

# Guide to the new FTA Ireland Conditions for Storage of Goods in Ireland 2019

## Briefing note

FTA Ireland, in conjunction with Noble Shipping Law, have drafted new Conditions of Storage for use by their members to afford greater protection to members when storing goods for a customer in Ireland.

The purpose of this briefing note is to highlight some of the key conditions and to guide members as to how to effectively incorporate these conditions into their contracts.

## What's Contained In The Conditions?

### ***Identity and Legal Status of the Customer***

The new Storage Conditions provide a clear definition of who is the customer and the legal capacity in which they contract with you as the member. The Conditions make it clear that the Customer is contracting as the legal owner of goods or as the authorised agent of the legal owner. This ensures clarity in the event of any dispute, termination, or the exercise of a right of lien and sale.

### ***Period of Responsibility***

The new Storage Conditions set out very clearly the point at which the member's liability for the goods starts and ends and the responsibility of the Customer for loading and unloading operations and equipment. The conditions however make provision for alternative arrangements thereby retaining the flexibility for the member to be involved in the provision of loading and unloading services if agreed but not losing the protection afforded by the remaining conditions.

### ***Carriage of goods from the premises of Customer or third party to member's warehouse***

The new Storage Conditions make it clear that these conditions do not apply to any period of carriage from the Customer's premises or a third party's premises to the member's premises for storage. If the member provides such transport we recommend that this transport be subject to the FTA Ireland Terms and Conditions 2018.

### ***Customer's responsibilities***

The new Storage Conditions set out in one clause all of the responsibilities and liabilities of the Customer ensuring clarity

and certainty as to the obligations of the Customer in a clear and straight forward format.

### ***Dangerous Goods***

The new Storage Conditions contain detailed provisions in relation to the storage of dangerous goods in accordance with Dangerous Goods regulations. The Conditions contain a general permission to the member to sub-contract the storage services but, in the interests of safety this right to sub-contract does not extend to the storage of Dangerous Goods.

### ***Charges***

The new Storage Conditions provide that there is no right of set-off from the member's charges for any claim the Customer may have in relation to the Goods and provide for clear payment terms and interest rates in the event of non-payment.

### ***Insurance***

Importantly the new Storage Conditions make it very clear that the obligation to insure the Goods rests with the Customer unless the Company is requested to insure in which case such a request from a Customer must specify in writing the amount per tonne to be insured and state the limit and maximum value of the Goods to enable the member to effect adequate cover.

### ***Liability for loss, damage and delay***

The new Storage Conditions make it clear that the member is not liable under any circumstances, including negligence, for any indirect or consequential loss or damage thereby limiting your exposure in the event of any claim for loss raised by your Customer.

The new Storage Conditions also make it quite clear that the member will not be liable for any loss arising from goods that are

not properly protected by packaging unless the loss and damage is caused by wilful misconduct of the member.

Significantly the new Storage Conditions also limit your liability to €1800.00 per tonne of the gross weight of the goods stored but not exceeding the actual value of the Goods at the time they are placed in storage as opposed to a future market value. This limit reflects the same limit of liability within the FTA Ireland Terms and Conditions 2018 for haulage.

#### **Notification of Claims**

The new Storage Conditions contain concise provisions for the notification of any claims and time limits within which a claim must be notified failing which the member's responsibility for any loss will be deemed to have ended.

#### **Dispute Resolution**

The new Storage Conditions provide for alternative dispute resolution and arbitration as a means to limit your exposure to legal costs of court proceedings.

## **Effective incorporation**

In practice many business fail to effectively incorporate standard trading terms and conditions into their contract and without realising it they therefore do not have the protection and intended benefit of those conditions.

In order to incorporate the new Storage Conditions into your contract with your customer it is critical that your customer has been made aware of your use of the conditions, and has accepted them, before you conclude your contract with them. It is too late to introduce conditions you want to rely upon after your contract is concluded. If your only reference to the new Storage Conditions is in your invoice sent after you have provided your services it is too late. Any particularly onerous terms must be brought specifically to the attention of your customer. We recommend therefore you draw specific attention to clause 8, and 10 which seek to exclude and/or limit your liability.

Best practice is to refer your customer to the new Storage Conditions as soon as possible before you reach any agreement as to provision of storage services.

We recommend you follow these key steps:

- On your first contact with your customer or a prospective customer and in all subsequent correspondence (your letterhead, footers of your emails, quotations, faxes etc. state very clearly that: "All business of the Company is transacted under the current edition of the FTA Ireland Conditions for the Storage of Goods in Ireland 2019, a copy of which are available on request. We would refer you in particular to clauses 7 and 10 which limit and/or exclude our liability to you" If a verbal booking make this statement over the phone and follow up by email.

- On any credit application form or any quotation make sure that your customer is told and accepts that the current edition of the FTA Ireland Conditions for the Storage of Goods in Ireland 2019 will apply to your trading relationship.
- Always send a follow up copy of the FTA Ireland Conditions for the Storage of Goods in Ireland 2019 by recorded post and by delivery/read receipt email to your customer and retain copies and delivery receipts on a customer file.
- Obtain written confirmation from your customer acknowledging that the current edition of the FTA Ireland Conditions for the Storage of Goods in Ireland 2019 will apply to your trading relationship.
- Make it clear on your website also that "All business of the Company is transacted under the current edition of the FTA Ireland Conditions for the Storage of Goods in Ireland 2019, a copy of which are available on request. We would refer you in particular to clauses 7 and 10 which limit and/or exclude our liability to you."

## **FAQ**

**Q** *Is there a benefit in incorporating the Storage Conditions into my contracts?*

**A** There is a significant benefit. The 2019 Storage Conditions create specific contractual obligations on the part of your customer and provide you with protection by limiting your exposure to your customer in the event something goes wrong. If you do not incorporate these or other similar terms then under common law you will be liable to your customer for the full value of the goods stored and potentially also face claims for consequential and indirect losses.

**Q** *Will reference to the FTA Ireland Conditions for the Storage of Goods in Ireland 2019 on our website suffice?*

**A** No you need to bring the Conditions to the attention of each and every customer specifically.

**Q** *Is there any benefit in informing my insurer that the business of the Company is transacted under the new terms and conditions?*

**A** Yes absolutely – the terms and conditions when effectively incorporated may exclude or limit your liability for claims and reveal best practice.

**Q** *What should I do if my customer breaches the terms and conditions?*

**A** It is best to seek legal advice as quickly as possible to understand your options so you act timely and in your best commercial interests.

**Noble Shipping Law** are delighted to have collaborated with FTA Ireland in the production of the new 2019 Storage Conditions and to provide ongoing legal advice and support to FTA Ireland's members. Noble Shipping Law is Ireland's only legal practice specialising exclusively in Shipping & Transport Law. We regularly advise freight forwarders, hauliers and importers and exporters for disputes arising from road transport (or as part of multi-modal transport). The disputes we handle frequently include a dispute as to the incorporation of standard terms and conditions under Irish Law and consideration of the CMR Convention and its application under Irish Law. We have also represented hauliers in defending prosecutions by the Road Safety Authority for breach of EU and national transport legislation on tachographs, EU driver hour rules and the road transport working time directive.

If you have any questions or issues on the FTA Ireland Storage Conditions or on related transport issues we are happy to advise.

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