

Incorporation of Standard Trading Conditions into Hauliers Contracts of Carriage with Customers (Standard Freight Liability / GIT Policy Cover)

We wish to remind all our freight liability / goods in transit policy holders and haulage contacts of the need to protect themselves through the use of Standard Trading Terms and Conditions (STC's), such as the RHA Conditions of Carriage, and to ensure the STC's are properly incorporated into each and every contract with their customers.

Wrightsure recommend that all hauliers continually review their system for ensuring that prior to the commencement of loading / movement of any customers goods that their principles are made fully aware that **All** work undertaken is only carried by the haulier under their standard trading terms and conditions (STC's) which will normally be declared to their GIT insurers as being RHA Conditions of Carriage 1998 edition.

Most freight liability / Goods in Transit insurance policies will provide some form of cover for the hauliers liability at 'common law' were the haulier has failed to properly incorporate their STC's (the RHA Conditions) into the contract with their customer for the movement of the customers goods.

However, most policy wordings will stipulate that cover for failure to incorporate a haulier's STC's into a contract with their customer for the movement of goods is only granted if:

1. At the time of the loss / damage to the goods the haulier had an effective system in continuous use throughout the period of insurance to contract with their customers under the hauliers declared STC's

And

2. The failure by the haulier to incorporate their STC's into the contract with their customer for the movement of the loads was as a direct result of an isolated error or omission by the haulier or any employee.

It is normally the case that only limited insurance cover is provided in the event that the haulier has failed to have an adequate system continuously in place to ensure that their STC's are always incorporated in their contracts of carriage with their customers. In such event a policy may only pay to the extent that liability would have attached under the hauliers STC's (i.e. RHA £1300 per tonne).

What this means in practice is that if a claim is brought against a haulier under '**common law**' because the haulier had failed to properly incorporate their STC's into their contract of carriage with their customer, the hauliers insurance policy may only respond under RHA at £1,300 per tonne, whereas under '**common law**' the haulier may find themselves liable not for £1300 per tonne but possibly up to the actual full value of the lost / damaged goods, which the haulier may not be able to fully recover under their Freight Liability / GIT insurance policy.

As can now perhaps be appreciated there is a strong requirement for the haulier to ensure they have a robust system in place to ensure their STC's are properly incorporated into each and every contract of carriage with the haulier's customers.

Wrightsure's advice to all hauliers is that they seriously consider the following recommendations:

1. Hauliers to make specific contact with each and every customer, in writing by e-mail, letter (recorded delivery) or fax and / or a suitable notification should be included with any new account/credit agreement. Such communication should clearly confirm to each customer that all work undertaken by the Haulier is subject to the RHA 1998 conditions. The Haulier might consider sending customers a copy of their specific STC's or at least state that a copy is available on request.

Hauliers might consider stating that their GIT insurers have required the Haulier to send out reminders to all customers that the haulier trades under RHA Conditions of Carriage 1998 for all contracts of carriage unless otherwise agreed in writing prior to commencement of transport.

2. Hauliers should also request that every customer acknowledges receipt of the above suggested communication and the haulier should monitor the responses received to ensure each and every customer has accepted in writing that they are aware of the Haulier's STC's and that the STC's apply to all work undertaken by the Haulier.
3. We suggest that the Haulier includes the following wording on all communications, future printed letter head paper, invoices, quotes, collection & delivery notes, faxes, e-mails (footer / signature, which may be found in Microsoft Outlook by going to Tools, Options, Mail Format, Signatures) and any other form of written documentation.

"Terms and Conditions"

"All business undertaken is subject to the 1998 Road Haulage Association (RHA) Conditions of Carriage – copies available on request".

4. If the haulier already has a website or at some point in the future intends to develop a website then they should include above wording on their website.

Wrightsure suggest that hauliers might wish to include the above suggested wording with some form of announcement about the Haulage Company such as a new service / growing activities in spite of the difficult times / continuing and/or expanded operations or something positive is sent out to all customers. In this way the haulier will be taking advantage of the opportunity to contact their customers giving them some positive 'news' alongside the note regarding the STC's.

Another possibility might be, if the haulier is considering introducing the new 2009 RHA conditions (see RHA website). This would be another way to notify / communicate with customers that the Haulier trades under the RHA conditions and the haulier has the ability to also seek customer's confirmation that they accept the Hauliers new terms and conditions (RHA 2009).

CASE STUDY

The Through Transport Mutual (TT Club) news magazine 'TT Talk' constantly mentions the need to incorporate standard trading conditions (STC's). The Club's cover is based on STCs being incorporated in all agreements member companies make with their clients. The reasons for their concern are clearly demonstrated by Peter Jones solicitor with PM Law in a previous posting on his website <http://www.forwarderlaw.com> - good and proven incorporation of a forwarder's STCs made a difference of a cool **USD 647,950.00 in its liability**.

A printing press worth USD 648,000.00 was damaged in transit between Germany and the United States. Having paid a claim to the owners, cargo insurers sued the freight forwarder to recover this amount. The forwarder could, however, point to the fact that he operated under the terms of the National Customs Brokers and Forwarders' Association of America (NCBFAA) and that he had handled at least twenty-five previous shipments for the machine's owners. On each occasion the forwarder had issued documents referring to the conditions. The conditions limited the forwarder's liability to an amount of **USD 50.00**.

The court held that the conditions met the criteria laid down in previous decisions and said that, although there was evidence that the forwarder had been negligent, it could still rely on the **USD 50.00** limitation. Further details are available on the Forwarderlaw website at <http://www.forwarderlaw.com>

The FIATA Legal Handbook states that

"All forwarders have handled transactions for regular customers who have on file routine commercial documents as well as documents pertaining to the forwarder's engagement, such as shipping instructions or quotations. **These documents should have a clear reference on the front of the documents to the forwarder's trading conditions printed on the reverse side.** Where the previous transactions concluded successfully, customers do not raise questions concerning the conditions. The forwarder's previous engagement by a customer is called 'a prior course of dealing'.

Courts expect a customer to take reasonable steps to keep informed about its business. After all, reproducing the terms on commercial documents is very common, and very few customers are ignorant of the practice. So a customer has an opportunity to learn about the terms on which a forwarder performs its services from previous transactions. **A prior course of dealing** where a customer raised no objection is strong evidence that the customer accepted the conditions for a future engagement."

The RHA and BIFA Conditions are designed to protect both parties and we trust the above is a reasonably clear explanation of the pressing need to review procedures in this area. If you require further information or assistance on this or any other related issue please do not hesitate to contact Frank Heinrich-Jones, Wrightsure Fareham Tel 01329 820 768 e-mail: frankhj@wrightsure.com