

Using Industry Standard Terms & Conditions (UK & Ireland)

This document is intended to provide general information and guidance to assist logistics service providers with developing good practice in relation to the use and incorporation of the most widely used industry standard terms and conditions of trading relevant to the carriage, warehousing, storage or forwarding of freight and goods within the UK and Ireland.

This guidance does not cover the application of international conventions or statutes that may be applicable to the international movement of goods or the use or incorporation of standard trading conditions that may apply under the domestic laws, rules, regulations, civil codes or similar of other countries. In addition, this guidance does not cover the use of third party standard terms or the provider's own bespoke terms and conditions or any other types of terms and conditions not expressly referred to in this guide.

The main industry standard terms and conditions that are used in the UK and Ireland and which are commonly referred to in transit liability insurance policies are:

1. The Road Haulage Association Limited (referred to as "RHA") Conditions of Carriage and the Road Haulage Association Limited Conditions of Storage. The RHA has recently launched an updated version of its conditions for 2020 which are likely to replace the most widely used 2009 edition. Other RHA terms exist for specialist business, such as abnormal loads or livestock, and Ireland's RHA has its own version.
2. The Freight Transport Association (referred to as "FTA") Model Conditions for the Carriage of Goods by Road in the United Kingdom. In 2020, the FTA changed its name to Logistics UK. For the time being, the FTA's standard terms and conditions remain unchanged but it is expected that they will eventually be revised to take into account the name change.
3. The British International Freight Association (referred to as "BIFA") Standard Trading Conditions. These conditions are mainly used in respect of freight forwarding operations involving air or sea, by service providers such as handling agents, or to cover services that fall outside the scope of carriage or storage arrangements. Please be aware that BIFA has released an updated version in January 2021 [replacing the 2017 edition] reflecting obligatory changes in light of the UK's exit from the EU, resulting in a change to direct/indirect representation with HMRC. Users of these terms need to make themselves aware of the key changes and differences between the 2017 and 2021 editions.
4. The United Kingdom Warehousing Association (referred to as "UKWA") Conditions of Contract. UKWA, was previously the National Association of Warehouse Keepers (or "NAWK") These conditions are mainly used to cover the provision of warehousing or storage services, although the latest edition is intended to be used when providing general logistics services.

The trade associations periodically review and update their standard model terms and conditions to take into account changes in law and practice. As a result, there have been a number of editions and versions released by each association over the years, often with older versions remaining in use for some time after the introduction of the new edition. Consequently, there are differences not only between the conditions issued by each association, but also between the various iterations of each set of conditions. Logistic providers should be mindful to ensure that they use the version which they believe is most suitable and appropriate for their business needs and it is recommended that they seek advice from their broker or the association that has produced the terms and conditions.

It is important to remember that the standard terms and conditions produced by a trade association are only available for the exclusive use of members of that association. Therefore, if service providers wish to use an association's conditions, they need to become a member first.

Where a logistics service provider does not wish to become a member of a trade association, it is advisable to obtain insurance coverage on a 'full responsibility' basis. This is because most standard conditions released by trade associations usually contain provisions that limit the liability of the provider. This means that the logistics provider's liability to their customer for loss or damage to cargo would be restricted if the association's terms are incorporated into the contract.

Where the service provider does not incorporate any of the standard conditions, any claims by customers would need to be resolved under common law principles and a service provider could be exposed to unlimited liability, subject to any other applicable rules or the incorporation of bespoke conditions. Service providers should therefore ensure that the limits of their insurance cover are adequate to meet the worst case scenario if faced with a claim from their customer(s) and they are not able to rely on any of the standard trading conditions or other bespoke

conditions. Insurance premiums for this cover may be higher than those where standard trading conditions have been incorporated. Refer to your normal insurance advisor for advice.

A great deal of goods owners, such as manufacturers and distributors, believe that a carrier 'fully insures' their goods, which, of course, is not the case. A carrier typically insures only their liability for loss or damage to the goods, not the goods themselves. Therefore, knowledgeable cargo owners tend to take out separate 'Marine Cargo Insurance' which is intended to cover the loss or damage of the goods being transported. Such cover commonly specifies the basis of valuation for determining the value of covered goods. This can be contrasted with goods-in-transit policies which are intended to cover the provider's liability towards their customer and therefore will generally specify the level of insurance cover by reference to the provider's liability under contract terms and any applicable limits of liability. In practice, this usually means that the cargo owner would claim indemnity for the agreed value of the goods from their cargo insurers, which may result in the cargo owner being compensated for their loss. The cargo owner's insurers will in turn seek to recover from the logistics service provider and/or their insurers, but in most cases that recovery would be up to the limits of liability specified in the standard terms and conditions incorporated into the contract between the cargo owner and the service provider.

Here are a few general tips on the steps that service providers can take to ensure incorporation of the standard terms and conditions of the association of which they are a member into contracts with their customers:

- As a general rule, the standard terms should be referred to as early as possible and brought to the customer's attention before or at the time the contract is made. This can be achieved in a number of ways. In most cases, the safest way would be to ask the customer to sign a copy of the conditions or acknowledge receipt before the contract is concluded.
- In many cases, it is likely that the customer will not return a signed copy back or even acknowledge receipt of the terms. Therefore, it is usually best practice to adopt processes that allow you to inform your customers as early as possible and, in any event, before a contract is concluded, of your intention to trade and/or provide specific services subject to your chosen standard terms and conditions. An example could be by adding specific statement(s) to all written forms of communication with your customers, specifically those exchanged prior to the provision of services or commencing a business relationship, such as acceptance or acknowledgement of orders, quotes, emails, letters, credit application forms, compliment slips, leaflets or brochures.
- Another way to notify existing and prospective customers could be by sending copies of the standard terms and conditions that they wish to use to their existing and prospective customers by attaching them to a covering letter. Any amendments to the standard provisions should be clearly highlighted in the covering letter.

Here are a few examples of the form of notice that could be used:

" All goods are accepted and carried subject only to the standard current or latest edition of the [insert the full name of the terms to be used here e.g. Road Haulage Association Conditions of Carriage or Freight Transport Association Conditions for the Carriage of Goods], a copy of which [select 'is attached' or 'available upon request']".

Or

"All business of the Company is transacted under the current edition of the Standard Trading Conditions of the British International Freight Association which are available on request".

Or

"All warehousing and storage services are subject only to the [insert the full name of the terms to be used here e.g. Road Haulage Association Conditions of Storage 2009 edition], a copy of which [select 'is attached' or 'available upon request']".

Another example is to write to all existing or future customers highlighting the intention to trade on specific industry standard terms and attach a copy of those terms to the covering letter.

Where a business provides more than one type of service and it wishes to rely on more than one set of standard terms, the notice should specify the conditions that would apply to each of the services provided. For example:

"All goods are accepted and carried subject only to the standard current or latest edition of the Road Haulage Association Conditions of Carriage, a copy of which [is attached / copies available upon request]. All other services are provided subject to the 2017 British International Freight Association Standard Trading Conditions], a copy of which [select 'is attached' or 'available upon request']".

It is worth noting that service providers should not assume that they can rely on standard terms and conditions printed on the reverse of invoices because such documents are usually submitted after the contract has been concluded and therefore this may not be sufficient to incorporate the terms.

Once a service provider becomes a member of one of the trade associations, they should also be allowed the use of the association's widely-recognised logo.

It is possible to amend or override some of the provisions contained within the standard terms and conditions. A typical example is to amend the limit of liability. It would be prudent to ensure that any such changes, or indeed any other changes to the standard terms, are properly documented.

Where a customer requests the service provider to increase its limit of liability, for example, a request for an increase to £3,000 per ton limit of liability instead of the £1,300 per ton limit specified under the RHA standard terms of carriage, the service provider should contact their broker to ensure that their insurance cover is appropriate and covers any such changes. It is best practice to ensure that all such requests from customers and the provider's responses, whether agreeing or rejected such requests, should be made or documented in writing, and all correspondence should be retained on file in the event of a dispute.

If a service provider chooses to notify its existing and prospective customers of the standard terms on which they trade by sending copies attached to a covering letter, it is advisable to highlight any amendments to the standard provisions in the covering letter.

Service providers that have a website or a business Twitter, Facebook or LinkedIn account, may wish to consider inserting clear statements referencing the use and application of their chosen standard terms and conditions and include a link or other means by which customers can view or download a copy of the relevant terms.

Ensuring that any standard terms and conditions are brought to the attention of and incorporated into any agreement with new customers at the outset of a commercial relationship is even more important especially if the services to be provided are likely to be on an infrequent basis or instructions are likely to be accepted on a spot hire basis. For example, where a service provider agrees to deal with a consignment belonging to a customer they have not worked for before and/or are unlikely to work for again often. In such situations, it would be prudent to ensure that prior to accepting the job or collecting the goods, the customer is notified of the provider's standard terms and conditions. For example, any quotes or booking forms and correspondence should have a clear reference the fact that the services are provided subject to the application of standard terms and conditions. Verbal quotations or bookings should always be confirmed in writing with a clear reference to the provider's applicable terms and conditions. Where the customer provides the rate, rather than the service provider being asked to quote for it, providers should still ensure that the standard terms and conditions are made known to the customer before accepting the job. This can be done by, for example, sending an email confirming the order or booking and expressly referring to the provider's chosen standard terms and conditions.

For new customers who are likely to provide frequent repeat business, service providers should inform such customers of their intention to trade subject to the relevant terms and conditions at the start of the commercial relationship, ideally at the quotation stage, and provide a copy of the terms prior to commencing performance.

In all cases, it is best practice to ensure that all communications are conducted or confirmed in writing and that service providers retain copies and maintain adequate records. For example, if a copy of the terms is sent by post, it is advisable to use recorded delivery and keep on your file the delivery receipts and copies of the covering letter and the version of the terms sent to the customers. If customers are informed by e-mail, providers should keep copies of those emails, together with the version of the standard terms referred to, or attached to, the e-mail, or, alternatively, print off copies of the emails and the terms and retain on their file. Providers may also wish to maintain a stock of printed conditions for issue to customers or subcontractors as and when requested.

Providers should also consider reminding their customers at regular intervals, such as annually, of the terms and conditions on which they trade and provide a copy of those terms, particularly where the provider adopts a new set of conditions or changes to an updated version.

It is also important to note that the same steps should be followed in relation to sub-contractors that the provider uses, whether regularly or on an infrequent basis, to perform part or the entirety of the services provided to customers.

Service providers should send a copy of their insurance schedule to customers annually to confirm that cover is in place for the contract terms applicable to the services they provide.

For further advice please speak with your normal insurance advisor.

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