

Incorporation of Trading Conditions



The following is a brief guide as to the steps you should take to ensure incorporation of your trading conditions into each and every contract that you undertake. Incorporation of these conditions is vitally important as they limit your exposure should something go wrong and create contractual obligations upon your customer that protect you. Incorporation of conditions is a requirement of your insurance.



In order to be legally enforceable your trading conditions must be incorporated into a contract and agreed before it is concluded. Reference to your trading conditions should be included on all correspondence issued including letterheads, faxes, and e-mails and must be formally incorporated into all quotations. Reference should also be included on all other correspondence such as on your invoices and delivery notes. You can also have the full conditions printed on the reverse side of your correspondence. The conditions should be available on your website.

If a booking is taken verbally your trading conditions should be mentioned during this process and the booking or quotation should be immediately confirmed in writing (mentioning your trading conditions) and the customer requested to acknowledge receipt.

If your clients enter into a credit agreement where they sign an application you can again include the incorporation of trading conditions in this document, the document would need to state that credit is offered subject to the customers acceptance of the standard trading conditions applying to all business to be conducted by you for them.

For new customers a copy of the full conditions should be provided to them requesting confirmation of receipt or acknowledgement. It is also good practice to send these to your existing customers on an annual basis.

**For further information, please contact Hazel Downes
Freight & Marine Manager.
E: hazel.downes@macbeths.co.uk**



T: +44 (0) 1628 532613
E: marine@macbeths.co.uk

www.macbeths.co.uk

Incorporation of Trading Conditions



If you are a member of BIFA we suggest a wording on all of your correspondence as follows:

All business of the company is transacted strictly in accordance with our Standard Trading Conditions of the British International Freight Association (BIFA). These conditions contain limitations and exclusions and copies of these can be provided upon request as applicable. All trading conditions are the current edition thereof.

BIFA have a Good Practice Guide available on their website relating to the use and incorporation of the BIFA conditions which we would recommend you review.

If you should trade under your own conditions or more than one set of trading conditions it is necessary to make mention of these conditions and the exact circumstances when the different conditions apply and we are available to give you guidance as to how to achieve this.

Please be aware that your customer may try to impose their own Terms of Business to your agreement and a 'battle of the forms' may arise. This is where two businesses are negotiating the terms of a contract and each party wants to contract on the basis of its own terms. Your customer may accept your offer but subject to their own terms of business which would then override your own trading conditions. In this situation, the battle is often won by the party who fired the "last shot", that is, the last party to put forward terms and conditions that were not explicitly rejected by the recipient.

Please be aware of this and if a customer accepts a quotation subject to their own terms of business acknowledge to them that the booking will only be accepted under your own standard trading conditions.

INCORPORATION BEST PRACTICE

We recommend that you:

- Ensure your customers are aware of your trading conditions prior to shipment
- Review the wording of your incorporation statement in line with the above advice.
- Check the incorporation statement appears on email replies as well as newly created emails.
- Ensure all links and copies of the BIFA conditions are the up to date version (currently BIFA 2021 edition).
- Consider links from emails direct to the conditions on your website.

**For further information, please contact Hazel Downes
Freight & Marine Manager.
E: hazel.downes@macbeths.co.uk**



T: +44 (0) 1628 532613
E: marine@macbeths.co.uk

www.macbeths.co.uk