration.

### What the law says

---

Concerning patents, Article L. 613-3 of the Intellectual Property Code states:

*“Absent the consent of the patent owner, the following are prohibited:*

- a) The manufacture, the offering and the placing on the market, the use or the import or the holding for the aforementioned purposes of the product that is the subject of the patent;*
- b) Use of a process that is the subject of the patent or, when the third party knows or when the circumstances make it clear that the use of the process is prohibited without the consent of the patent owner, the offer of the use thereof on French territory;*
- c) The offering, the placing on the market or the use or the import or the holding for the aforementioned purposes of the product obtained directly by the process that is the subject of the patent”.*

Concerning designs and models, Article L. 521-1 of the Intellectual Property Code states:

*“The manufacture, the offering, the placing on the market, the import, the export, the use or the holding for the aforementioned purposes of a product that incorporates the design or model are prohibited without the consent of the owner of the design or model”.*

### **In practice**

The acquisition of an intellectual property title grants its holder a monopoly on the exploitation. The Intellectual Property Code makes it an offence to exploit a patent, design or model without the agreement of the right holder.

Suppliers who hold an industrial property right may take action against infringing third parties on these bases.

# APPENDIX

## Non-compliant practices and types of liability incurred

Category of "non-compliant practice"	Type of liability incurred
Significant imbalance	Civil liability: restitution of money paid without legal cause, damages, nullity of the clause or contract and civil fine (Article L 442-6.III of the Commercial Code).
Obtaining more advantageous conditions by threatening to terminate business relations	Civil liability: restitution of money paid without legal cause, damages, nullity of the clause or contract and civil fine (Article L 442-6.III of the Commercial Code).
Sudden termination of a business relationship	Civil liability: restitution of money paid without legal cause, damages, nullity of the clause or contract and civil fine (Article L 442-6.III of the Commercial Code).
Failure to comply with payment times	Civil liability: restitution of money paid without legal cause, damages, nullity of the clause or contract and civil fine (Article L 442-6.III of the Commercial Code). Criminal penalty: fine of EUR 15,000 (Article L 441-6 of the Commercial Code).
Unilateral returns of goods and deductions	Civil liability: restitution of money paid without legal cause, damages, nullity of the clause or contract and civil fine (Article L 442-6.III of the Commercial Code).
Invalid clauses	Civil liability: restitution of money paid without legal cause, damages, nullity of the clause or contract and civil fine (Article L 442-6.III of the Commercial Code).
Failure to comply with invoicing rules	Criminal penalty: fine of EUR 75,000 (Article L 441-4 of the Commercial Code).
Exclusion of the GCS before any transaction	Civil liability: restitution of money paid without legal cause, damages, nullity of the clause or contract and civil fine (Article L 442-6.III of the Commercial Code).
Abuse of a dominant position	Invalidity of the contractual commitment or of the abusive clause (L 420-3 of the Commercial Code). Injunctions and financial penalties handed down by the Competition Authority (Article L 464-2 of the Commercial Code).
Abuse of a state of economic dependence	Invalidity of the contractual commitment or of the abusive clause (L 420-3 of the Commercial Code). Injunctions and financial penalties handed down by the Competition Authority (Article L 464-2 of the Commercial Code).
Contractual non-performance	Civil liability: damages, restitution of money paid without legal cause, termination or rescission of the contract.
Breach of the Law of 1975	Civil liability: damages.
False statement concerning the capacity of patent owner or applicant	Criminal penalty: fine of EUR 7,500 (Article L 615-12 of the Intellectual Property Code).
Infringement of a patent, design or model	Civil liability: seizure to establish infringement of intellectual property rights, order to cease and desist from the offending practice, damages, etc. Criminal penalty: prison sentence of up to 3 years and a fine of EUR 300,000, which may be increased to 5 years and EUR 500,000 for dangerous goods (Article L 615-14 of the Intellectual Property Code).

## LINKS TO USEFUL WEBSITES:

[http://www.dgccrf.bercy.gouv.fr/concurrence/rerelations\\_commerciales/](http://www.dgccrf.bercy.gouv.fr/concurrence/rerelations_commerciales/)

<http://www.dgccrf.bercy.gouv.fr/documentation/lme/>

<http://www.dgccrf.bercy.gouv.fr/concurrence/pac/>

<http://www.autoritedelaconcurrence.fr>

[http://www.industrie.gouv.fr/biblioth/docu/dossiers/sect/sb\\_sect.htm](http://www.industrie.gouv.fr/biblioth/docu/dossiers/sect/sb_sect.htm)

[http://www.economie.gouv.fr/directions\\_services/daj/](http://www.economie.gouv.fr/directions_services/daj/)

<http://www.mediateur.industrie.gouv.fr>

<http://www.inpi.fr/fr/connaitre-la-pi/a-lire/brochures-de-l-inpi.html>

<http://www.inpi.fr/fr/outils-transversaux/contacter-l-inpi.html>

**This guide, which is available on the above sites,  
can be downloaded at the following link:**

<http://www.industrie.gouv.fr/guides/guides-pratiques.php>