

Guide to the new FTA Ireland Terms and Conditions 2018

Briefing note

Generally terms and conditions of trade are not foremost in minds when concluding contracts. Attracting customers and winning business is paramount. Issues such as price, payment terms and delivery costs are all important issues to the non-lawyer and issues such as limitation of liability, protection of rights in event of non-payment often appear less important. However effective incorporation of standard terms and conditions can be critical to limiting your company's exposure if something goes wrong.

FTA Ireland, in conjunction with Noble Shipping Law, have updated the FTA Ireland Conditions for the Carriage of Goods by Road for use by their members to afford even greater protection to their members.

The purpose of this briefing note is to highlight what is new in the 2018 terms and conditions and to guide members as to how to effectively incorporate terms and conditions into their contracts, including these new terms.

What's new?

Insurance

The 2018 terms and conditions make it clear that the member shall not be under any obligation to arrange insurance for any consignment unless this is agreed in writing between the member and their customer prior to the member taking possession of the consignment.

Means, route and procedure

The new terms make it clear that the member has an absolute discretion as to the means, route and procedure to be followed in the transportation of the consignment.

Shortage in the consignment on delivery

The 2018 terms and conditions make it clear that if the member has not been afforded any opportunity to verify the quantity of the consignment upon loading the member shall not be liable to the customer in respect of any alleged shortage in the consignment upon delivery.

Limitation of liability

The provision for the member's right to limit liability has been strengthened in the 2018 terms and conditions by making it clear that the liability of the member shall not exceed and shall be the lesser of:

- i €1,800 per tonne inclusive of all/any duties and/or taxes on the gross weight of the consignment where the whole or part of a consignment is lost or damaged
- ii €600 for the total consignment but not exceeding the actual value of the consignment or part of the consignment.

Clause 10.2 of the 2018 edition of the 2018 terms and conditions further makes it clear that in any event the member's liability shall

not exceed the lesser of the customer's loss or the amount of the carriage charges.

The 2018 terms and conditions contain an express exclusion of liability for any indirect or consequential loss of any kind whatsoever to include, but not limited, to loss of profit and loss of market opportunity.

Fraud and indemnity

The 2018 terms and conditions provide that the member is to be held fully harmless and indemnified for any fraudulent activity by its customer, the consignor or consignee and for any liability assumed or incurred by the member, other than set out in the 2018 terms and conditions by carrying out any instruction from the customer. This extends to any liability to the customer, consignee or consignor or any other third party

Time for suit

The 2018 terms and conditions contain a new provision that the member be discharged of all liability in respect of a consignment unless their customer has referred the matter to arbitration written notice of such referral is given to the member within twelve months from the date delivery was scheduled to or did take place, or in the event no delivery date was agreed and no delivery took place twelve months from the date the member took actual possession of the consignment.

Governing law and jurisdiction

The 2018 terms and conditions make it clear for members that the governing law of contracts incorporating these terms is Irish law and subject to exclusive jurisdiction of the courts in Ireland.

Confidentiality

The 2018 terms and conditions contain a new confidentiality provision to protect any confidential information of the member's business.

Effective incorporation

In practice many business fail to effectively incorporate their standard trading terms and conditions into their contract and without realising it they therefore do not have the protection and intended benefit of those conditions.

In order to incorporate the terms and conditions into your contract with your customer it is critical that your customer has been made aware of your use of the terms and conditions, and has accepted them, **before** you conclude your contract with them. It is too late to introduce terms and conditions you want to rely upon after your contract is concluded. If your only reference to the terms and conditions is in your invoice sent after you have provided your services it is too late. Any particularly onerous terms must be brought specifically to the attention of your customer. We recommend therefore you draw specific attention to clause 9, 10 and 12 which seek to exclude and/or limit your liability.

Best practice is to refer your customer to your terms and conditions as soon as possible before you reach any agreement as to provision of services.

We recommend you follow the following key steps.

- On your first contact with your customer or a prospective customer and in all subsequent correspondence (your letterhead, footers of your emails, quotations, faxes etc. state very clearly that *"All business of the Company is transacted under the current edition of the FTA Ireland Conditions for the Carriage of Goods by Road in Ireland, a copy of which is available on request. We would refer you in particular to clauses 9, 10 and 12 which limit and/or exclude our liability to you"*. If a verbal booking make this statement over the phone and follow up by email
- On any credit application form or any quotation make sure that your customer is told and accepts that the current edition of the FTA Ireland Conditions for the Carriage of Goods by Road in Ireland will apply to your trading relationship
- Always send a follow up copy of the FTA Ireland Conditions for the Carriage of Goods by Road in Ireland by recorded post and by delivery/read receipt email to your customer and retain copies and delivery receipts on a customer file
- Obtain written confirmation from your customer acknowledging that the current edition of the FTA Ireland Conditions for the Carriage of Goods by Road in Ireland will apply to your trading relationship
- Make it clear on your website also that *"All business of the Company is transacted under the current edition of the FTA Ireland Conditions for the Carriage of Goods by Road in Ireland, a copy of which is available on request. We would refer you in particular to clauses 9, 10 and 12 which limit and/or exclude our liability to you"*

Noble Shipping Law are delighted to have collaborated with FTA Ireland in the production of the new 2018 terms and to provide ongoing legal advice and support to FTA Ireland's members. Noble Shipping Law is Ireland's only legal practice specialising exclusively in shipping and transport law. We regularly advise freight forwarders, hauliers and importers and exporters for disputes arising from road transport (or as part of multi-modal transport). The disputes we handle frequently include a dispute as to the incorporation of standard terms and conditions under Irish Law and consideration of the CMR Convention and its application under Irish Law. We have also represented hauliers in defending prosecutions by the Road Safety Authority for breach of EU and national transport legislation on tachographs, EU driver hour rules and the road transport working time directive.

If you have any questions or issues on the FTA Ireland Conditions for the Carriage of Goods by Road in Ireland or on related transport issues we are happy to advise.

FAQ

Q *Is there a benefit in incorporating the terms and conditions into my contracts?*

A There is a significant benefit. The 2018 terms and conditions for the Carriage of Goods by Road in Ireland create specific contractual obligations on the part of your customer and provide you with protection by limiting your exposure to your customer in the event something goes wrong. If you do not incorporate these or other similar terms then under common law you will be liable to your customer for the full value of the load and potentially also face claims for consequential and indirect losses.

Q *Will reference to the 2018 edition of the FTA Ireland Conditions for the Carriage of Goods by Road in Ireland on our website suffice?*

A No you need to bring the 2018 edition of the terms and conditions to the attention of each and every customer specifically.

Q *Do the 2018 terms and conditions apply automatically and supersede previous conditions?*

A No. To effectively incorporate the new 2018 terms and conditions into existing contracts you will need to inform all of your existing customers in writing by recorded delivery that from the date of your notice all business of the company is transacted under the 2018 edition of the FTA Ireland Conditions for the Carriage of Goods by Road in Ireland and enclose a copy of the terms and conditions.

Q *Is there any benefit in informing my insurer that the business of the company is transacted under the new terms and conditions?*

A Yes absolutely – the terms and conditions when effectively incorporated may exclude or limit your liability for claims and reveal best practice.

Q *What should I do if my customer breaches the terms and conditions?*

A It is best to seek legal advice as quickly as possible to understand your options so you act timely and in your best commercial interests.

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