

A Guide to Logistics Agreements



The services provided by freight forwarders and logistics suppliers can be complex. This complexity has added innovation and value, enabling the customer to outsource much of what was previously done in-house. For freight forwarders however, extending the service offer is not without risk, and it is essential to understand where these risks lie and what can be done to protect against potential loss.

BIFA Standard Trading Conditions (STC)

All BIFA Members use the BIFA STC as the basis of their international freight contracts with their customers. The STC have stood the test of time and supported Members over many years. They are a fair set of conditions regularly reviewed against consumer legislation and the Unfair Contracts Terms Act. They have been developed over a number of years and have been regularly upheld in the Courts. Under no circumstances should Members set them aside. However tempting it might be to secure an apparently lucrative contract, there are many fundamental defences in the STC that are indispensable. This is not to say that they cannot be extended. In such circumstances however, always consult your liability insurer and a solicitor with appropriate transport-related experience. It would be sensible to establish the principal points of agreement with the customer on a 'subject to contract' basis before appointing a solicitor, in order to keep costs down. Negotiating and finalising contracts can be a lengthy process, so if the customer is anxious that provision of services begins before the contract is finalised, you should ensure that the BIFA STC are in place, pending the coming into force of any extended contract, which can always be backdated.

Customer Demands

Often a potential customer will require a scope of service that goes beyond the traditional freight forwarding activity, and will attempt to suggest that the STC are not relevant to the contract. But Clause 2A of the STC states: ".....all and any activities of the company in the course of business, whether gratuitous or not, are undertaken subject to these conditions". Remember that you are the service provider and it is your STC that will be paramount and need to be embodied into any contract. 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:

- 1 Should we be entering into this agreement? If "Yes",
- 2 What commitment will we need to make?
- 3 Can we cope?
- 4 What will our risks be? For example, cash flow, personnel, premises, equipment.
- 5 Can we afford it? If "Yes",
- 6 Can we work with the company and its staff?
- 7 What is our real motivation? For example, profits.
- 8 How can we safeguard our company?
- 9 Should we proceed?



CONSULT YOUR SOLICITOR BEFORE MAKING ANY COMMITMENTS
Do not be rushed. Using a solicitor will present an image of professionalism.

Liability Insurance

All BIFA Members carry an insurance policy that covers their minimum liabilities as set out in the STC. The premium payable 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 failure to inform insurers could result in an exposure not covered by your policy, not just in respect of this non-notified business but also the rest of your business depending on the policy wording. If you wish to take on new business that falls outside the scope of previous activity always advise your liability insurer before doing so.

Activities that may fall outside Liability Cover

- 1 Staff implants in the customer's own premises.
- 2 Computer-to-computer data exchange.
- 3 Accounting activity, such as invoicing and credit control.
- 4 Taking on employment responsibilities for customer's staff.
- 5 Responsibility for intellectual property.
- 6 Managing the customer's own premises, leases, health and safety, etc.
- 7 Product installation.
- 8 Product liability if your customer is outside of the EU and has no other representative in the EU.

Note: this list is NOT exhaustive, and is provided merely for guidance.

Contract Essentials

There are a number of indispensable items that must appear in every contract you sign. Your solicitor will advise, but the following checklist will assist:

- 1 The names and contacts of the parties: a self-explanatory section.
- 2 The scope of work: it is important to define the extent of the work to be carried out.
- 3 Duration: a clear statement to define the period of time to which the contract refers.
- 4 Termination: periods of notice, and any exceptional reasons for termination.
- 5 Dispute resolution: a course of action must be specified in case of future need.
- 6 Conditions of business: the BIFA STC.

continued...



GOLDEN RULES

- Under no circumstances set aside the STC in their entirety
- Always consult a solicitor
- Always inform your liability insurer
- Assess your risks
- Act professionally - don't rush
- Check your liability cover
- Check the contract essentials

Contract Essentials continued...

7 Governing law and jurisdiction: it is particularly important with overseas customers to ensure that governing law is established under English jurisdiction.

The BIFA STC do provide for English law and jurisdiction with a choice of litigation or arbitration in favour of the BIFA Member.

The logistics agreement could provide for this clause to apply to the entirety of the logistics contract.

If you are not able to gain the agreement of the other party to importing the BIFA STC into the logistics agreement you could use clause 28 of the BIFA STC as a template for the law and jurisdiction clause but you would need to change references to “Company” in clause 28 to however you are to be described in the logistics contract and references to “Customer” to however the other party is described in the logistics contract.

8 Authorities: signatories to the contract must have the authority to engage the responsibilities of the respective parties to the contract.

9 Assignments: a statement that forbids one party from assigning any part of the agreement without the consent of the other.

10 Indemnity: each party must warrant that it is free to enter into the agreement and indemnify the other party for breach of such warranty.

11 An entire agreement clause to ensure that nothing else outside the written agreement is regarded as contractual between the parties unless it is amended or varied in accordance with the agreement.

12 A clause to state how amendments or variations to the agreement should be dealt with. This is usually by requiring the same to be in writing and signed by both parties and attached to the agreement.

Conclusion

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. However, there is no substitute for preparation, planning and professional advice. Follow the Golden Rules.

Advice and Information

The Association is here to help you in any way it can. Whilst BIFA members of staff do not have legal training, they can often assist with commercial questions and source appropriate advice for you. However, any such assistance given and flowing from this Guide will be subject to the disclaimer appearing at the end of the Guide.