



Best Practice *for the effective use of*

BIFA 2000 STCs

The purpose of this document is to establish a code of better practice to ensure that the Standard Trading Conditions, once incorporated, are not undermined, and to assist members to understand the pitfalls and problems that can be caused by lack of understanding.

It is not possible to cover all the clauses of the Trading Conditions or all eventualities; we will therefore concentrate on those matters which our experience shows are the most vulnerable, and trust that this paper will create some awareness of the subject and the need for it to be introduced to even the newest clerk and, just as importantly, to Sales Personnel. Unfortunately in the bustle of the day, liability and conditions of trade are often the last thing on one's mind, but herein lie problems that can often prove expensive and time consuming.

BIFA's Trading Conditions are basically the rules of the game. If you play card games such as poker where mistakes can prove expensive, you will no doubt play according to the accepted authority – in this case, Hoyle. Playing according to the rules does not *guarantee* that you will always win but, as with BIFA Trading Conditions, will always guarantee you the best possible outcome in the event of a dispute.

BIFA STANDARD TRADING CONDITIONS

The Customer's attention is drawn to the Clauses hereof which exclude or limit the Company's liability and those which require the Customer to indemnify the Company in certain circumstances.

DEFINITIONS AND APPLICATION

1. In these Conditions:

"Company" is the BIFA Member trading under these Conditions.

"Person" Includes persons or any Body or Bodies Corporate.

"The Owner" means the Owner of the goods (including any packaging, containers or equipment) to which any business concluded under these Conditions relates and any other person who is or may become interested in them.

"Customer" means any person at whose request or on whose behalf the Company undertakes any business or provides advice, information or services.

2. (A) Subject to Sub-Paragraph (B) below, all and any activities of the Company in the course of business whether gratuitous or not are undertaken subject to these Conditions.

(B) If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further.

3. The Customer warrants that he is either the Owner or the authorised Agent of the Owner and also that he is accepting these Conditions not only for himself but also as Agent for and on behalf of the Owner.

THE COMPANY

4. (A) Subject to Clauses 11 and 12 below, the Company shall be entitled to procure any or all of its services as an Agent or to provide those services as a Principal.

(B) The Company shall on demand by the Customer provide evidence of any Contract entered into as Agent for the Customer. Insofar as the Company may be in default of this obligation, it shall be deemed to have contracted with the Customer as a Principal for the performance of the Customer's instructions.

5. When the Company contracts as a Principal for any services, it shall have full liberty a) to perform such services itself, or b) to subcontract the whole or any part of such services to third parties (including the Company's own parent, subsidiary, or associated companies).

6. When the Company acts as an Agent on behalf of the Customer, the Company shall be entitled (and the Customer hereby expressly authorises the Company) to enter into all such Contracts on behalf of the Customer as may be necessary or desirable to fulfil the Customer's instructions and subject to the trading conditions of the parties with whom such contracts are made.

7. The Company reserves to itself a reasonable liberty as to the means, route and procedure to be followed in the handling, storage and transportation of goods.

8. (A) Subject to Sub-Clause (B) hereof, the Company shall have a general lien on all goods and documents relating to goods in its possession, custody or control for all sums due at any time from the Customer or Owner, and shall be entitled to sell or dispose of such goods or documents as Agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums on 28 days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the goods or documents.

(B) When the goods are liable to perish or deteriorate, the Company's right to sell or dispose of the goods shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to bring to the Customer's attention its intention of selling or disposing of the goods before doing so.

9. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to Freight Forwarders.

10. (A) If delivery of the goods or any part thereof is not taken by the Customer, Consignee or Owner, at the time and place when and

where the Company is entitled to call upon such person to take delivery thereof, the Company shall be entitled to store the goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of the goods or that part thereof stored as aforesaid shall wholly cease and the cost of such storage if paid for or payable by the Company or any Agent or Sub-Contractor of the Company shall forthwith upon demand be paid by the Customer to the Company.

(B) The Company shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances):

(i) on 28 days notice in writing to the Customer, or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the goods) without notice, any goods which have been held by the Company for 90 days and which cannot be delivered as instructed; and

(ii) without prior notice, goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Company or Third Parties or to contravene any applicable laws or regulations.

11. (A) No Insurance will be effected except upon express instructions given in writing by the Customer and all Insurances effected by the Company are subject to the usual exceptions and conditions of the Policies of the Insurance Company or Underwriters taking the risk. Unless otherwise agreed in writing the Company shall not be under any obligation to effect a separate Insurance on each consignment but may declare it on any open or general Policy held by the Company.

(B) Insofar as the Company agrees to effect Insurance, the Company acts solely as Agent for the Customer. The limits of liability under Clause 27(A)(ii) of these Conditions shall not apply to the Company's obligations under Clauses 11(A) and (B).

12. (A) Except under special arrangements previously made in writing or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of goods in specified circumstances only, such as (but without prejudice to the generality of this Clause) against payment or against surrender of a particular document, are accepted by the Company where the Company has to engage third parties to effect compliance with the instructions, only as Agents for the Customer.

(B) The Company shall not be under any liability in respect of such arrangements as are referred to under Sub-Clause (A) hereof save where such arrangements are made in writing.

(C) In any event, the Company's liability in respect of the performance or arranging the performance of such instructions shall not exceed the limits set out in Clause 27(A) (ii) of these Conditions.

13. Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall not pass such advice or information to any Third Party without the Company's written agreement. The Customer shall indemnify the Company against all loss and damage suffered as a consequence of any breach of this Condition by the Customer.

14. (A) Except under special arrangement previously made in writing the Company will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets or plants. Should any Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing the Company shall be under no liability whatsoever for or in connection with such goods howsoever arising.

(B) The Company may at any time waive its rights and exemptions from liability under Sub-Clause (A) above in respect of any one or more of the categories of goods mentioned herein or of any part of any category. If such waiver is not in writing, the onus of proving such waiver shall be on the Customer.

15. Except following instructions previously received in writing and accepted by the Company, the Company will not accept or deal with goods of a dangerous or damaging nature, nor with goods likely to harbour or encourage vermin or other pests, nor with goods liable to taint or affect other goods. If such goods are accepted pursuant to a special arrangement and then in the opinion of the Company they constitute a risk to other goods, property, life or health, the Company shall where reasonably practicable contact the Customer, but reserves the right at the expense of the Customer to remove or otherwise deal with the goods.

16. Where there is a choice of rates according to the extent or degree of the liability assumed by carriers, warehousemen or others, no declaration of value where optional will be made except under special arrangements previously made in writing.

THE CUSTOMER

17. The Customer warrants:

(A) that the description and particulars of any goods furnished by or on behalf of the Customer are full and accurate.

(B) that all goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the goods and the characteristics of the goods.

(C) that where the Company receives the goods from the Customer already stowed in or on a container, trailer, tanker, or any other device specifically constructed for the carriage of goods by land, sea or air (each hereafter individually referred to as "the transport unit"), the transport unit is in good condition, and is suitable for the carriage to the intended destination of the goods loaded therein or thereon.

18. Should the Customer otherwise than under special arrangements previously made in writing as set out in Clause 15 above deliver to the Company or cause the Company to deal with or handle goods of a dangerous or damaging nature, or goods likely to harbour or encourage vermin or other pests, or goods liable to taint or affect other goods, he shall be liable for all loss or damage arising in connection with such goods and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the goods may be dealt with in such manner as the Company or any other person in whose custody they may be at any relevant time shall think fit.

19. The Customer undertakes that no claim shall be made against any Director, Servant, or Employee of the Company which imposes or attempts to impose upon them any liability in connection with any services which are the subject of these Conditions and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.

20. The Customer shall save harmless and keep the Company indemnified from and against:-

(A) All liability, loss, damage, costs and expenses whatsoever (including without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the goods) arising out of the Company acting in accordance with the Customer's instructions or arising from any breach by the Customer of any Warranty contained in these Conditions or from the negligence of the Customer, and

(B) Without derogation from Sub-Clause (A) above, any liability assumed or incurred by the Company when by reason of carrying out the Customer's instructions the Company has reasonably become liable or may become liable to any other party, and

(C) All claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions regardless whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Company, its Servants, Sub-Contractors or Agents, and

(D) Any claims of a General Average nature which may be made on the Company.

21. (A) The Customer shall pay to the Company in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.

(B) In respect of all sums, which are overdue, the Customer shall be liable to pay to the Company interest calculated at 8% above the prevailing Base Rate of the London clearing banks.

22. Despite the acceptance by the Company of instructions to collect freight, duties, charges or other expenses from the Consignee or any other person the Customer shall remain responsible for such freight, duties, charges or expenses on receipt of evidence of proper demand and in the absence of evidence of payment (for whatever reason) by such Consignee or other person when due.

23. Where liability for General Average arises in connection with the goods, the Customer shall promptly provide security to the Company or to any other party designated by the Company in a form acceptable to the Company.

LIABILITY AND LIMITATION

24. The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgement.

25. The Company shall be relieved of liability for any loss or damage if and to the extent that such loss or damage is caused by:

(A) strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence;

(B) any cause or event which the Company is unable to avoid and the consequences whereof the Company is unable to prevent by the exercise of reasonable diligence.

26. Except under special arrangements previously made in writing the Company accepts no responsibility for departure or arrival dates of goods.

27. (A) Subject to clause 2(B) and 11(B) above and sub-clause (D) below the Company's liability howsoever arising and notwithstanding that the cause of loss or damage be unexplained shall not exceed:

(i) in the case of claims for loss or damage to goods: (a) the value of any goods lost or damaged, or (b) a sum at the rate of two Special Drawing Rights as defined by the International Monetary Fund (hereinafter referred to as SDRs), per kilo of the gross weight of any goods lost or damaged whichever shall be the least.

(ii) in the case of all other claims:

(a) the value of the goods the subject of the relevant transaction between the Company and its Customer, or

(b) a sum at the rate of two SDRs per kilo of the gross weight of the goods the subject of the said transaction, or

(c) 75,000 SDRs in respect of any one transaction whichever shall be the least.

For the purposes of Clause 27(A) the value of the goods shall be their value when they were or should have been shipped. The value of SDRs shall be calculated as at the date when the claim is received by the Company in writing.

(B) Subject to Clause 2(B) above, and Sub-Clause (D) below, the Company's liability for loss or damage as a result of failure to deliver or arrange delivery of goods in a reasonable time or (where there is a special arrangement under Clause 26) to adhere to agreed departure or arrival dates shall not in any circumstances whatever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant transaction.

(C) Save in respect of such loss or damage as is referred to at Sub-Clause (B) and subject to Clause 2(B) above and Sub-Clause (D) below, the Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market or the consequences of delay or deviation however caused.

(D) By special arrangement agreed in writing, the Company may accept liability in excess of the limits set out in Sub-Clauses (A) to (C) above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

28. (A) Any claim by the Customer against the Company arising in respect of any service provided for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for him to comply with this Time Limit and that he has made the claim as soon as it was reasonably possible for him to do so.

(B) Notwithstanding the provisions of Sub-Paragraph (A) above the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of any service provided for the Customer or which the Company has undertaken to provide unless suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

JURISDICTION AND LAW

29. These Conditions and any act or contract to which they apply shall be governed by English Law and any dispute arising out of any act or contract to which these Conditions apply shall be subject to the exclusive jurisdiction of the English Courts.

INCORPORATION

Our first task is to make sure that the BIFA STCs form part of our contract with the customer, so that they are "Incorporated into the Contract". It is important to note that the incorporation of restrictive trading conditions is dealt with under the Unfair Contract Terms Act, where one of the test of reasonableness is that the parties have equal bargaining power.

Best Practice

On first contact with a customer or prospective customer, be sure to confirm on all letterheads, quotations, invoices, faxes and e-mail that:

"All business of the Company is transacted under the Standard Trading Conditions of the British International Freight Association (BIFA STCs) a current edition of which is available upon request".

It is also prudent to send, without delay, a copy of the BIFA STCs to the Company Secretary or Managing Director drawing attention to the fact that the conditions restrict your liability. Any verbal quotations or bookings that are made or received should always be confirmed in writing and bear the above statement.

This should be done preferably by fax or e-mail, before any work is undertaken or, where this not practical, as soon as is possible.

LIABILITY

Your liability to your customer is restricted under the STCs -

For loss or damage to cargo see **Clause 27(A)(i)**

For all other claims including errors,
omissions and negligence see **Clause 27(A)(ii)**

For delay see **Clause 27 (B)**

These limits are however overridden if any legislation is compulsorily applicable; such as for international movements by road, the Carriage of Goods by Road Act 1956 (CMR), by rail CIM, by sea Hague Visby, and by air the Warsaw Convention.

Other limitations my also apply such as the FIATA FBL or local National Law.

Best Practice

Irrespective of the fact of any other legislation that might apply to the transaction, it is still most important to incorporate the STCs. For example all International Conventions relate specifically to the carriage of goods, and not to ancillary services applying to the carriage such as Customs formalities and documentary procedural work. As **Clause 2 (B)** ensures that the STCs apply to any part of the transaction which is not covered by the Convention.

YOUR ROLE

Under the STCs the Company is entitled to act as an Agent or a Principle - see **Clause 4 (A)**. This does not mean that you can just state that you are only the agent and therefore are not liable for loss or damage.

To claim the status of an Agent the company must be able to produce evidence to the customer as is laid down in **Clause 4(B)**:

When acting as an Agent
Clause 6 grants authority

When acting as a Principal
Clause 5 grants certain liberties

As a Principal you are responsible for Loss and/or Damage to the goods whilst they are in your care, custody and control, or that of your Agents or Sub-Contractors.

As an Agent whilst you are not responsible for loss or damage, you have a greater duty of care especially in the selection of carrier and route.

Best Practice

The role of Agent cannot be presumed. To act as an agent the Company must put the customer into a direct contractual relationship with the carrier, and such a transaction must be transparent from the shipping documentation, ie bills of lading and invoices.

In today's commercial world more often than not the forwarder will be the principal, or even the contracting carrier. Agency still applies to documentary tasks, some house forwarding, and projects where the shipper wishes to have a direct relationship with the carrier in order to liaise directly at the port of discharge.

Your Forwarders Liability Insurers should be made aware of your role as they cover for all these eventualities, and further should be advised immediately of any possible claim you may receive against you.

DUTY OF THE CUSTOMER

Customer warranties are contained in **Clause 17** and are the terms under which the customer undertakes his business with you. The clause covers such matters as description weight, measure, nature of the goods and special instructions.

Clause 17 (C) is particularly important when the goods are collected in the transport unit.

In accepting **Clause 20** the Customer agrees to a set of indemnities protecting the Company when carrying out his instructions

Best Practice

These are not the only Clauses that underline the need to obtain instructions in writing. Where the customer's instructions are not clear they should be clarified before being undertaken. Where verbal instructions are received, **always** confirm verbal instructions back to the customer by telex, fax, mail or e-mail, and don't forget to incorporate your STCs at the same time!

CARGO INSURANCE

The owner of the cargo is the only person who has an insurable interest in its loss or damage. Accordingly the forwarder cannot insure the goods without receiving specific instructions from the owner to do so.
See **Clause 11(A)**

However should the forwarder receive instructions and fail to insure, the company cannot claim the restricted limitations laid down in **Clause 27(A)(ii)**. See **Clause 11(B)**.

Best Practice

Under no circumstances should you offer to insure goods on behalf of your Client unless you hold an Open Cover Marine Insurance Policy, as such policies will offer retrospective cover if you can prove having received instructions to insure from the Client. Having an "Open Cover" will therefore protect you against the full liability you would otherwise have under **Clause 11(B)**. When effecting an Open Cover, be sure that it is agreed that the Insurer will not subrogate his claim against you. This makes the promotion of the sale of cargo insurance to your client much more beneficial to you, as apart from earning you commission, it protects you from dealing with the claim through your liability insurance and so protects your policy excess and claims record.

PAYMENT OF ACCOUNT

The end product of any business is to receive payment for services rendered. The STCs address this subject under various Clauses.

SET-OFF

Clause 21(A) is very important. It is a customer warrantee to pay monies, when due, without any set off against any claim they may have, or purport to have, against you.

It is well to note that under common law set-off is a legal right in normal commercial trading; however it is established in the Courts that this is not the case when the debt refers to freight charges or services.

Clause 21 (B) establishes the amount of interest chargeable for overdue accounts.

Best Practice

The key words in **Clause 21(A)** are "when due". It is therefore vitally important that terms of payment relate to a "due" date, ie "cash against documents", "cash before delivery" or, where credit is concerned, the amount of days from invoice date, so establishing the date that payment is due. This is important in the case that you need to refer to the Courts for settlement and for the establishment of any interest due under **Clause 21(B)**.

Should a customer attempt to set off his debt, you should firstly advise him that his act is not legal, secondly confirm that until he pays the freight charges, he is in breach of his warrantee under the STCs, and that any claim he may have can only be dealt with once he has completed his part of the contract of carriage by paying the freight.

LIEN

Clause 8(A) claims the right for the Company to take a "General Lien" on all goods and documents they hold, as opposed to a "Specific Lien" which would relate merely to charges outstanding to a specific transaction. Once invoked a lien is known as an "Active Lien".

The point of a General Lien is to offset the problem which arises when a credit line is agreed, and the goods

relevant to the non-payment are no longer in the Company's possession at the time the monies are due.

It is at this point that the importance of **Clause 21(A)** becomes even more obvious.

Best Practice

You may well have heard the saying that "Possession is nine tenths of the law" which really does sum up the Forwarder's situation.

Success often depends upon how important the receipt of the goods is to the customer (or Official Receiver!). In taking lien it is vitally important that you advise all parties concerned in the transaction of your intentions. You cannot succeed with any lien that is not addressed to the owner of the goods. Before lodging a lien it is prudent to take legal advice and have the lien served by a Solicitor, as if the lien is not undertaken properly, or if you cannot prove that your actions are valid, you might find that the Customer has obtained a Court Order for the release of the Goods. Legal costs could then be counted in thousands rather than tens of Pounds Sterling, and may well be for your account!

This is a very useful clause which is very powerful when undertaken properly, but it can often be a game of bluff and counter-bluff which must be played with great care.

CASH ON DELIVERY (CODS)

Clause 22 covers the collection of freight charges and other expenses and is quite specific when dealing with the "Customer". The *big* problem arises when an ex-works shipper requests the company to collect the value of the goods from the Consignee before delivery.

As the ex-works shipper is not involved in the Contract of Carriage the company does not have the opportunity to incorporate its STCs. The contract between the shipper and the company is basically one related to banking.

The real problem is the fact that when the Consignee, who once the goods are collected is now the owner, calls for delivery having paid the freight, there is no legal reason why delivery can be withheld. To do so would be to impose an illegal lien. (See comments on Lien) The same scenario applies to an FOB shipper, except that he should have received, or have been aware of, the Company's STCs.

Best Practice

The very best practice is not to accept this form of business at all!

However if it is felt necessary to do so, the following are some rules that should be followed to the letter. The list is probably not finite but it is a good guideline:

1. Insist and check that the Consignor has included a Retention of Title clause into his contract of sale to the Consignee
2. Make it conditional and check that the Consignor makes the Consignee aware that delivery will not take place until his costs are paid.
3. Do not consider undertaking this task if you do not have your own appointed Agent arranging the delivery and if he does not have the Consignee as a Client.
4. Have a clause in your Agency Agreement that refers to CODs and the conditions under which both Agents will

undertake their collection and payment. It is wise not to consider accepting a COD where the cargo is not routed through your Agent.

5. When collecting monies from the Consignee insist that it is by way of a non-cancellable Banker's Cheque drawn to the favour of the Consignor in the currency and for the full amount of the sales invoice. Do not get involved in currency fluctuations and Bankers charges.

6. Do not on under any situation accept to collect monies from anyone other than a Trading Company.

7. Please do not forget to make a charge to the Shipper for your services which he agrees to pay before you send him his cheque - Banks do!!

INSURANCE CLAIMS

PROCEDURE

Claims Management and Procedures constitute a major subject and are well covered under BIFA Publication "**Cargo Claims Management – Good Practice Guide**" the reading of which is highly recommended.

Clauses 2, 19, 20(A)(B)(C)(D), 25(A)(B), 26, 27(A)(B)(C)(D), 28(A) (B) and 29 all refer to claims made against the Company relative to defences, time-bars, limitation and jurisdiction. In order to deal with any claim on a proper basis, these Clauses must be understood.

Best Practice

This is best described in the publication mentioned above, however the following is a very brief resumé of a procedure that should be followed:

1. Always confirm to customers, and potential customers, that the goods are not automatically insured by you, and further that settlement under the limits of the STCs or any International Convention for the carriage of goods will always be subject to the defences laid down in the various conditions relative to the Company's liability.

2. To ensure full payment is made for any loss or damage to his cargo and the consequent freight charges, he must declare the carrying on an All Risks Policy. As previously mentioned it is always good policy to receive instructions to declare the cargo on your Open Cover.

3. Upon receipt of a claim for loss or damage to cargo you should firstly identify if you were instructed to insure the cargo on your open cover and, if so, that it has been done. You should then request documentary evidence of the loss and/or damage, hold all parties involved in the transit responsible in writing, and forward all papers to the insurers for them to deal direct with the Client.

4. If the claim relates to your liability, you should advise the Customer to make a claim on his own Marine Insurance, and to advise those Insurers of your interest as Carrier or Contracting Carrier. You should then proceed to obtain proof of delivery from the haulier and proof of loss from the Customer. If the Claim is valid, then hold all parties concerned in the transit responsible and pass the matter to your insurers. Do not allow any set-off of freight payment against the claim (*see Set-Off above*).

5. Experience has shown that with prudent handling many claims initially received will not be pursued. A proven practice is that on receipt of the initial advice of a claim, the Customer is sent a claim form bearing a claim reference.

6. The intentions of the form are many, as it should be designed to establish the fact that:

- ☐ it is not your responsibility to insure the goods;
- ☐ that in the event that you have not been instructed to insure, your liability is restricted to a sum relevant to the gross weight of the goods;
- ☐ that you require documentary evidence of the claim.

A specimen claim form is included in this leaflet.

CLAIMS OTHER THAN FOR LOSS OR DAMAGE

These cover claims made for Errors and Omissions, Negligence, Delay and Consequential Loss.

Clause 27(A)(ii) relates to the limitation of claims other than those of loss or damage namely Errors and Omissions, & Negligence.

Clause 27(B) relates to claims relative to delay.

Clause 27(C) precludes any claim for Consequential Losses.

Important - it must be understood that you cannot restrict your liability if you fail to meet your Customer's instructions to insure the Cargo, and are not able to declare the cargo retrospectively. In such cases you will be held fully responsible for all losses that would have been paid had you followed instructions.

Best Practice

We can only repeat our previous statement that you should not under any circumstances accept instructions to insure unless you hold an Open Cover Marine Insurance Policy in your name.

CONCLUSION

The intention of this paper is to create awareness of the fact that the STCs are there for your protection, which will only work to your favour if you and your staff understand and apply them correctly

We have covered only those Clauses which we know from our experience are those that cause the most complaint and trouble.

Hopefully this introduction will encourage further reading and understanding of an important subject which, whilst appearing dull and formidable has in fact an interesting and direct link to good practice and profitable trading.

R G Willis
12 April 2000

CLAIM FORM – lost or damaged cargo



To enable us to process a claim where we have insured the goods for you, or to consider any claim for cargo lost or damaged whilst it was in our care, custody and control, please complete this form without delay and return it, together with supporting evidence, to the address below.

Name and address of company making claim	Consignment reference	Claim reference
	Assessor's reference	Broker's reference
Contact name / job title		
Telephone number	Fax number	
Your reference		
Detailed description of goods lost or damaged		
Total weight of consignment	Total weight of goods lost or damaged	
Value of total consignment	Value of goods lost or damaged	
Where are the damaged goods available for inspection	Please show how you calculated the value of the lost or damaged goods	
Please describe details of the loss and/or extent of the damage		
Evidence of loss or damage		
Photographs of damaged goods	<input type="checkbox"/>	
Signed 'claused' collection/delivery note showing goods were missing or received damaged	<input type="checkbox"/>	Tick as applicable and ATTACH
Survey report	<input type="checkbox"/>	to this form
Other (please specify)	<input type="checkbox"/>	
Were we instructed in writing to insure the goods for All Risks?	YES <input type="checkbox"/>	NO <input type="checkbox"/> Tick as applicable
If YES - please attach a copy of the Confirmation of Insurance		
If NO - PLEASE READ THE GUIDANCE NOTES ON THE REVERSE		
PLEASE SIGN THIS FORM Name Signature Date		
Enclose evidence of loss as detailed above and Confirmation of Insurance where applicable.		
Please note: we are unable to consider any claim until all outstanding charges have been paid in full.		

Guidance notes given without prejudice to explain the position where (name of your company) has NOT been requested in writing to insure cargo for All Risks under its Marine Open Cover.

We suggest that the correct course of action for you is to claim on your own insurance cover which should reimburse your loss for the goods and associated freight charges. You should advise your insurers of our position as contracting carrier; they can then contact us for recovering within our restricted liability.

1. We refer you to the current BIFA Trading Conditions and the Carriage of Goods by Road Act (1956) which restrict our liability for the loss or damage to goods whilst they are in our care, custody and control. This restricted liability is expressed in SDRs per kilo of the goods actually lost or damaged. SDRs (Special Drawing Rights) are defined by the International Monetary Fund and their value is published daily in the FT Currencies, Money and Capital Markets page under Currency Rates. We will calculate the current value on receipt of a completed claim form.
2. As a general rule our liability will be as follows:
 - a) Where the loss took place during the international movement (between our depot and our overseas agents depot or vice-versa) the CMR Convention as enforced by the Carriage of Goods by Road Act (1965) applies, and our maximum liability will be 8.33 SDRs per kilo.
 - b) Where the loss or damage took place during the UK domestic collection, delivery or warehouse handling, BIFA conditions apply and our maximum liability will be 2 SDRs per kilo.
 - c) In circumstances where we are proven to be at fault, but the actual point where the loss or damage occurred cannot be determined, the higher limit of 8.33 SDRs will apply.
3. **Specific guidance for exporters selling goods on ex-works terms**

The contract of sale is completed when the title to the goods passes to your customer, once they are taken into our control in good condition. After this point you should not be responsible for any loss or damage other than possible claims from your customer that the goods were insufficiently packed. We would advise you to direct your customer to claim against his insurers notifying them of the position of our overseas agent as contracting carrier.
4. **Specific guidance for exporters selling goods on FOB terms**

The contract of sale is completed once the goods have arrived safely at our depot as evidenced by the signed collection/delivery note or depot receipt. After this point you should not be responsible for any loss or damage other than possible claims from your customer that the goods were insufficiently packed. We would advise you to direct your customer to claim against his insurers notifying them of the position of our overseas agent as contracting carrier.

 - a) We are not responsible for damaged cargo received at our warehouse if it was delivered in by you or your sub-contractor.
5. **Door to Door trailer movements**

The CMR Convention Article 17 paragraph 4 includes the following:

The carrier shall be relieved of liability where the loss or damage arises from the special risks inherent in one or more of the following circumstances –

 - a) use of open unsheeted vehicles, where their use has been expressly agreed and specified in the consignment note;
 - b) the lack of, or defective condition of, packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or not properly packed;
 - c) handling, loading, stowage or unloading of the goods by the sender, the consignee or persons acting on behalf of the sender or the consignee;
 - d) the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin.
 - e) insufficiency or inadequacy of marks or numbers on the packages.

British International Freight Association

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