

# The Irish Freight Forwarders Terms and their Incorporation into Transatlantic Contracts under Irish Law

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# Why IIFA Terms?

- IIFA Standard Trading Conditions 1962 available use by its members.
- Key Clauses:
  - Clause 10 - Lien on all Goods
  - Clause 29 - Limitations on Liability
  - Clause 30(A) - Claim notification within 14 days
  - Clause 30 (B) - Suit within 9 months

# Example Scenario (1)

- Transatlantic Company “Noble Finest” – Plants in Kentucky, USA and in Waterford, Ireland.
- Noble Finest ships components from plant in Waterford to Kentucky, USA. Components are sold through inter-company sale and are shipped on straight house bills.
- For shipments services of freight forwarder - Speedy Freight - are used. Speedy Freight are an international freight forwarder with offices all over the USA and an office in Ireland.
- Speedy Freight have a service level agreement effective from 1 January 2015 with the shipping line – Fast Lines International, the ocean carrier - specific to Noble Finest shipments. This agreement makes no reference to the IIFA terms and is limited to the scope of services provided by Fast Lines International, the products to be shipped.
- Speedy Freight in Ireland also have an SLA with Noble Finest in Waterford dated 1 January 2014 in Waterford under which it is expressly stated that arrangement on prices and other commercial terms between the parties are to be subject to a separate commercial agreement. There is no other separate commercial agreement however in place.
- Speedy Freight in Ireland’s website: [www.speedyfreight.ie](http://www.speedyfreight.ie) contains a download tab and a link within that tab to the IIFA terms and conditions.

# Example Scenario (contd.)

- Speedy Freight in USA were engaged by Noble Finest in Kentucky to arrange a shipment of temperature sensitive components from Waterford to Kentucky on 1 February 2015.
- Speedy Freight in USA contacted its Irish office. The Irish office arranged by email collection of the components by local haulier: Notsocold Haulage to arrange collection of the components from Noble's Finest in Waterford for delivery to the Port of Dublin for onward shipment to USA. Speedy Freight in this booking note states that all business of Speedy Freight Ireland is conducted in accordance with the IIFA terms, copies of which are available on request.
- Notsocold set the reefer container to the wrong temperature and effectively cooked the components – it was checked by Fast Lines in Dublin who switched to the correct temperature. The components arrived in USA on 15 February 2015 and have to be destroyed.
- Speedy Freight invoice Noble Finest in Waterford accounts department – at bottom of invoice it is stated that all business of Speedy freight conducted in accordance with IIFA terms, copies of which are available on request.

# Example Scenario (Contd.)

- Noble Finest commence proceedings in the Kentucky Circuit Court against Speedy Freight USA and Fast Lines International for all losses suffered on 15 January 2016.
- Fast Line International look to settle the claim in accordance with limits of liability under the H-V Rules.
- Noble Finest seeks a full recovery from Speedy Line in the USA whose response is that any claim against them is time barred as the IIFA terms apply as between the parties and/or they are entitled to limit their liability under those terms.

# Incorporation T&Cs under Irish Law

- Methods of incorporation by parties:
  1. Signature; or
  2. Reasonable Notice; or
  3. By a course of dealings
- Terms also can be implied by virtue of custom

# Key Principles (1):

- Is the document purporting to incorporate the T&Cs a contractual document? **Does it have a contractual purpose or is it more concerned with the execution of a contract?**
- Timing of documents referring to T&C's critical – **if sent after contract concluded – too late cannot incorporate after the event – more likely a document concerned with execution of contract**
- If signed document – party must understand that he/she is signing a document that forms part of a contract between the two parties

## Key Principles (2):

- Have reasonable steps been taken to bring clause to attention of affected parties?
  - Notice before contract concluded
  - Lord Denning: "Some clauses which I have seen would need to be printed in red ink on the face of the document with a red hand pointing to it before the notice could be held to be sufficient" *J. Spurling Ltd. v Bradshaw*



# Key Principles (3):

- Course of Dealings
  - question of fact and degree
- Custom
  - must have such notoriety
  - must be certain
  - must be reasonable,
  - has to be proven by clear and convincing evidence
  - must not be inconsistent with express contract.

# Review of Scenario Documents (1)

- SLA between Speedy Freight Ireland and Noble Finest Waterford
  - effective from 1 January 2014 – contains no reference to the IIFA terms so cannot be relied upon to argue incorporation – Query if this is the governing contract and any documents referring to IIFA terms thereafter too late?
  - Not between parties to litigation in United States

# Review of Scenario Documents (2)

- Speedy Freight's Website
  - Not referred to in any other documents
  - Have to search within website to find just a link to them
  - Does not draw attention to specific onerous clauses except when open actual IIFA terms

# Review of Scenario Documents (3)

- Email Communication between Speedy Freight Ireland and Notsocold
  - Not between parties to litigation
  - Sent after the contract for shipment was arranged
  - More akin to a document implementing an existing contract
  - Refers to T&C's being available on request – insufficient notice

# Review of Scenario Documents (4)

- Speedy Freight Ireland's invoice
  - Not between parties to litigation
  - Issued after the contract was arguably concluded
  - Is a document evidencing execution of contract?
  - Is not a document sent to the relevant contracting personnel – simply between accounts departments
  - Does not draw attention specifically to limitations and exclusions – arguably onerous clauses

# HOWEVER.....

- Need to also review course of dealings and custom
- Need review carefully:
  - ❖ All documentation that led to the two SLA's to establish purpose, agreement etc.
  - ❖ All documentation regarding engagement of Speedy Freight previously by Noble Finest for previous shipments
  - ❖ Previous invoices, delivery notes, booking notes, consignment documentation

# What should have been done in our scenario:

- Speedy Freight in USA and in Ireland should have made it clear to Noble Finest in USA and Ireland prior to booking of shipment that all business was conducted subject to the IIFA terms – a copy should have been provided of the terms and attention drawn to specific clauses
- All email communications should include footer referring to all business being conducted in accordance with such terms
- Website should make it clear all business is conducted subject to the terms and set the terms out – perhaps even highlighting specific terms in red.
- SLA between Speedy Freight in Ireland and Noble Finest should include reference to IIFA terms

# THANK YOU

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