



Don't Litigate, Incorporate

We are fast becoming a litigious society, with people claiming thousands of pounds on the basis that they were not made aware of the correct procedures for operating a newly bought electrical item, or were not made aware of the terms and conditions when buying a ticket for travel.

We have all seen instruction manuals for electrical goods that have warnings dealing with aspects that the reasonable man in the street would never normally consider.

The freight industry is not exempt from these situations, and whilst you take every step to collect and deliver your customers' goods in sound condition and on time, things do go wrong occasionally. For such circumstances you need operational terms and conditions that define your liability for loss of or damage or delay to those goods whilst in your care, custody and control.

Most freight forwarders, hauliers or warehouse keepers are members of an appropriate trade association, such as BIFA, RHA or UKWA, and will have adopted the standard trading conditions of those bodies. However, if those conditions have not been properly incorporated into their business dealings with their customers, they may not be able to rely on the protection afforded by those conditions.

What is incorporation?

Incorporation is a system of ensuring that your standard trading conditions apply correctly to all the transactions that fall within your business operations. Effectively, this means that you must make it clear to each customer that you only operate under stated conditions and you must give them an opportunity to inspect those conditions prior to trading with you. On that basis they cannot, at a later date, claim they were unaware of the conditions.

Here is an example form of words that you might use or adapt according to your own particular operations and trading conditions:

All business is transacted on *Road Haulage Association Ltd Conditions of Carriage 1998*, which exclude or limit the liability of *XYZ Hauliers Ltd* in certain circumstances; these trading conditions can be downloaded from our web site or a copy will be supplied on request.

If you are in any doubt as to whether this or any other form of words is legally sufficient, you should always take professional advice.

Why is incorporation important?

When goods are lost or damaged, the goods owners or their insurers will make a claim against you for the full value of the goods, plus any ancillary charges, and sometimes

consequential losses. If your terms and conditions have not been properly incorporated, your customers could claim that they did not apply to the contract that you had with them, and you may well find yourself liable for the full value of the goods, court costs, legal fees, surveyors' fees and all additional associated charges.

How is incorporation achieved?

It's simple...

Ensure that all correspondence by letter, fax or email states that you trade exclusively under specified trading conditions and that copies are available on request.

Usually this will be at the foot of every document.

If you have a web site, use it too to make reference to your trading conditions, and make copies available to download.

When issuing a quotation, always state the trading conditions under which you operate and provide a copy of them.

When any quotation is taken up, re-state your trading conditions and provide a copy of them, prior to commencement of the contract.

For new customers, a copy of your trading conditions should be sent along with any credit application form. The customer's signature on the form should also be stated to acknowledge that the conditions apply.

Once a trading relationship is established with a client, you should still make reference to your trading

conditions at the bottom of every letter, e-mail, fax, quotation, consignment note, collection note, dispatch note, delivery note and invoice.

And you should write to every customer at least once a year, reminding them that you operate exclusively under your trading conditions, providing them with a further copy.

By following these simple steps, you can ensure that your customers can never dispute their acceptance that all their dealings with you are governed by your trading conditions.

Subcontracting

As subcontracting is a feature of the freight industry, it is important to establish that all your subcontractors operate on terms that are no more restrictive than your own and that they have adequate insurance to cover their liabilities.

On that basis, it is recommended that you write annually to your subcontractors requesting confirmation and evidence of this.

Risk Management at NMU

This document is produced as part of NMU's commitment to helping policyholders reduce risks to their businesses and to safeguard their future.

For further information or to discuss specific Risk Control requirements, please contact your local NMU office or call NMU Risk Control on 0121 236 6550.