

Contract Review Guidelines

Valuable Tips for Transportation Intermediaries

The following is an excerpt from a contract provided to a domestic freight forwarder that doesn't own trucks:

“Carrier represents and warrants that it is registered with the FHWA to operate as a common and contract carrier of general commodities and that it is in full compliance with Department of Transportation safety regulations.”

At best, this contract would be unenforceable and likely would make for a short relationship between shipper and forwarder.

At worst, the forwarder is identifying itself as the actual carrier. By doing so, they could be taking on the liabilities of the trucker thus exposing itself to injury and damage claims.

When confronted with ill-fitting contracts like this, a transportation intermediary should either modify the contract to the satisfaction of both parties or revert to its standard terms and conditions.

Shipper contracts can significantly increase your liability as a transportation intermediary. Your risk manager, compliance officer and attorney should all participate in the review process prior to signing. Consider the following tips during your next contract review.



Beware of Inexact Terms

Some shipper contracts are created by people who understand very little about transportation and logistics. Signing an ill-constructed contract may cause as much pain to you and your shareholders as it may cause the shipper. Many of the contracts you're asked to sign are not applicable to transportation intermediaries at all. Rather, they are shipper-carrier contracts designed for use directly with truckers. Refer to the case study on the left.



Outline All Parties' Responsibilities

Service contracts can include many aspects of the services that you promise to your client including some that may not be under your direct control. For example, equipment availability, the safety and fitness of carriers, delivery hours and even hiring practices of delivery are controlled by the companies actually providing the service.

As an intermediary, when presented with a contract of this nature, you should transfer the responsibility for those services to the actual vendors. Transferring responsibility ultimately requires a contract between you and those vendors. Also, understand that your vendor may rely on another layer of vendors.

Outlining all parties' responsibilities up front ensures that there are fewer disagreements down the road and your ability to seek recourse against responsible parties is preserved.



Be Mindful of Mitigation Costs

Shifting liability or risk from one party to another inevitably involves added cost to the party that inherits the risk. Ultimately, that cost gets passed on to the customer.

Pointing this out can create some leverage when trying to make modifications to the contract. For example, a shipper contract may stipulate a limit of liability for damage to cargo but may not include a cap on those limits.

If the shipper has its own cargo insurance policy, it's a duplication of cost to require you, the intermediary, to contractually obligate yourself to uncapped limits. It is also important to consider what is not stipulated in a contract, and how that can increase your liability and costs to the customer.



Strive for Clarity and Equity

Consider that a contract is more than an agreement between two parties; it's a document that may be seen by many third parties including insurance adjusters, attorneys, collections specialists and perhaps even the courts.

The contract must be written in a way that's easily understood by all parties. We recommend that if you are presented with a contract that is unclear to you, have the document modified to clarify the intent, and include definitions within the contract.



Scrutinize Hold Harmless Agreements

One job of the attorney drafting the shipper's contract is to transfer liability for a claim to another party, most likely you. As a result, most strive for overly broad hold harmless agreements that can create big problems for the intermediary.

Terms like *'agent'*, *'any'*, *'other parties'* and *'occurring in connection with'* are all examples of hold harmless wording that can extend your liability outside the scope of services to be provided.

Rarely does the author of the contract even consider that many of these overly broad terms are unacceptable especially as it applies to insurance such as General Liability and Worker's Compensation.

Contract Review & Consultation

Shipper driven contracts shift broad exposure to the transportation service provider. These exposures often exceed the protections afforded by accepted conventions, or customary terms and conditions. Roanoke is unable to offer legal advice, but we do assist our clients in addressing this exposure with a contract review solution.

Most insurance policies DO NOT automatically cover contractual liability, so any contract that deviates from your standard terms and conditions must be approved by your insurers prior to entering the contract.

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About Roanoke Trade

Roanoke Trade, a division of Roanoke Insurance Group and part of Munich Re Specialty Group Ltd., operates as a specialty insurance broker focused on surety and insurance solutions for transportation intermediaries, 3PLs, customs brokers and companies with supply chains, and is a leading provider of customs bonds, marine cargo insurance and ATA Carnets for the industry.

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