

UKWA LTD

GUIDANCE TO USERS OF THE CONTRACT CONDITIONS FOR LOGISTICS (2014)

The Conditions are not a contract in themselves; they are terms which need to be incorporated specifically into the members' contract with the customer, either by reference in a written contract, or by notification to the customer before the contract is made that the Conditions apply. A copy of the Conditions should be sent to the customer or potential customer as early as possible with notification that they will apply to all activities undertaken for the customer. It may not be sufficient simply to inform the customer that the Conditions apply without supplying a copy of them.

The contract itself should set out what the member will do, what is expected of the customer, how the charges will be calculated and any other relevant matters.

The Conditions do not include a space for the insertion of the members' name. The member should notify the customer when sending the Conditions that the member is "the Company", although this should be readily apparent anyway.

The Conditions are considered suitable for application to most contracts for the provision of logistics services relating to goods (including any combination of warehousing, carriage and freight forwarding) but may also be useful in other areas where services are provided in relation to a customer's goods.

Comments on some of the clauses appear below:-

- 1.1 It is the customer's responsibility to notify in advance in writing any particular treatment required for the goods.
- 1.3 Defines when the goods become, and subsequently cease to be, the responsibility of the member.
- 1.5 Unless otherwise stated, members engaged in freight forwarding act as agent of the customer so that it is the customer who is responsible for paying other parties who store or carry the goods.
- 2.1 These clauses define the customer's obligations.
 - 2.1.2 Requires goods to be properly and safely packed.
 - 2.1.3 Requires the customer to notify the member prior to acceptance of the goods of any special precautions needed.
 - 2.1.4 Requires the customer to reimburse duty and tax which is payable in respect of the goods for any reason.
 - 2.1.5 Is a statement by the customer that none of the goods pose a potential environmental problem or need a licence, etc, unless this has been previously disclosed and accepted in writing.
 - 2.1.6 Where goods are being carried, it is the customer's obligation to ensure availability of suitable loading and unloading facilities (other than at the

member's premises) and where appropriate to provide an appropriate risk assessment for health and safety purposes.

- 2.1.7 Gives the member the right to apply reasonable regulations if desired.
- 2.2 Where the customer is in breach of contract, eg, by not paying the member's charges when due, the member is entitled to re-charge to the customer any expenses involved in dealing with that breach, plus a reasonable amount for its own time. It also gives the member the right to remove the customer's goods from the premises if they do not match the customer's undertakings in clause 2.1.
- 3.1 It is the customer's obligation to insure its goods to their full value or to accept that it is self-insuring. Members' charges are for providing the relevant services, not for underwriting the security or value of the goods.
- 3.2 Exclude and limit the member's liability for loss as follows:-
- to
- the member is only liable if it is at fault
- 3.5
- if the member is at fault, it is only liable for loss directly caused and not for lost profit or income, wasted expenditure, consequential loss, etc
 - the limit of the member's liability (if at fault) is the level previously stipulated in writing by the customer (as an amount per tonne, in sterling, euros or dollars); but if the customer does not stipulate a limit then the applicable level is £100 per tonne
 - where the customer stipulates a limit above £100 per tonne, then it has to specify the value of the goods and pay an extra charge to cover the cost of the member insuring against the extra liability, or a reasonable sum to compensate the member for self-insuring
 - if the member is not able to obtain insurance or the customer does not promptly pay the invoice for the insurance, then the member can require that the limit of liability is £100 per tonne but needs to serve written notice
- If the member does not wish to accept the higher limit stipulated by the customer, then (unless insurance isn't available) its remedy is to terminate the contract and require the customer to remove its goods (unless, of course, an acceptable alternative solution is negotiated between the parties). The Conditions are drafted to give the customer the right to set the limit of liability so as to deal with the requirement of reasonableness imposed by the Unfair Contract Terms Act.
- 3.7 Imposes time limits for notifying the existence of a claim (10 days from becoming aware), providing details of the claim (21 days from becoming aware) and serving legal proceedings (nine months from the event giving rise to the claim).
- 4.2/4.3 Operate to prevent the limitation of liability in clause 3 being circumvented by the customer bringing a claim against someone other than the member

who may then claim against the member (eg a security company).

5. Protects the member's position if the goods are transferred to someone else while in store.
- 6.1 Allows the member to increase its charges by 21 days' notice (7 days for fuel related costs).
- 6.2 The member is entitled to charge extra if its vehicles are delayed in loading or unloading.
- 6.3 The member is entitled to payment up to date immediately before goods are removed from store, regardless of any credit period agreed.
- 6.4 Interest is payable on overdue amounts, calculated in a simple way. If an invoice is overdue in any particular calendar month, then it attracts a 1.5% charge for that month and for each subsequent month in which it is outstanding. For instance, an invoice payable on 20 May which is ultimately paid on 10 July attracts 4.5% interest (1.5% for each of May, June and July).
- 6.5 Gives the member a lien on goods in its control to secure amounts payable by or claimed from the customer, or otherwise in respect of the goods or by the owner of the goods (if that is not the customer). The member is entitled to continue to charge for storage of goods detained under lien.
- 7.1 The member can require the customer to remove its goods within 14 days (3 days for perishable goods).
- 7.2 If the customer does not comply with a notice to remove the goods served under 7.1, or payments are overdue, the member can give 21 days' notice (three days for perishable goods) of its intention to sell the goods and at the end of that period, the goods can be disposed of and the proceeds of sale set against money owing to the member.
8. Excuses the member from performing its obligations if that is prevented or delayed by factors outside the member's control.
9. Deals with data protection and confidentiality.
10. Aims to protect members where taking on a new contract may impose liabilities relating to the workforce of the previous service provider.
12. English law applies to contracts incorporating the Conditions, including where the parties or the goods are in, eg, Scotland or Northern Ireland. This is because liens are less effective under Scottish law and it is unlikely to be too inconvenient to deal with any disputes in England.

The Conditions are copyright, which means they may only be used by UKWA members. Members may choose to amend or exclude parts of the Conditions for their own use, but should be sure that they first understand the legal and insurance implications of doing so.

These guidance notes are intended to assist users of the UKWA Conditions and set out the views of UKWA and its advisors on certain aspects of the meaning and

application of the Conditions. They are not a definitive guide and ultimately, any questions of interpretation and application of the Conditions are for the Courts to resolve. The notes are not advice, nor to be relied upon and neither UKWA nor its advisors accept liability for any loss arising from reliance on the Conditions or these notes.