



BIFA Standard Trading Conditions – Review

(Changes for the 2017 Edition)



2017 Edition-the main changes

- The STC are regularly reviewed by the Association in the light of:-
 - New legislation
 - Rulings and judgments
- The overall impact of the review is to effect a significant tidying up:-
 - A few clauses have significant changes e.g. Clause 28
 - Some untouched e.g. Clause 11
 - Two significant additions Acceleration Clause and Arbitration
- Will only be available:-
 - On line
 - In an electronic format.



Back to basics

- Regarded as the industry standard in the UK:-
 - Regarded as fair and equitable
 - Rules of the game
 - Members who understand them are prepared
- Must be incorporated:-
 - Battle of the Forms
 - One sided contracts
- Make clear which trading conditions are relative to the activity being undertaken
- Methods of incorporation;-
 - Earliest possible opportunity
 - Credit application
 - Course of dealing
 - Website
 - E-mails



History of the STC



- Earliest set published by the Institute of Freight Forwarders (IFF) we have found were dated 1956
- British Shippers Council (BSC) lodged complaint in 1983 to Office of Fair Trading that the IFF Trading conditions were unfair.
- 1984 STC incorporated concept of forwarders
 - Acting as either an Agent or Principal
 - Changes to forwarders liability for loss/damage
- BSC withdrew their complaint to the OFT
- Corporate membership of the IFF established:-
 - Became BIFA in 1988
- First set BIFA STC published in 1989



STC - Revision History

- 2000 Edition which were pulled due to insurance case
 - A and B editions to cover late payments
- 2005 edition resulted from the Insurance Mediation Directive (IMD)
- 2005a were issued in 2009 due the IMD being overturned
- 2017 Edition to reflect
 - Introduction of EU Regulation 952/2013 (UCC)
 - Introduction of Verified Gross Mass through an amendment to SOLAS
 - Resolves date issues
- BIFA STC are the basis of forwarders STC in many Common Law countries
 - Specific versions for Scotland and Northern Ireland.



The Review Process

- Review process carried out by the Legal Policy Group.
- Persons conducting the review included:-
 - Specialist solicitors
 - Insurers
 - Freight Forwarders
- Legal Policy Group broken up into teams:-
 - Allocated specific clauses to review
- The teams:-
 - Cross checked existing clauses
 - Examined impact of new regimes etc
 - Redrafted as applicable
 - Draft proposals sent to main Legal Policy Group
 - Changes debated and amended resulting in a final draft
 - All changes reviewed by specialist Barrister



Structure of STC

- Standard Trading Conditions comprise 6 main elements.
- These are:-
 - The Preamble
 - Definitions
 - The Company's rights and responsibilities
 - The Customer's role
 - Liability and Limitations
 - Jurisdiction
- 2017 STC will be largely familiar:-
 - Review has led to significant tidying up
 - Fundamentals largely remain the same



Overview of changes

- The Preamble:-
 - Added arbitration clause “The Customer’s attention is also drawn to Clause 28 which permits arbitration in certain circumstances”
 - Strong legal advice to include this change.
- DEFINITIONS and Application:-
 - Clause 1 “Direct Representative” amended to read “as defined by Article 18 of Regulation (EU) No. 952/2013 of the European Parliament and of the Council or as amended.
 - When UK leaves the EU fallback position will be Clause 2 (B).



Overview of changes

cont'd

- Clause 6 (B) “The Company shall on demand by the Customer” has been replaced by
 - “The Company shall, within 14 days notice given by the Customer.”
 - Only applicable when the BIFA Member is acting as an Agent
- As Principal the open book principle is not applicable and the forwarder can quote as they believe to be appropriate.
- Clause 8 (A) (ii) of the 2005A edition covering Liens allowed the Member after giving 28 days notice in writing to the Customer to sell or dispose of the goods or documents.
 - Timeframe has been reduced to 21 days in 2017 edition.
- Under Clause 10 (A) (ii) of the 2005A edition covering non-delivery of goods the forwarder had to wait 28 days before being able to sell.
 - Timeframe has been reduced to 21 days in 2017 edition.



Clause 11-the debate

Sub Header

- All 28 Clauses of the Standard Trading Conditions were reviewed.
- Clause 11 –the Insurance Clause was examined in great detail
 - Insurers especially interested
- Numerous suggested amendments were tabled
 - Some suggesting lengthy amendments
- All were discussed in detail
- Decision was made to keep to the original wording proving that
 - Less is more
 - Text was right the first time.



Overview of changes

Cont'd

- 2005a edition of STC's in Clause 14 had referred to bullion, coin, precious stones, jewellery etc .
 - Simplified in 2017 version to read “bullion, currency, securities, precious stones etc.”
- Similarly the 2005a edition in Clause 14 made reference to “livestock, pets etc.”
 - Now referred to as “living creatures.”
- Clause 17- “The Customers Warranty Clause”
 - Solicitors suggested that BIFA terms should make specific reference to Verified Gross Mass requirements under SOLAS.
 - Other Common Law countries were adopting this approach.
- Clause 17 (A) (i) reworded to read “(including the verified actual gross mass of any container packed with packages and cargo items)”



Clause 21 - The Payment Clause

- Clause 21 was discussed at length during review
 - Expanded from 7 to 20 lines or looked another way from 2 to 4 sub-clauses, one with two sub-sections.
- Most significant change was the inclusion of a “Acceleration Clause” to assist Members in recovering monies owed.
- Original Clause 21 (B) has become Clause 21 (D) in 2017 edition



New Clause 21 (B)

21 (B) In the event of any failure by the Customer to make full and punctual payment of any sum payable to the Company (in accordance with Clause 21 (A) above):

(i) Any and all other sums properly earned by and/or otherwise due to the Company (but which, but for this clause 21(B), would otherwise not yet be payable by the Customer, whether by virtue of an agreed credit period or otherwise) shall become payable in full.

(ii) Any sum thereby becoming immediately payable shall be paid to the Company in cash, or as otherwise agreed, and without reduction or deferment on account of any claim, counterclaim or set-off.



Overview of changes

Cont'd

- Minor adjustment to Clause 26 (Company's Liability Clause) on 2005a edition referred to "whichever shall be the lower"
 - In 2017 edition replaced with "whichever shall be the lesser."
- Major changes to Clause 28 covering Jurisdiction and Law
 - Complete re-write expanded from 5 to 23 lines
 - Cross refer to the Preamble the 2017 edition introduces a binding Arbitration Procedure
 - Emphasis on:-
 - The Member to initiate "Arbitration"
 - Covers "Any dispute arising out of any act or contract to which these Conditions apply"



The Importance of Incorporation

- The STC only protect the member if they have been incorporated correctly.
 - Be specific regarding business activities covered by BIFA terms.
- Increasing emphasis is being placed on:-
 - Positive incorporation by the BIFA Member
 - Evidence of acceptance by their Customer
- Be aware of :-
 - The battle of the forms
 - Who fired the last shot
- Methods of incorporation:-
 - Initial credit application form
 - Separate agreement
 - Bring to attention linking via electronic and paper communication
- Specific problems regarding One-off/COD consignments.



Introduction of new STC



- New version of the STC's to be introduced from 1st October 2017
- Printed version will not be available
- High Quality PDF will be available
- Check website for Good Practice Guide on STC's





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