

A Guide to Agency Agreements



Agency agreements between freight forwarders are made throughout the world on a daily basis, sometimes on a ‘one off’ basis but often based upon long-term co-operation on a sole agency in a defined geographical location. Agreements may also include agreed profit sharing or commission remuneration.

BIFA Standard Trading Conditions (STC)

Irrespective of the type of agreement you enter into, if you are providing services of any kind to the other forwarder it is imperative that the STC are incorporated at the time a quotation is made in the case of a one off arrangement and, for longer term arrangements, into a formal agency agreement.

The Agency Agreement

Entering into an agency agreement (either verbal and/or written) is a binding contract between two parties as long as there is an offer, an acceptance, and value of some kind such as payment passing with acceptance, and should not be entered into lightly. Long-term agreements should be negotiated in English with the final draft being approved by a knowledgeable solicitor.

The document should include the following:

- 1** Detail of the scope of the agreement ie. air freight, sea freight, consolidations, documentary services or all services.
- 2** Definition of the geographical areas that the agreement covers.
- 3** Date of commencement and term of the agreement with notice of any termination clauses.
- 4** Financial agreement – payment terms – the conditions under which you will undertake the collection of any Cash on Delivery (COD) shipments. An agreement that there shall be no invoice adjustments raised on insurance claims prior to mutual agreement of liability and settlement, together with terms on dealings with HM Revenue & Customs on behalf of them and their customers.
- 5** The incorporation of the STC of both parties with a clear definition of when the STC of either party become paramount to the other. Beware of trading conditions you are asked to accept and be satisfied that they are standard forwarding conditions for the country concerned, and not conditions that are being imposed on your partner by his customer. If in doubt check these conditions with a solicitor.
- 6** Confirmation that forwarder’s liability insurance is in place and will continue to be in effect throughout the term of the agreement.
- 7** As far as possible the agreement should contain a list of pre and post costs and charges from both parties for haulage, warehousing, freight, customs formalities and any other foreseeable costs/charges including an agreement to bear proven currency and bunker surcharges without delay.
- 8** The Agreement and the quoted costs/charges should be reviewed on an agreed regular basis. Any interim changes excluding Bunker Adjustment Factor (BAF)/Currency Adjustment Factor (CAF) should require an agreed notice period.
- 9** Logistics Contracts - if this form of business is to be included in the scope you should also take note of BIFA’s Good Practice Guide: ‘A Guide to Logistics Agreements’. Separate terms must be agreed for each individual Logistics Contract, the basis of which should not conflict with the basic Agency Agreement.

continued...

This list is not definitive and is designed as a set of guidelines. Informal engagements can be very costly therefore time and money spent in setting up strong and fair arrangements with existing and potential partners, with clearance from a knowledgeable solicitor, can prove to be a sound investment.

The document should include the following: continued...

- 10** If contracting with a foreign agent, the agreement should contain a law and jurisdiction clause. Whilst the BIFA STC do provide for English law and jurisdiction, with a choice of litigation or arbitration in favour of BIFA Members in the 2017 edition, the agreement itself should also contain a clause specifying agreed law and jurisdiction. The BIFA clause 28 could be used as a template but you would need to change the references in clause 28 to “Company” to however you are described in the agency agreement and the references to “Customer” to however the party you are contracting with is described in the agency agreement.