



## Transport Operators should avoid the liability-shock with standard terms of operation.

*For many involved in New Zealand's transport industry – be they carriers by sea or road, storage companies or logistics operators – the first time they may pay close attention to the terms of their contract with a customer is when they are on the receiving end of a claim for loss of or damage to the goods carried or stored. Transport insurance specialist TT Club's representative Alistair Irving advises on how to avoid the liability shock with clearly stated and appropriate standard terms of operation.*

When that claim comes in, it might be small but on the other hand it might have a devastating financial effect. In either case, two questions tend to need answering – (1) on what terms does the freight company operate and (2) do those terms effectively apply to the claim in question? This issue of terms of contract – and whether they have effectively been incorporated into an operator/client relationship – is also important in the context of insurance claims.

Most transport operators have a set of standard conditions which set out the basis of their liability and perhaps provide limits on or exclusions from liability. In many cases, for example with respect to international carriage of goods by sea, or any domestic movement of goods within New Zealand, a carrier's rights and obligations, as well as limitations and exclusions, will be dealt with through the application of compulsorily applicable legal provisions. In the case of international carriage of goods by sea the Maritime Transport Act gives effect to the Hague Visby Rules which set out a long standing and well understood structure of obligations and liabilities. In the domestic context the Carriage of Goods Act has, for over 30 years, become a well understood piece of legislation which imposes clear liabilities on carriers but, at the same time, gives them useful financial limits on their liability.

Beyond these compulsory provisions it is important for those involved in the transport industry not only to have in place standard terms of business but also processes which effectively incorporate those terms into their client relationships.

It goes without saying that the most effective way of ensuring that the terms of the contract between parties are clear is to have a document signed by the parties.

However, in practice transport operators generally have signed contracts only with their major customers and often at the request of the customer. In the latter case transport operators can agree a client contract which is likely to impose onerous, and perhaps uninsurable, terms from a liability perspective. In general however many contracts remain unsigned or are non-existent. The question then arises... 'how does a transport operator ensure that their terms are given binding effect?'

One effective step towards ensuring incorporation of contractual terms where a signed contract does not exist arises when a client is given credit. Often a transport operator's credit application form – which the client must sign – contains a provision whereby the applying for credit automatically binds the customer to the operator's terms and conditions.

Most contracts entered into by transport operators are however formed by a series of exchanges with customers through e-mails and phone calls. How can standard terms be incorporated into that relationship? When a signature isn't required – either on the contract document itself or on a credit application – an effective way of incorporation is to give the customer formal notice of the standard terms before or on the formation of the contract. The standard terms will thereby be incorporated into the contract by reference. It is also helpful if notices referring to the standard terms are displayed in warehouses and in other premises. A simple way of reinforcing the message about standard terms is to make reference to them on all documents which are produced by the transport operator, be they e-mails, quotes, invoices or letters.

These are the kind of steps which the TT Club, as a major insurer of transport operators worldwide recommends be taken – put the terms on a company website, send them to clients, refer to them on all documentation issued. The TT Club has additionally drafted model terms that are available to its Members.

The message is simple.

- make sure you have a set of terms covering all of your activities
- review those terms periodically
- advertise the terms to clients as widely as you can
- refer to the terms on every exchange with your customer.