

Retention of Title: Supplier Security for Trade Credit

Retention of title is an agreement under which the seller transfers ownership of the delivered goods only once the buyer has paid the purchase price in full. It is the most common credit security instrument in practice in the goods trade between companies. For buyers, this means that the purchased goods legally belong to the supplier for a long time – with relevant consequences for insolvency, further processing and financing.

Key facts

- With simple retention of title, ownership only passes to the buyer upon full payment for the goods.
- Without an effective agreement, simple retention of title is deemed agreed in case of doubt in B2B sales under German law.
- Extended and expanded retentions of title also secure suppliers beyond further processing and resale.
- Strict formal requirements apply for effectiveness against insolvency administrators.
- In supply relationships involving workshop-like manufacturing, a retention of title may be invalid; in that case, a construction trades security or other security may be considered.
- Buyers should actively negotiate standard terms clauses, as retention of title can affect the balance sheet, covenants and the proof of unencumbered availability towards banks.

Definition: Retention of Title

Retention of title is a contractual condition whereby the transfer of ownership of the purchased item from the seller to the buyer is made dependent on full payment. Legally, it is a transfer of ownership subject to a suspensive condition under §§ 449, 158 BGB. It secures the seller as a trade credit provider without bank guarantees or transfers by way of security being required.

Simple retention of title

With simple retention of title, the specific delivered goods are secured: ownership only passes once the buyer has settled precisely this purchase price. This form is the standard case in the B2B sector and, under § 449 (2) of the German Civil Code (BGB), is in any case deemed agreed in sales between traders in the absence of deviating agreement. For the buyer, this means: even if the goods have already been installed in their own plant or stored, they formally still belong to the supplier.

- Transfer of ownership only upon full payment of the respective invoice
- Deemed automatically agreed in trader-to-trader sales in the absence of deviating standard terms
- No special written form required, but clear documentation recommended

Extended and expanded retention of title

The extended retention of title authorises the buyer to resell the goods subject to retention of title in the ordinary course of business and assigns the resulting claims to the supplier. The expanded retention

(also referred to as extended retention covering processing) additionally covers products created through processing, combination or mixing with other goods. The advance assignment of customer claims is limited to a share corresponding to the supplier's outstanding claim.

- Extended retention: security via claim assignment upon resale
- Expanded retention: inclusion of further-processed and combined products
- Practical for manufactured goods in mechanical engineering, but requires strict legal review

Methods and approach: dealing with retention of title in the procurement process

For buyers, retention of title is not a mere legal detail but a component of supplier evaluation and contract strategy. It is addressed systematically in the standard terms review, contract negotiation and operational process control.

Standard terms review and negotiation

Suppliers predominantly use pre-formulated standard terms, which frequently contain extended and expanded retentions of title as well as broad claim assignments. Purchasing should systematically review these clauses and negotiate them, above all with strategic suppliers: scope of application, extent of claim assignment and consequences of payment default are key negotiation points. An internally agreed negotiation policy on which clauses are acceptable and where to counter with an objection based on the company's own purchasing terms is helpful. Mandatory and optional criteria from supplier management can be applied directly here.

- Clause catalogue with accepted, negotiable and unacceptable positions
- Clear responsibility for standard terms conflicts (terms collision) within Purchasing
- Documentation of the agreed retention of title form in the supplier master data

Operational implementation in procurement and financial accounting

In day-to-day operations, Purchasing must ensure that payment terms are met, as a breach of the retention of title can trigger immediate surrender of the goods. Coordination with financial accounting is central here: open items on goods subject to retention of title must be taken into account in liquidity management and when demonstrating unencumbered availability to lenders. In project procurement, where payments run via milestones, the retention of title should also be coordinated with the payment schedule.

- Linking of goods receipt, invoice verification and payment run
- Flagging of goods subject to retention of title in the inventory management system
- Coordination with Treasury on credit lines and covenants

Contractual alternatives to retention of title

If a retention of title is unacceptable to the buyer – for example due to bank covenants or lease financing – alternatives are available: security via guarantees, sureties, advance payment bonds or the agreement of a Master Service Agreement (MSA) with coordinated payment and security mechanisms. Limiting the retention of title to the individual invoice instead of balances (current account retention) also significantly reduces the risk.

- Security in lieu of retention of title for critical suppliers
- Limitation to simple retentions of title without claim assignment

- Combination with Incoterms risk transfer for clear risk bearing

Key KPIs and review criteria relating to retention of title

Retention of title itself is not a key figure, but it can be managed via process indicators. These show how well Procurement and Finance jointly control the legal risks.

Key figures at a glance

Four key figures have proven themselves in practice: the proportion of suppliers with a documented retention of title provision, the proportion of old open items, the punctuality of payments and the lead time from goods receipt to payment release. The shorter the lead time, the lower the risk of the supplier asserting rights to the delivered goods on contractual grounds. At the same time, punctual payment increases the supplier's delivery service level, as payment problems frequently lead to delivery stoppages or line stops in production.

- Documentation rate of retention of title provisions in the supplier master data
- Proportion of overdue payments to suppliers with retention of title
- On-Time In Full (OTIF) as an indirect early indicator of supplier stress

Interpreting the benchmark values

As a rule of thumb in practice: the documentation rate should be close to 100%, as missing clause documentation becomes costly in disputes. Overdue items with retention-of-title suppliers are typically classified as critical with a threshold below five per cent of purchasing volume. In well-organised companies, the lead time from goods receipt to payment release is often only a few working days; every reduction reduces the legal and operational risk.

- Use payment reliability as part of supplier segmentation
- Agree thresholds with Finance and review them regularly

Risks and controls: where retention of title becomes a problem

The main problems arise in three situations: insolvency of the buyer or the supplier, further processing of the goods, and standard terms collisions. The earlier Purchasing identifies these risks, the more favourably they can be managed.

Insolvency and current account retention

In the event of the buyer's insolvency, the supplier can demand separation of the goods subject to retention of title – a considerable risk for one's own production. Conversely, in the event of the supplier's insolvency, the buyer may be obliged to pay simultaneously against transfer of ownership; an important issue in ongoing projects such as tooling procurement. Current account retentions of title that secure open balances from the entire business relationship are problematic: they are invalid in many constellations or at least require strict scrutiny, which is why Purchasing should actively question their validity.

- Anticipate the separation risk in the event of one's own insolvency
- In the event of supplier insolvency: document willingness to pay and review legally
- Critically review current account retention, limit to individual invoices if necessary

Further processing and connected supply chains

When goods subject to retention of title are processed, legally complex ownership issues arise regarding the new products. Expanded retentions of title of the supplier can extend into intermediate and end products and affect their disposal or pledging. This is particularly sensitive for customer-financed or pledgeable inventories. In the supply chain, a supplier's retention of title may also collide with retentions of title of sub-suppliers; a network analysis of critical suppliers helps to make such chain risks visible.

- Take connected ownership rights into account in production planning
- Keep alternative sources available for critical upstream products

Standard terms collision and maverick buying

When buyer and seller each apply their own standard terms, the so-called 'last word' decides which clause applies. Without a clear rule, the supplier's standard terms with a broad retention of title may inadvertently apply. Maverick buying – purchases outside regulated procurement processes, such as catalogue buying or direct orders by specialist departments – increases this risk, because standard terms reviews are often omitted there. Clear processes and central framework agreements remedy this.

- Framework agreements with an agreed form of retention of title for recurring requirements
- Training of specialist departments on standard terms risks in direct orders

Current developments: supply chains, digitalisation and raw material volatility

Retention of title is regaining importance through intensified supply chain dynamics, geopolitical uncertainty and the increasing use of supply chain finance.

Geopolitical risk and inventory holding

Geopolitical risk is driving inventory holding in many industries. Anyone building safety stocks is simultaneously deferring the transfer of ownership through longer payment terms to the banks – economically an interest-free trade credit from the supplier. This can strain the relationship, especially if the supplier itself is under raw material price and financing pressure. Balanced payment terms and, where appropriate, dynamic price formulas preserve the partnership capability of critical suppliers.

- Link safety stocks to payment terms and decide consciously
- In the event of raw material volatility, jointly design price and payment mechanisms

Digital processes and supply chain finance

Digital procurement platforms and electronic invoice workflows significantly shorten the time between delivery and payment and thereby reduce the risk of breaches of retention of title. At the same time, supply chain finance is spreading, in which banks or platforms pre-finance supplier claims. Here it must be clarified how assignments under extended retentions of title interact with global factoring and financing programmes – an issue that Procurement, Treasury and Legal should answer jointly.

- Electronic approval processes to shorten lead times
- Early involvement of banks on retention of title and assignment clauses

Typical metrics

Documentation rate of retention of title clauses: > 98%

Proportion of suppliers with a documented retention of title provision in the supplier master data

Proportion of overdue payments to retention-of-title suppliers: < 5%

Relative to purchasing volume; threshold to be agreed with Finance

Lead time from goods receipt to payment release: < 7 working days

Shorter lead times reduce the risk of breaches of retention of title

On-Time In Full (OTIF) for critical retention-of-title suppliers: > 95%

Indirect early indicator of supplier stress and payment problems

Practical example

A medium-sized mechanical engineering company with around 400 employees purchased precision components from a supplier whose standard terms contained an extended and expanded retention of title including claim assignment. When the engineering company's lender demanded proof of the unencumbered availability of the inventory, this was initially not possible. Purchasing subsequently renegotiated the retention clause and switched processes to shorter payment cycles.

- Renegotiation of the standard terms: limitation to simple retention of title per invoice without claim assignment
- Documentation of all retention of title provisions in the supplier master data and the ERP system
- Reduction of the lead time from goods receipt to payment release from 14 to 5 working days
- Coordination of payment terms and security mechanisms with Treasury and banks

Conclusion

Retention of title is a powerful but often unnoticed security instrument of the supplier. For technical procurement, what matters is less the legal finesse than operational control: know the clauses, negotiate actively, manage payment processes with discipline and share risks with Finance. Those who systematically document retentions of title and assess critical suppliers early avoid unpleasant surprises in insolvency, financing reviews or production stoppages. Combined with solid framework agreements and short lead times, retention of title turns from a risk into a manageable contractual building block.

Frequently asked questions

What does retention of title mean in simple terms?

The seller remains the owner of the goods until the buyer has paid in full. In case of doubt, the buyer may use and process the goods, but ownership only passes upon payment. In business-to-business transactions, the simple retention of title automatically applies in case of doubt unless otherwise agreed.

What is the difference between simple, extended and expanded retention of title?

The simple retention of title secures only the delivered goods. The extended retention of title additionally secures the claims arising from resale through assignment. The expanded retention of title also covers processed or combined products and can thus extend as far as into end products.

What happens to the goods if the buyer becomes insolvent?

The supplier can in principle separate out the unpaid goods subject to retention of title, provided its rights are effective. For the company, this means a concrete production and balance sheet risk. Countermeasures include low retention ratios, prompt payments and alternative suppliers for critical parts.

When is an extended retention of title invalid?

Invalidity can result from formal defects, from an excessive current account relationship or, in workshop-like manufacturing, from applicable construction law. Restrictions under the Insolvency Code also play a role. In case of doubt, the specific clause should be reviewed legally on a case-by-case basis.

Can I as a buyer reject the retention of title?

Yes, via a standard terms objection (AGB objection) or an individual contractual agreement. Suppliers often then accept alternatives such as guarantees, shorter payment terms or retention of title only up to a certain maximum claim amount. With strategic suppliers, a balanced solution is usually better than uncompromising rejection.

How does retention of title affect the balance sheet?

Economically, the goods usually count as an asset of the buyer; legally, they belong to the supplier. In credit negotiations and covenants, proof of unencumbered availability can become problematic. Purchasing should therefore record inventories under retention of title transparently together with Treasury and Accounting.