

STANDARD TERMS & CONDITIONS OF CARTAGE

1. WHY DO TRANSPORT OPERATORS NEED STANDARD TERMS AND CONDITIONS?

a) An outline of standard terms and conditions – What protection do they provide?

[What are the standard terms and conditions of cartage?](#)

A contract of carriage is a legal agreement between a road carrier and a customer/client for services involving carriage of goods from one place to another. It is industry practice for road carriers to include standard terms & conditions (STCs) in the agreement that, among other matters, seek to limit or exclude liability on the part of the road carrier for loss of or damage to goods in their custody or control. Furthermore, for a small investment, properly drafted and incorporated STCs will reduce your exposure to claims for loss or damage to goods in transit, save you costs of defending claims, reduce your insurance premiums for carriers liability insurance policies, and may assist you in compliance where the insurance policy terms and conditions of cartage require such STCs to be included in the contract of carriage as a condition of cover

[Properly drafting and incorporating standard terms & conditions](#)

Standard terms & conditions need to be properly drafted to protect the road carrier from claims and also need to be kept up to date as the law changes over time. Further, the need to have been reasonably and fairly brought to the customer's attention to relying on them if a claim is brought. Merely stating that you are 'not a common carrier' or are not liable unless the customer arranges insurance through them will not protect you from a claim.



STANDARD TERMS & CONDITIONS OF CARTAGE

b) Do subcontractors need standard terms and conditions of cartage?

Subcontractors are only protected by a head carrier's STCs to the extent that those STCs are properly drafted, are incorporated into the contract of carriage with the customer, and have an appropriately drafted 'Himalaya Clause' that extends any protections to the subcontractors. Accordingly, sub-contractors need protection from their own STCs which they may rely on if they damaged the goods and are pursued directly by the head carrier or head carrier's customer.

c) Why are many standard terms and conditions of cartage outdated/invalid?

The law is constantly evolving. Standard terms that were drafted years ago may not be enforceable due to subsequent changes in the law. For example, there are laws in place that protect customers from unfair contract terms which may extend to standard terms & conditions. Further, some STCs refer to legislation that has been repealed or updated. Consequently, it is crucial that road carriers get specialist legal advice to review, draft and update their standard terms & conditions to ensure they comply with the law and are effective in limiting or excluding liability.

d) The importance of standard terms and conditions for insurance

Many insurers require road carriers to have a set of standard terms & conditions as a pre-condition for cover under an insurance policy. Often, liability insurance will only cover road carriers where there is an effective process and practice of incorporating the standard terms and conditions.

STANDARD TERMS & CONDITIONS OF CARTAGE

2. FAILURE TO INCORPORATE STANDARD TERMS AND CONDITIONS

EXAMPLE

A medical practice engages a transport operator to transport an MRI machine via road carriage. The truck departs Sydney carrying the consignment bound for Newcastle. Unknown to the transport operator, the MRI machine is worth \$3 million having been imported from Europe. The MRI machine is essential to the operation of the medical practice and without the machine, the practice is unable to perform urgent scans.

In transit, the truck runs off the road and rolls. Along with the truck, the MRI machine is damaged beyond repair. The road has a set of standard terms and conditions. However, they have failed to give proper notice of the terms and conditions to the customer. The liability insurer refuses to cover the loss as they found there was no effective process for incorporating terms and conditions in contractual agreements.

In these circumstances, the road carrier will be exposed to a claim for the full value of the damaged MRI machine, together with financial losses for the practice's inability to conduct MRI scans, the cost of hiring a substitute MRI machine and any legal costs incurred in defending the claim. This highlights the importance of ensuring road carriers have adequate terms and conditions that are properly incorporated to limit or exclude liability.



www.truckinsurancehq.com.au



[1300 815 344](tel:1300815344)



info@inshq.com.au

3. HOW CAN MILLS OAKLEY HELP?



The Insurance, Transport and Trade team represent a diverse group of carriers on transport-related matters, together with most of the Australian marine insurers, international freight forwarders and logistics service providers. Mills Oakley services all areas of transport law and marine claims, including policy drafting and due diligence reviews, indemnity disputes, cargo recoveries, carriers' liability claims.

The Mills Oakley Insurance, Transport, and Trade team has extensive experience drafting and reviewing contracts of carriage and standard terms and conditions for all transport operators in order to minimise the risk of liability in disputes. The typical cost for reviewing, drafting and advising on the incorporation of standard terms and conditions for road carriers is approximately AUD \$1750 + GST. As a full-service firm, Mills Oakley also advises on Personal Property Securities Act (PPSA) matters, long-term lease agreements, dry hire agreements, etc.

WHO IS MILLS OAKLEY?

Mills Oakley is a full-service, national commercial law firm with one of Australia's leading specialist transport teams.

FOR EXPERT LEGAL ADVICE OR ANY GENERAL ENQUIRIES, PLEASE CONTACT:

- **Frazer Hunt | Partner | Insurance, Transport & Trade**
fhunt@millsoakley.com.au | ☎ (02) 8035 7972
- **Maurice Lynch | Partner | Insurance, Transport & Trade**
mlynch@millsoakley.com.au | ☎ (02) 8035 7975



www.truckinsurancehq.com.au



[1300 815 344](tel:1300815344)



info@inshq.com.au