

Terms and conditions

How they govern liabilities in the transport of goods **Interviewed by Jerry Roche**

On the reverse of nearly every invoice, bill of lading or airway bill, you will find “terms and conditions of service” involving that shipment. It’s imperative that corporate officers and heads of shipping know how the legal ramifications of these terms and conditions can result in large payments either to or from their company.

Smart Business spoke to Francesca Russo-Di Staulo, an attorney with Kluger, Peretz, Kaplan & Berlin P.L., about how to minimize financial losses due to goods that are damaged in transit from or to a company.

What are terms and conditions?

In the daily transportation of goods, they are preprinted, standard contract conditions that form part of the shipping contract between a shipper and a carrier that set forth general conditions.

If you have purchased goods that are being transported or delivered to your warehouse or place of business, chances are that the person or persons involved in the handling, delivery and/or transportation of those goods will issue an invoice or bill of lading containing terms and conditions of service.

If you are the person handling, delivering or transporting the goods, you will not want to do so without such terms and conditions of service.

If you are a shipper (the seller) or the consignee (the buyer), then you need to be aware that such terms and conditions exist and that they may well regulate the shipment of your goods.

Are terms and conditions more applicable to international shipments, or are they equally applicable to domestic shipments?

They’re equally applicable to international and domestic shipments. What becomes contentious are situations when more than one governing statute is in place.

For example, if you have goods transported by interstate commerce by motor carrier, then the Carmack Amendment — the federal statute — applies, in addition to whatever terms and conditions the carriers may want to impose.



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For international shipments, you have to determine the mode of transport, who the carriers are, and where the possible damage to the shipment occurred. If airlines provided transport, the Warsaw Convention can apply. The Carriage of Goods by Sea Act (COGSA) applies to all contracts for carriage of goods by sea to or from ports of the United States in foreign trade. The Convention on the International Sale of Goods may also apply to questions including when the title to the goods and risk of loss pass from seller to the buyer with or without transportation by a carrier.

How do terms and conditions apply?

They regulate and define the contract between you, the person shipping the goods or the person receiving the goods, and the carrier, the person handling the transportation. You can be subject to the terms and conditions even if you did not expressly acknowledge them and even if you never read them, so long as they are printed in legible form and so long as this is not the first time you received such an invoice containing identical terms and conditions.

They can also act as a waiver of your rights and stop you from filing a claim to

recover for the lost, damaged or delayed shipment — unless you file a claim as soon as you discover the problem. The claim often can simply be a letter — as long as you provide the carrier with reasonable notice of the loss, including the claim for the payment of a determinable amount of money.

What can shippers and carriers do to protect themselves?

If you are the shipper, you can avoid the limits on liability by declaring a higher value and paying a special compensation, so that the limits of liability will not apply. Typically, the invoice or the bill of lading will provide a space for just such a purpose.

If you are the consignee, you often will be handed a delivery bill of lading at the time the goods are delivered. This will be the first opportunity you would have to see a bill of lading, let alone see the terms and conditions. Don’t fret. The law provides that unless the carrier issued the bill of lading prior to moving the goods and unless you have been given a reasonable opportunity to choose between two levels of liability, a carrier may be hard-pressed to impose such terms against you.

If your company acts as the carrier, you naturally will want to make sure you issue the bill of lading prior to the movement of the goods, and you will want to make sure the shipper or consignee received the bill of lading containing the terms and conditions prior to the movement of the goods.

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