

FIATA

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A GUIDE TO LOGISTICS AGREEMENTS

Introduction:

There is no doubt that the services provided by freight forwarders and logistics suppliers have become more complex. Basically, this is good news for the industry. It has added innovation and value that has enabled the customer to outsource much of what was previously done in house. Extending the service offer, however, is not without risk. It is essential, therefore, to understand where the risks lie and what can be done to protect oneself against potential loss. This document aims to provide practical guidance.

National Standard Trading Conditions (STC):

In most trading countries freight forwarders use Standard Trading Conditions (STC) as the basis of their contract with the customer. They are an essential authority to support the forwarder and clarify the role and responsibilities of the parties to the contract. They should be recognised by the courts as fair and reasonable. **UNDER NO CIRCUMSTANCES SHOULD FORWARDERS SET THEM ASIDE.** However tempting it might be to secure an apparently lucrative contract there are many fundamental defences in STC that are indispensable. This is not to say that they cannot be extended. In these circumstances, however, **ALWAYS CONSULT YOUR LIABILITY INSURER AND A LAWYER WITH APPROPRIATE TRANSPORT RELATED EXPERIENCE.**

It would be sensible to get the principle points of agreement set out in writing with the customer on a "subject to contract" basis before appointing a lawyer so as to keep costs down.

Negotiating and finalising contracts can be a lengthy process, so if the customer is anxious that the provision of services begin before the contract is finalised, you should ensure that your STC are in place, pending the coming into force of any extended contract that can always be back dated.

Customer Demands:

Often a potential customer will require a scope of services that go beyond the traditional freight forwarding activity and will attempt to suggest that STC are not relevant to his contract. It is helpful if STC make it clear that ***"all and any activities of the company in the course of business, whether gratuitous or not, are undertaken subject to the conditions"***. Remember that you are the service provider, it is your STC that will be paramount and need to be embodied into any contract. Very often the demands of the customer relate to scope or performance issues which can sit alongside the STC in the contract.

Assess Your Risks:

If you are offered a contract that is outside the scope of work that you have previously handled, but you feel able to meet the customer's requirements, first ask yourself a few basic questions:

1. Should we be entering into this agreement? *If "Yes"*
2. What commitment will we need to make? Can we cope?
3. What will our risks be? - Cash flow, personnel, premises, equipment.
4. Can we afford it? *If "Yes"*

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5. Can we work with the company and its people?
6. What is our real motivation? - Profits
7. How can we safeguard our company?
8. Should we proceed?

CONSULT YOUR LAWYER BEFORE MAKING ANY COMMITMENTS.

DO NOT BE RUSHED. USING A LAWYER WILL PRESENT AN IMAGE OF PROFESSIONALISM.

Liability Insurance:

Ideally forwarders should carry an insurance policy that covers their minimum liabilities set out in their STC. The premium you pay will be based on a number of factors including the type of business handled. It is easy to take on additional business risks inadvertently and not inform insurers. Failure to do this could result in an exposure not covered by your policy. If you take on new business that falls outside the scope of previous activity **ALWAYS ADVISE YOUR LIABILITY INSURER.**

Activities That May Fall Outside Liability Cover:

- Staff implants in the customer's own premises.
- Computer to computer data exchange.
- Accounting activity such as invoicing and credit control.
- Taking on employment responsibilities for customer's staff.
- Responsibility for intellectual property.
- Managing the customer's own premises, leases, health and safety, etc.
- Product installation.

NB: This list is not exhaustive, merely indicative for guidance.

Contract Essentials:

There are a number of indispensable rules that must appear in every contract you sign. Your lawyer will advise, but the following check list will assist you:

- The names and contacts of the parties. A self-explanatory section.
- The scope of work - It is important that you define the extent of the work you are being asked to carry out.
- Duration - A clear statement to define the period of time the contract refers to.
- Termination - Periods of notice and any exceptional reasons for termination.
- Dispute resolution - If there is a dispute between the parties there should be a course of action specified to establish how this is resolved.
- Conditions of business - The Company's Standard Trading Conditions.
- Governing law and jurisdiction - It is particularly important if your customer is overseas to enable that governing law is established under an appropriate legal jurisdiction.
- Authorities - Signatures to the contract must have the authority to engage the responsibilities of the respective parties to the contract.
- Assignments - A statement that forbids one party from assigning any part of the agreement without the consent of the other.

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- Indemnity - Each party must declare that it is free to enter into the agreement and indemnify the other party accordingly.

Conclusions:

It is the nature of the business that difficulties and disputes will arise from time to time in any contract or relationship. Following these guidelines is not a guarantee that all claims or risks will be avoided. There is no substitute for preparation, planning and professional advice. **FOLLOW THE GOLDEN RULES.**

Golden Rules:

- UNDER NO CIRCUMSTANCES SET ASIDE YOUR STC IN THEIR ENTIRETY.
- ALWAYS CONSULT A LAWYER.
- ALWAYS INFORM YOUR LIABILITY INSURER.
- ASSESS YOUR RISKS.
- ACT PROFESSIONALLY - DON'T RUSH.
- CHECK YOUR LIABILITY COVER.
- CHECK THE CONTRACT ESSENTIALS
- FOLLOW THE GOLDEN RULES

Advice & Information:

Each Member of FIATA will have its own sources of advice and information. The National Association may have qualified staff or employ a lawyer to assist its Members. If such advice is not available to you FIATA'S own Advisory Body Legal Matters is here to help you in any way it can.

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April 2008