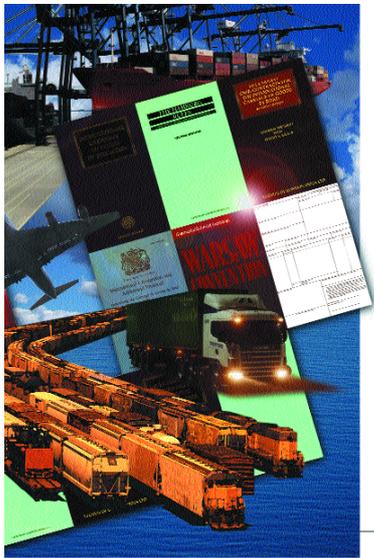


HANDBOOK ON CONVENTIONS FOR THE INTERNATIONAL CARRIAGE OF GOODS & TRANSPORT CONDITIONS



ABOUT THE CLUB

TT Club is a specialist insurer of Logistic transport operators equipment and liabilities. Directed and run by and for its Members, it provides insurance at cost to operations located in some 80 countries and trading all over the world. The Club's success and reputation is attributable to the very high level of specialist expertise it embodies. In addition to providing an expert claims handling service, the Club offers support to Members on many aspects of their business. It is a policy of the Club, through its ongoing STOPLOSS initiative, to provide pro-active support to the industry in the implementation of loss-prevention strategies.



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**HANDBOOK ON CONVENTIONS FOR THE INTERNATIONAL
CARRIAGE OF GOODS & TRANSPORT CONDITIONS**

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Whilst every effort has been made to ensure that information contained in this Handbook is correct, neither the editors, contributors nor Holman, Fenwick & Willan nor the TT Club can accept any responsibility for any errors or omissions or for any consequences resulting therefrom.

This guide was produced in co-operation with Craig Neame of Holman, Fenwick & Willan

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INTRODUCTION



This is the third in a series of loss prevention guides published by the TT Club as part of its STOPLOSS initiative. In it we look at conventions relating to the international carriage of goods and other transport conditions. People who did not have day-to-day transport operations, especially claims, as their first priority, drew up the conventions so our intention is to explain, in simple English, some of the effects of operating under these conventions.

We thank Craig Neame of Holman Fenwick & Willan, a London based law firm specialising in transport matters, for his part in the compilation of this booklet.

We have also drawn on the expertise of the Club's Managers and Correspondents gained from many years' experience in handling claims where these conventions and conditions have been applicable.

The information contained in this booklet relates specifically to the application of the conventions and transport conditions under English law and should, therefore, be of direct benefit to readers in countries where the law is based on English law. Readers in other countries may also derive benefit from this information by gaining an understanding of how English law applies to these conventions and conditions.

The main deliberations contained in this booklet have been based on experience gained in claims and legal situations. Each situation will be individual and specific because it has not yet happened does not mean that it will not happen, nor should the fact that it has happened in the past give any indication that you will be properly prepared should a similar situation arise in the future.

No publication of this kind can be comprehensive in the advice it offers as every situation presents its own unique profile and therefore no risk can be entirely eliminated. We hope that this guide will play some part in helping you to prepare for claims that might arise under these conventions and transport conditions.

The straightforward information contained in this booklet will be extremely useful to anyone in the transport industry, especially those needing to know how and when the conventions and conditions apply to their business.

The questions posed and the answers given make understanding the basic elements of the conventions and conditions as simple as possible. How and when they apply and what defences you may have against claims should be most useful.

We can all learn from this booklet.

Jan Ramberg
Professor of Private Law
University of Stockholm

ARE WE LIABLE FOR THE CLAIM?

The Club's insurance covers your legal liabilities but not claims you settle purely for commercial reasons. The following questions/commentaries will help you decide if you have a legal liability when the claim is subject to English law. If the claim is subject to the law of a different state then different principles may apply.

Has a loss been suffered?

Legal liability can only arise if a loss, with a financial value, has been suffered. If a customer is dissatisfied with your service but has not suffered a financial loss, then his dissatisfaction has commercial implications (eg. loss of future business/reputation), but no legal implications.

Similarly, your customer's cargo insurers cannot claim directly against you by standing in your customer's shoes unless they have settled your customer's claim. This is because they have not yet suffered a loss (in legal terminology, they have not yet become subrogated to your customer's claim).

What type of loss has been suffered?

Identifying the type of loss suffered (eg. delay, partial damage, total destruction, missing/stolen, pilferage, third party damage) is crucial. Some unusual losses do not generally attract compensation because they are regarded as being too remote (eg. loss of profits well above the market value). The Club can advise you about what other types of loss are classified as too remote.

What is the alleged monetary value of the loss?

Ask your customer for his claim's alleged value and strongly advise him that he is legally obliged to take steps to reduce the value of his loss; for example finding an alternative buyer for damaged cargo if the original buyer rejects it. (In legal terminology, your customer has a duty to mitigate his loss).

Must I notify the Club about the claim?

Claims for losses that are greater than your deductible should be immediately reported to the Club. The Club may wish to appoint a surveyor/expert to inspect/enquire about the goods or instruct lawyers.

ARE WE LIABLE FOR THE CLAIM?

Claims for losses that are less than your deductible should be reported to the Club if you think that the loss may later increase beyond the claimant's first estimate. Other below deductible losses need not be reported; but should the claim's value increase you must immediately inform the Club.

Who has suffered the loss?

Some parties who have suffered a loss are not entitled to make a claim against you directly. The law may oblige them to direct their claim against someone else. For example, someone intending to buy cargo from the consignee usually cannot sue you for his losses. He must sue the consignee and the consignee will make a claim against you for an indemnity.

Do I have a contract with the party who has suffered the loss?

If you agreed to carry the goods in return for freight then you will generally have a contract with the person who is required to pay you. However in some cases who pays you the freight is not decisive. For example when the Hague-Visby or CMR Rules apply the consignee may become a party to the contract even though your contract was originally made with the shipper. A party with whom you have a contract will normally only be able to claim under that contract.

The contract will be oral if you didn't agree on any written terms. Try to avoid oral contracts. With oral contracts your conversations with the claimant about the booking details will form the contract and the law will fill in the gaps where your conversations didn't deal with a point. The contract will be written if specific written terms were agreed upon. Try to make your standard trading terms and conditions govern the contract, and confirm in writing any loading/delivery details etc. you agreed over the phone.

For UK domestic movements your standard terms will apply if before making the deal you:

- (a) agreed with your customer that your standard written trading terms would apply; or
- (b) advised your customer, preferably in writing, that any work undertaken by you would be subject to your standard terms; or

ARE WE LIABLE FOR THE CLAIM?

company on top of the vehicle owners' fees or did you send an all-inclusive invoice? If you charged a commission then this may indicate that you are an agent.

- (e) Have you undertaken any previous movements for the claimant? In these movements did you agree that you were an agent or a principal?

What difference does it make if I am a principal instead of agent?

If you are principal you have assumed liability for the entire transport movement including liability for any losses caused by your sub-contractors. Freight forwarders who contract as principal are frequently called NVOCs (Non Vessel Owning Carriers). You should claim an indemnity from any sub-contractor who has damaged goods which were given into your care, paying particular attention to any time bars and notification requirements imposed on you by your contract with him. Issues to think about when seeking to recover from a sub-contractor are covered on pages 41-43

If you are an agent your liability is more limited. As agent, you will generally not be liable for losses unless the carrier you booked should never have been entrusted with the movement in the first place.

Where can the claimant sue me?

For UK domestic movements, the claimant will generally have to sue you in the UK.

For international movements, you can generally be sued in (i) any state through which you carry the cargo or (ii) the state(s) in which your company is based. However if your standard terms provide that you must be sued in a particular state (a jurisdiction clause) then the courts in some states may refuse to hear the case if they are not the courts named in the jurisdiction clause.

ARE WE LIABLE FOR THE CLAIM?

- (c) your customer signed an agreement containing your standard terms.

However if your customer is a private individual then UK consumer protection laws may strike out any unfair terms. Sometimes such laws will apply if your customer is a business but this is unusual.

For international movements, your standard terms, even if made applicable by one of the above methods, may be amended by the terms of an international convention. There is a separate convention regulating movements by each of the following modes of transport: sea, air, road and rail. How the international conventions regulating cargo movements by sea, air and road can amend your standard conditions is described elsewhere in this booklet.

How can a party sue me if I do not have a contract with him?

Usually he cannot. However in certain circumstances claims may be brought against you in negligence if physical loss has been suffered by the party (eg. third party property damage). This is a complicated area of law and you should consult the Club if you are faced with such a claim.

Am I an agent or principal under the contract?

Sometimes this is clear from the terms of the contract. In unclear cases, including oral contracts, you should ask yourself the following questions and then form a balanced view:

- (a) What did you agree to do for the client? To arrange the movement? This word may indicate that you contracted as agents. Or to undertake the movement? This, or a word with a similar meaning, may indicate that you are a principal.
- (b) What carriage documents did you issue to the claimant? Your own house documents or those of the ship/plane/truck owner? Issuing owners documents may indicate that you are an agent.
- (c) If the documents describe you as Carrier (eg. FIATA bills) then this may indicate that you are a principal whereas if they describe you as the Carrier's agent then this may indicate that you are an agent.
- (d) Did your invoice to the client charge a commission for your

HAGUE-VISBY 1968: Convention for the Carriage of Goods By Sea

The Hague-Visby Rules are an updated version of the Hague Rules 1924 (pp.10-13). Most major shipping nations, including UK (but excluding USA), now apply the Hague-Visby Rules to most contracts of carriage (eg. bills of lading).

These may incorporate some portions of the carriage which falls outside of the compulsory scope of the Hague-Visby Rules. Hague-Visby only mandatorily applies (subject to jurisdiction) on a port to port or tackle to tackle basis.

1 Who normally trades under Hague-Visby terms?

Ship owners, ship charterers, and freight forwarders (NVOCs) who are involved in carriage by sea as carriers.

2 What mode(s) of transport movement do Hague-Visby terms apply to?

Carriage of goods by sea and in some states by inland river navigation.

3 How can these terms apply to a transport movement arranged by my firm?

The Hague-Visby Rules automatically apply to any contracts under which your firm agrees, as principal (NVOc), to carry goods on a ship when you issue a bill of lading *and* either (i) the bill is issued in a state which has made Hague-Visby part of its national law [p.47 contains a list of these states]; or (ii) the carriage commences from a port in such a state; or (iii) the bill's terms expressly provide that the Rules will apply. They will not normally apply where you issue a waybill or a similar non-negotiable document as in many ro-ro and short-sea movement between UK and the continent.

The terms will not apply against you if your firm contracted for the carrier as agent.

4 How does Hague-Visby affect terms expressly agreed between my firm and our customer?

If Hague-Visby applies, it will override any terms which you and your customer might have expressly agreed to govern your contract (eg your standard terms) which are inconsistent with Hague-Visby *unless* such terms improve the position of cargo interests.

HAGUE-VISBY 1968: Convention for the Carriage of Goods By Sea

5 Can I amend the terms to improve my firm's legal position?

Any attempt to weaken the obligatory terms of the Hague-Visby that favour cargo interests will be null and void.

6 Who can make a claim against my firm under these terms?

The lawful holder of the bill of lading, with title to sue (usually the shipper or the consignee).

7 What defences do I have against claims under these terms?

If a shipper who is making a claim shows that a clean bill was issued but the goods were damaged/missing on discharge, then your firm's legal liability is presumed. You can defeat this presumption by proving the goods were damaged/missing before loading. If you cannot defeat the claim in this way you will have to rely on one of the defences below. If a consignee is making the claim you cannot defeat the presumption by proving that the goods were damaged/missing before loading but you can rely on the defences below.

You can defeat the presumption of liability by proving (i) what the actual cause of the loss was and (ii) that the loss or damage occurred, in spite of the exercise of a diligent effort by you and the ship owner to make the vessel seaworthy/cargoworthy, because of:

- the master's error of navigation or error in the management of the ship; or
- unforeseeable perils of the sea/freak weather; or
- Insufficiency of packing/stuffing/marks on the cargo; or
- fire during the voyage, unless the fire was caused by your or the ship owner's personal negligence; or
- wrongful act or failure to act by the shipper or owner of the goods; or
- war, pirates, strikes, riots or other similar external interference including acts of government bodies and agencies (seizure, quarantine, etc.); or
- latent defects in the vessel or other relevant machinery or equipment not discoverable by your or your agent's diligent efforts; or
- any inherent defect in the goods; or

HAGUE-VISBY 1968: Convention for the Carriage of Goods By Sea

- any other cause which occurred without any negligence or fault on your or the ship owner's behalf.

Please note however that most courts usually interpret these defences strictly and give the benefit of doubt to the cargo claimant.

8 When and how must the claimant notify me that he has suffered a loss?

Visible losses: Unless a joint survey is held on discharge, then a notice in writing must be given to you/your agent at the discharge port before or at time of the consignee takes possession of the goods.

Invisible Losses: Unless a joint survey is held on discharge, then a notice in writing must be given to you/your agent within three days after the consignee has taken possession of the goods.

Failure to provide a notice within the relevant period creates a presumption in your favour that the goods were received undamaged, although the claimant can rebut this presumption with fairly minimal evidence.

9 When must the claimant send me a formal written letter of claim?

Hague-Visby does not require the claimant to send you a formal written letter of claim in addition to the notice referred to in 8 above.

10 After what date does the claimant lose his right to sue?

Generally, if the claimant fails to commence proceedings against you to recover his claim within one year from either the date of delivery, or the date when the goods should have been delivered (in respect of lost or destroyed goods), then he will be barred from doing so thereafter. If the claimant is an NVO (freight forwarder) a longer time bar may apply (please ask the Club).

11 Can I limit the compensation I pay to the claimant for his loss and if so to what amount?

Declared Value: If the bill includes a Declared Value for the goods you must compensate the claimant with this amount (or pro-rata if only a portion of the goods are affected). Usually, you will only agree to a Declared Value if you are paid increased freight. Please advise the Club before agreeing a Declared Value as failure to do so may prejudice your cover.

No Declared Value: If the bill does not include a Declared Value then

HAGUE-VISBY 1968: Convention for the Carriage of Goods By Sea

you must compensate the claimant with the difference between the actual value of the goods on arrival (if any) and the value they would have been worth had they arrived undamaged (Sound Arrived Value). If this difference in value exceeds (i) 666.7 SDRs (see below) per *package* affected (package does *not* generally mean pallet or container) or (ii) 2 SDRs (see below) per kilogram affected, then you can limit your liability to the higher of these two amounts instead of paying the difference between the actual value of the goods on arrival and their Sound Arrived Value.

12 Can I lose my right to limit the compensation payable to the claimant?

Your firm will lose its right to limit its liability if the claimant can prove that the loss was caused by an act or omission done on your/the owners' behalf with an intent to cause the loss, or recklessly and with knowledge that loss would probably result.

SPECIAL DRAWING RIGHTS (SDRs). The SDR is the reserve unit account of the International Monetary Fund and although it does not exist physically it has been promoted as a standard of account for international transactions and conventions. It is in terms of a basket of currencies including the US Dollar, the French Franc and UK Sterling. To get the current rate of exchange look in the Financial Times or Lloyd's List.

HAGUE RULES 1924: Convention for the Carriage of Goods By Sea

1 Who normally trades under the Hague terms?

Ship owners, ship charterers and freight forwarders (NVOCs) who are involved in carriage by sea as carriers.

2 What mode(s) of transport movement do the Hague Rules apply to?

Carriage of goods by sea and in some States by inland waterway.

3 How can the Hague Rules apply to a transport movement arranged by my firm?

The Hague Rules automatically apply to any contracts under which your firm agrees, as principal (NVO), to carry goods on a ship when you issue a bill of lading which contains an express unqualified statement that the bill is to have effect subject to the Hague Rules *except* where the Hague-Visby Rules automatically apply to the carriage (see pp.6-9).

The terms will not apply against you if your firm contracted for the carrier as agents.

4 How do the Hague Rules affect terms expressly agreed between my firm and our customer?

If the Hague Rules apply, they will override any terms which you and your customer might have expressly agreed to govern your contract (eg. your standard terms) which are inconsistent with the Hague Rules *unless* such terms improve the position of cargo interests.

5 Can I amend the terms to improve my firm's legal position?

If the bill contains an unqualified statement that the bill is subject to the Hague Rules then any attempt to lessen your obligations under the Hague Rules will be null and void. However, if the bill contains a qualified statement that only certain Hague Rules provisions are incorporated, then you may be entitled to rely upon any expressly agreed terms which lessen your obligations under the Hague Rules.

6 Who can make a claim against my firm under the Hague Rules?

The lawful holder of the bill of lading, with title to sue (usually the shipper or the consignee).

7 What defences do I have against claims under the Hague Rules?

If a shipper making a claim shows that a clean bill was issued but the goods were damaged/missing on discharge, then your firm's legal liability is presumed. You can defeat this presumption by proving the goods were damaged/missing before loading. If you cannot defeat the claim in this way you will have to rely on one of the defences below.

If the consignee is making the claim and he can prove that he relied upon the description of the cargo in the bill, then you cannot defeat the presumption by proving that the goods were damaged/missing before loading but you can rely on the defences below.

You can defeat the presumption of liability by proving (i) what the actual cause of the loss was, and (ii) that the loss or damage occurred, in spite of the exercise of a diligent effort by you and the ship owner to make the vessel seaworthy/cargo worthy, because of:

- the master's error of navigation or in the management of the ship; or
- unforeseeable perils of the sea/freak weather; or
- insufficiency of packing/stuffing/marks on the cargo; or
- fire during the voyage, unless the fire was caused by your, or the ship owner's, personal negligence; or
- wrongful act or failure to act by the shipper or owner of the goods; or
- war, pirates, strikes, riots or other similar external interference including acts of government bodies or agencies (seizure, quarantine, etc.); or
- latent defects in the vessel or other relevant machinery or equipment not discoverable by your or your agent's diligent efforts; or
- any inherent defect in the goods; or
- any other cause which occurred without any negligence or fault on your or the ship owner's behalf.

Please note however that most courts usually interpret these defences strictly and give the benefit of doubt to the cargo claimant.

HAGUE RULES 1924: Convention for the Carriage of Goods By Sea

8 When and how must the claimant notify me that he has suffered a loss?

Visible losses: Unless a joint survey is held on discharge, then a notice in writing must be given to you/your agent at the discharge port before or at time the consignee takes possession of the goods.

Invisible Losses: Unless a joint survey is held on discharge, then a notice in writing must be given to you/your agent within three days after the consignee has taken possession of the goods.

Failure to provide a notice within the relevant period creates a presumption in your favour that the goods were received undamaged, although the claimant can rebut this presumption with fairly minimal evidence.

9 When must the claimant send me a formal written letter of claim?

The Hague Rules do not require the claimant to send you a formal written letter of claim in addition to the notice referred to in 8 above.

10 After what date does the claimant lose his right to sue?

If the claimant fails to commence proceedings against you to recover his claim within one year from either the date of delivery or the date when the goods should have been delivered (in respect of lost or destroyed goods) then he will be barred from doing so thereafter.

11 Can I limit the compensation I pay to the claimant for his loss and if so to what amount?

Declared Value: If the Bill includes a Declared Value for the goods, you must generally compensate the claimant with this amount (or pro-rata if only a portion of the goods are affected). However, unlike under the Hague-Visby Rules (p.8), you may be entitled to bring evidence to prove that the Declared Value was incorrect. Usually, you will only agree to a Declared Value if you are paid increased freight. Please advise the Club before agreeing a Declared Value as failure to do so may prejudice your cover.

No Declared Value: If the bill does not include a Declared Value then you must compensate the claimant with the difference between the actual value of the goods on arrival (if any) and the value they would have been worth had they arrived undamaged (Sound Arrived Value). In theory, if this difference in value exceeds £100 Sterling

HAGUE RULES 1924: Convention for the Carriage of Goods By Sea

Gold Value (please ask the Club to advise you on how to calculate this) per package affected (package does not mean container) then you can limit your liability to that sum instead of paying the actual difference in value. However, in practice a limitation sum calculated on this basis may lead to a figure far greater than the difference between the actual value of the goods on arrival and the Sound Arrived Value.

12 Can I lose my right to limit the compensation payable to the claimant?

The Hague Rules do not provide that you can lose your right to limit your liability.

US COGSA 1936 incorporates much of the substance of The Hague Rules

CMR 1956: Convention for the Carriage of Goods By Road

1 Who normally trades under CMR terms?

Road hauliers, freight forwarders and liner operators who are involved in carriage by road.

2 What mode(s) of transport movement do CMR terms apply to?

Carriage of goods by road, for example by truck.

Carriage by any other mode where the goods remain inside or on top of a road vehicle. For example, where a truck carrying goods travels from England to France by sea on a ferry.

3 How can CMR terms apply to a transport movement arranged by my firm?

CMR automatically applies to any contracts under which your firm agrees, as principal, to carry goods on a road vehicle between two different states, of which one at least has made CMR part of its national law [pp.48-49 contains a list of these states]. CMR can also apply to UK domestic movements if you expressly agree this with your customer [see pp. 3-4 on methods of incorporating terms such as your standard terms or CMR].

The terms will not apply against you if your firm contracted as agent.

4 How does CMR affect terms expressly agreed between my firm and our customer?

If CMR automatically applies, it will override any terms which you and your customer might have expressly agreed to govern your contract (eg your standard terms) which are inconsistent with CMR (eg limitation of liability provisions) but you can agree to pay cargo interests higher limits of liability by express agreement (see 11 on Declared Values and Special Interests in Delivery).

5 Can I amend the terms to improve my firm s legal position in relation to CMR?

Any attempt to improve your firm s or cargo interests legal position will be null and void.

6 Who can make a claim against my firm under CMR terms?

Both the sender and consignee of the goods. (The identity of the consignee is usually found in the CMR note. Occasionally, the CMR note is blank: the sender will generally nominate the consignee prior to

CMR 1956: Convention for the Carriage of Goods By Road

delivery. Disputes about the consignee's identity sometimes arise in such cases). However, a consignee who wishes to claim against your firm must pay your freight charges if these were not paid before collection of the goods.

7 What defences do I have against claims under these terms?

If the claimant proves that he has suffered a loss then it is presumed that your firm has a legal liability. You cannot defeat this presumption if a defect in your vehicle caused the loss. However you may be able to defeat the presumption if a defect in your vehicle did *not* cause the loss *and* if you can show that:

the loss was actually caused by:

- (i) the claimant's wrongful act or failure to do something that he should have done; or
- (ii) the claimant's instructions (and that your firm's or your subcontractor's conduct is blameless); or
- (iii) the inherent vice of the particular consignment of the goods carried; or
- (iv) unavoidable circumstances. You must prove that you or your subcontractor could not have avoided the loss even with the utmost care. This is difficult to prove: most robberies, traffic jams, weather conditions, crashes, etc. are avoidable if the utmost care is taken; or
- (v) the claimant cannot show that a particular act caused the loss but you can show that the carriage occurred without incident **and** that the loss might have been caused due to this type of cargo's potential to be damaged:
 - (a) when open/unsheeted vehicles are authorised and actually used;
 - (b) when the goods are packed in inadequate packing by the sender;
 - (c) whenever this kind of goods are carried even if properly packed and carried;
 - (d) when inadequate marks/numbers are used on the goods to identify them (providing that when the driver checked the marks/numbers against the Consignment Note the inadequacy was not reasonably apparent);
 - (e) because it is livestock (providing the driver reasonably handled the animals during the carriage).

CMR 1956: Convention for the Carriage of Goods By Road

8 When and how must the claimant notify me that he has suffered a loss under CMR?

Cargo Damage/Partial Loss: If the loss is apparent on reasonable inspection then oral or written notice must be given to the driver or your office immediately on delivery. If the loss is not apparent on reasonable inspection then notice must be given to the driver or your firm within seven days of delivery. The consignee's failure to give you notice of damage/loss will create a presumption that the cargo was in a proper condition.

Delay in delivering Cargo: A notice in writing by letter/fax/telex must be sent to you within 21 days from the eventual delivery date. Failure to do so will create a presumption that no delay was suffered.

Total Loss: No notice is required.

9 When must the claimant send me a formal written letter of claim under CMR?

CMR does not require the claimant to send you a formal written letter of claim. However if he does so then the time bar for suing you (see below) will be suspended until such date as you reject the claim in writing and return any documents that he sent you in support of his letter of claim.

10 After what date does the claimant lose his right to sue me?

Partial Loss, damage and delay: One year from date the cargo was delivered.

Total Loss: One year and 30 days after the agreed delivery date if any. If no specific delivery date was agreed the time limit is one year and 60 days after the cargo was collected from the pick-up point.

Other Losses: One year and three months from the date that the contract was made.

Wilful misconduct: Three years (see below paragraph 12 for a definition of Wilful misconduct)

11 Under CMR can I limit the compensation I pay the claimant for his loss and if so to what amount?

Cargo Loss/Damage:

Declared Value: If the CMR Note contains a Declared Value for the cargo then you must compensate the claimant with this amount

CMR 1956: Convention for the Carriage of Goods By Road

(pro-rata if only a portion of the cargo is affected). Usually, you will only agree to a Declared Value if you are paid increased freight. Please advise the Club before agreeing a Declared Value. Failure to do so may prejudice your cover.

No Declared Value: If the CMR Note does not include a Declared Value then you must compensate the claimant with the reduction in value of the cargo calculated by reference to the value of the cargo on *collection* (ie usually the sales invoice/FOB value *not* the CIF/ Sound Arrived Value). However if this difference in value exceeds 8.33SDRs (see p.9 on SDRs) per kilogram of the cargo affected then you can limit your compensation to the per kilogram amount plus duty, freight and such other transport costs the claimant has paid as a result of the movement.

Delay:

To prove a delay has occurred the claimant must prove that his goods were not delivered after any agreed date or, in the absence of an agreed date, after a reasonable period. If he can show that a delay has occurred *and* that he has suffered a financially quantifiable loss, then you must compensate him with that amount unless this amount exceeds your total freight charges for the movement in which case you will refund your freight charges. In addition, if the CMR Note provides for a Special Interest In Delivery on a particular date (and you do not comply with this Special Interest) then you must pay the claimant this amount as well as the normal compensation. Please advise the Club before agreeing a Special Interest in Delivery as failure to do so may prejudice your cover.

12 Can I lose my right to limit the compensation payable to the claimant?

You will lose your right to limit your liability if the loss occurred due to your/your sub-contractor acting wrongfully or recklessly without care for the consequences (Wilful Misconduct).

WARSAW CONVENTION 1929 (As Amended by the Hague Protocol 1955)

1 Who normally trades under Amended Warsaw terms?

Air Carriers, including airlines and freight forwarders who contract as principal.

2 What mode(s) of transport movement do Amended Warsaw terms apply to?

Carriage of goods by air (planes and helicopters). Other surface modes of transport used by the air carrier for the purpose of loading, delivery or transshipment within the vicinity of an airport.

3 How can Amended Warsaw apply to a transport movement arranged by my firm?

Warsaw applies to any contracts under which your firm agrees, as principal, to carry goods by air between

- (i) airports in two different states both of which have made Amended Warsaw part of their national law [pp.50-53 contains a list of these states]; or
- (ii) two airports within the same state if that state has made Amended Warsaw part of its national law and if, en route, the aircraft stops at an airport within another state, even if the stop-over state has not made Amended Warsaw part of its national law; or
- (iii) UK domestic movements.

The terms will not apply if your firm contracted as agent.

4 How does Amended Warsaw affect terms expressly agreed between my firm and our customer?

If Warsaw applies, it will override any terms which you and your customer might have expressly agreed to govern your contract (eg your standard terms) which are inconsistent with Warsaw (eg limitation of liability provisions).

5 Can I amend the terms to improve my firm's legal position in relation to Amended Warsaw?

Any attempt to improve your firm's legal position or to deprive you of your right to limit your liability (see para 11 below) will be null and void.

6 Who can make a claim against my firm under Amended Warsaw?

Loss: The shipper or the consignee (for themselves if they own the goods or on behalf of the true owner).

Damage: The shipper or the consignee (for themselves if they own the goods or on behalf of the true owner. If the shipper claims against your firm then he must pay your freight charges if these remain unpaid).

Delay: The shipper or the consignee (for themselves if they own the goods or on behalf of the true owner).

In all cases, the true owner of the goods probably cannot bring a claim unless he is either shipper or consignee.

7 What defences do I have against claims under Amended Warsaw?

If the claimant takes delivery of the goods without giving your firm written notification of his loss (see para 8.below) then a presumption arises that the goods were received in good condition. Unfortunately, this presumption can be rebutted if the claimant shows that the goods condition on acceptance could not be observed because they were, for example, tightly packed or in a container.

If the claimant gives a notice on time or rebuts the above presumption and proves that he has suffered a loss then your firm's legal liability is presumed. However, you can still defeat his claim if you can show that the loss occurred:

- (i) not during the flight or within the perimeters or vicinity of the airport; or
- (ii) in spite of your firm having taken all reasonable measures to avoid the damage; or
- (iii) because the loss was inevitable or could not have been prevented by human foresight or precaution; or
- (iv) because of the contributory negligence of the shipper or the consignee.

8 When and how must the claimant notify me that he has suffered a loss under Amended Warsaw?

Cargo Damage/Loss: within fourteen days from the date on which the goods were delivered to him.

WARSAW CONVENTION 1929 (As Amended by the Hague Protocol 1955)

Delay: within twenty one days from the date on which the goods were delivered to him.

The notification must be written on the air waybill or upon a separate document. If the claimant fails to send you the notification within the relevant period then he loses his right to pursue the claim.

9 When must the claimant send me a formal written letter of claim under Amended Warsaw?

Amended Warsaw does not require the claimant to send a written letter of claim in addition to a notification.

10 After what date does the claimant lose his right to sue me?

Providing the claimant has sent you his notification of loss he has a further two years to sue you starting with the latest of the following dates:

- (i) the date of arrival at the destination; or
- (ii) the date on which the aircraft should have arrived; or
- (iii) the date on which the carriage stopped (eg delivery to the consignee).

11 Under Amended Warsaw can I limit the compensation payable and if so to what amount?

Cargo Loss/Damage:

Declared Value on Delivery: If the air waybill contains a Declared Value for the cargo then you must generally compensate the claimant with this amount (pro-rata if only a portion of the cargo is affected).

Usually, you will only agree to a Declared Value if you are paid increased freight. Please advise the Club before agreeing a Declared Value as failure to do so may prejudice your cover.

No Declared Value: If the air waybill does not contain a Declared Value then you must compensate the claimant with the reduction in the value of the goods. However if the reduction in value of the goods exceeds 17 SDRs (see p.9 on SDRs) a kilo of the goods affected then you can limit your compensation to the per kilogram amount.

WARSAW CONVENTION 1929 (As Amended by the Hague Protocol 1955)

Delay: To prove a delay has occurred the claimant must prove that the cargo was delivered after an agreed date or, in the absence of an agreed date, after a reasonable period. If he can show that a delay has occurred and that he has suffered a financially quantifiable loss then you must compensate him with that amount if either the loss was a natural result of the delay or if the claimant had put you on notice that the loss would occur if the goods were delayed.

12 Can I lose my right to limit the compensation payable to the claimant?

You will lose your right to limit your liability if the claimant proves either:

- (i) that the loss occurred due to your/your sub-contractor acting wrongfully or recklessly without care for the consequences (Wilful Misconduct); or
- (ii) that you failed to issue an air waybill in triplicate and deliver them to the relevant parties; or
- (iii) that the delivered air waybill failed to state that the carriage is subject to the Warsaw Convention ; or
- (iv) that you delivered the goods on the instructions of the shipper without having received an air waybill from the alleged consignee.

CARRIAGE TO/FROM USA

Please note: The USA has not implemented the Hague protocol and therefore the original 1929 Warsaw Convention applies to air traffic to and from the USA. The original Warsaw Convention has a long list of information which must be included in the AWB and failure to include all of those items (even if not relevant) could lead you to lose your right to limit your liability.

**BRITISH INTERNATIONAL FREIGHT ASSOCIATION (BIFA)
STANDARD TRADING CONDITIONS 1989 EDITION**

1 Who normally trades under these terms?

Freight Forwarders and other parties who are members of the British International Freight Association, who use these terms as their standard trading conditions.

2 What mode(s) of transport movement do these terms apply to?

All modes including carriage of goods by sea, road, air and rail. The BIFA terms can also apply to non-transport activities such as customs clearance, warehousing, packing, etc.

3 How can these terms apply to a transport movement arranged by my firm?

The BIFA terms will only apply if you and your customer expressly agree that they will. The terms may apply according to the methods discussed under 'Do I have a contract with the party who has suffered the loss?' on pages 3-4 of this booklet.

If the BIFA terms apply then they will do so only where they are not inconsistent with any applicable compulsory international convention. For example, if a loss or damage arising out of an event which occurred during an international movement by road then CMR and not BIFA may regulate your liability.

The BIFA terms allow you to contract as both agent or principal. However the liability provisions below are only relevant if you are principal.

4 How do the BIFA terms affect terms expressly agreed between my firm and our customer?

If the BIFA terms apply but you have also agreed other express terms by correspondence then it is possible that the inconsistent terms may take precedence over those BIFA terms which conflict with the terms agreed by correspondence. Nonetheless, when defending claims you should (i) maintain that your BIFA terms apply and (ii) contact the Club for advice.

5 Can I amend the terms to improve my firm's legal position?

No, but you may amend the terms to improve your customer's position, - higher limits of liability - providing these are agreed with your liability insurer.

If the damage is governed by an applicable international convention then the convention will apply.

6 Who can make a claim against my firm under these terms?

You should be aware that where a bill of lading is issued, the claim should be made against the carrier shown in the bill of lading under the bill of lading terms.

If a third party, for example a buyer from the consignee, claims against you in the Law of Negligence, then you can demand from your customer an indemnity for the amount which exceeds your BIFA limitation (see 11) even if the loss was caused by your negligence.

7 What defences do I have against claims under these terms?

The BIFA terms expressly provide for only two general defences: your firm will be relieved of liability if the loss or damage suffered was caused by either:

- (i) problems arising out of labour disputes which your firm was unable to avoid by acting with reasonable diligence; and
- (ii) any cause or event which your firm was unable to avoid by acting with reasonable diligence and any consequent problems which your firm was unable to avoid by acting with reasonable diligence.

However if the loss or damage occurred during a stage of the movement where an international convention is applicable then the defences within that convention will be available to your firm. For example, if a loss occurs during international carriage by road then the CMR defences may apply.

8 When and how must the claimant notify me that he has suffered a loss?

Your customer must notify you of his claim within 14 days of the date when he became aware or should have become aware of the event or occurrence which he says caused the claim.

However if your customer shows that it was impossible for him to send you his written notification within this period he has the lesser obligation of having to send you his written notification as soon as he can thereafter.

9 When must the claimant send me a formal written letter of claim?

The BIFA terms do not require the claimant to send you a formal written letter of claim. However if the loss occurs in the road stage of an international movement, then the CMR Rules may apply, i.e. if the claimant sends you a written letter of claim then the CMR time bar for suing you will be suspended until such date as you reject the claim in writing and return any documents which he sent you in support of his letter of claim (see page 16). It would be sensible to have an agreed procedure with your customer regarding written notification of claims.

10 After what date does the claimant lose his right to sue me?

Once nine months have passed since the event or occurrence which gave rise to the claim then the claimant is no longer entitled to sue you, *unless* a compulsory international convention gives the claimant a longer time.

11 Can I limit the compensation I pay the claimant for his loss and if so to what amount?

If a compulsory international convention *does not apply* the following limits will:

Cargo Loss/Damage:

You must compensate the claimant with the reduction in the value of the goods calculated by reference to the value of the cargo on collection (ie usually the sales invoice/FOB value *not* the CIF value). However if this difference in value exceeds 2SDRs (see p.9 on SDRs) per kilogram of the cargo affected then you can limit your compensation to the per kilogram amount.

Other Losses:

The lower of (i) the invoice/FOB value of the goods carried; or (ii) 2SDRs per kilogram of the goods carried; or (iii) 75,000SDRs.

Delay:

No compensation will be due to your customer *unless* you expressly agreed to compensate him for delay. Furthermore, even if you expressly agree to compensate your customer for delay he will generally only be entitled to a maximum of twice the amount of your freight charges.

The above limits can be increased by express agreement between you and your client. Please inform the Club before agreeing higher limits as failure to do so may compromise your cover.

**BRITISH INTERNATIONAL FREIGHT ASSOCIATION (BIFA)
STANDARD TRADING CONDITIONS 1989 EDITION**

12 Can I lose my right to limit the compensation payable to the claimant?

The BIFA terms do not provide that you can lose your right to limit your liability. However if consumer protection law applies (unlikely in the case of commercial clients) or if a compulsory international convention applies then this may cause you to lose your right to limit.

If you do not properly incorporate standard trading conditions in your arrangements with your customer, they may not legally apply and all rights thereunder may be lost.

BIFA have recently issued their 2000 Conditions. These have also been examined and the comments made in this section apply equally to BIFA 2000 Conditions

TT Club Members who are not Members of BIFA may utilise the TT Club series 400 Conditions for Freight Forwarders.

I only ever issue bills of lading or CMR notes. Do I still need BIFA conditions?

Yes. CMR only deals with some aspects of the contract but does not, for instance, govern important things like paying freight or your right to lien (detain) cargo if your client does not pay. BIFA terms and the CMR Convention compliment each other and you do need both.

TT CLUB SERIES 100 BILL OF LADING(not a Standard Trading Condition)

1 Who normally uses the Series 100 bill of lading?

Freight forwarders and other parties who obtain their liability insurance from the Through Transport Club and who use Club, or National Forwarding Association terms as their standard trading terms.

2 What mode(s) of transport movement does the Series 100 bill of lading apply to?

All modes, including carriage of goods by sea, road, air and rail.

3 How can the Series 100 bill of lading terms apply to a transport movement arranged by my firm?

The terms apply if your firm issues a bill of lading which incorporates the Series 100 terms and names your firm as Carrier (i.e. principal). If the Series 100 terms apply, then they will take effect only in so far as they do not conflict with any applicable compulsory international conventions. For example, if the claimant proves that the loss occurred during an international road leg of a multimodal movement, then CMR and not the Series 100 terms may regulate your firm's liability.

4 How do the Series 100 bill of lading terms affect terms expressly agreed between my firm and our customer?

If the Series 100 terms apply but you have also agreed other express terms with your customer by correspondence then the express terms may possibly take precedence over any Series 100 terms which are in conflict with them. Nonetheless, when defending claims you should (i) maintain that your Series 100 terms apply, and (ii) contact the Club for advice.

5 Can I amend the Series 100 bill of lading terms to improve my firm's legal position?

Yes, but if the claimant proves that a compulsory international convention applies then the convention will override any inconsistent unamended or amended Series 100 terms.

6 Who can make a claim against my firm under the Series 100 bill of lading terms?

The holder of the Series 100 bill of lading, providing he lawfully came into possession of the bill. If someone, other than your customer or the party who has lawfully come into possession of the bill, seeks to sue you, your customer or the person who is lawfully entitled to

TT CLUB SERIES 100 BILL OF LADING (not a Standard Trading Condition)

possession of the bill will be obliged to indemnify you in respect of the third party's claim.

7 What defences do I have against claims under these terms?

If the claimant proves that he has suffered a loss then it is presumed that your firm has a legal liability. The defences available to rebut this presumption will depend upon the type of movement covered by the bill:

Port to Port Shipments

Generally the (unamended) Hague Rules (pp.10-13) will regulate your liability to your customer. However, in movements where the Hague-Visby Rules automatically apply, the Hague-Visby Rules will apply (pp.6-9).

Movements by Inland Waterway

The (unamended) Hague Rules will apply (pp.10-13).

Combined Transport Movements

Where the claimant cannot prove that the loss occurred on a particular mode of transport, then you can rely on the defences in the Hague-Visby Rules if (i) the movement *involves a sea leg* and (ii) if the bill was issued in a state which is party to the convention or the ocean carriage commenced in a state which is party to the convention. In movements which *do not involve a sea leg* you can rely on all the defences contained in the (unamended) Hague Rules (pp.10-13) as long as these make sense in a maritime context.

If the claimant can prove that the loss occurred whilst the cargo was being carried by a particular mode of transport, then your liability will be determined as above *unless* an international convention is applicable. If an international convention is applicable then the defences within that convention will be available to your firm instead. For example, if the loss occurred during international carriage by road then the CMR defences may apply.

8 When and how must the claimant notify me that he has suffered a loss?

Visible Losses: A notice in writing must be given to you/your agent at the place of delivery before or at the time the consignee or his agent takes delivery of the cargo.

TT CLUB SERIES 100 BILL OF LADING (not a Standard Trading Condition)

Invisible Losses: A notice in writing must be given to you/your agent at the place of delivery within three days after the consignee or his agent takes delivery of the cargo.

Failure to provide a written notice gives rise to a presumption in your firm's favour that the goods were received without loss or damage. This presumption can be rebutted with evidence of the loss or damage. However the claimant's ability to rebut the presumption becomes increasingly difficult with the passage of time.

9 When must the claimant send me a formal written letter of claim?

The Series 100 terms themselves do not require the claimant to send you a formal written letter of claim.

However if the claimant proves that the loss occurred during a road leg of a combined transport movement, then CMR might apply. Therefore, if the claimant sends you a written letter of claim then the CMR time bar will be suspended until the date when you reject the claim in writing and return any supporting documents to him.

10 After what date is the claimant barred from suing me?

The claimant must issue proceedings *and* advise you in writing that he has done so within nine months after delivery of the goods or the date when the goods should have been delivered, *unless* a compulsory international convention gives the claimant a longer time.

11 Can I limit the compensation I pay the claimant for his loss and if so to what amount?

If the limitation provisions in a compulsory international convention *do not apply* the following limits will:

Cargo Loss/Damage:

Declared Value: Even if a value for the goods is declared on the face of the bill you are not obliged to compensate the claimant with that sum unless you have expressly agreed with him that this would be the case.

No Declared Value: You must compensate the claimant with the reduction in the value of the goods calculated by reference to the actual value of the goods on arrival (if any) and the value they would have been worth had they arrived undamaged (Sound Arrived

TT CLUB SERIES 100 BILL OF LADING (not a Standard Trading Condition)

Value). If this difference in value exceeds US\$2.00 per kilogram of the gross weight of the goods lost or damaged, then you can limit your liability to this amount instead of paying the actual difference in value.

Delay: To prove a delay has occurred, the claimant must prove that his goods were delivered after the agreed date if any or, in the absence of an agreed date, after a reasonable period. If he can show that a delay occurred *and* that he suffered a financially quantifiable loss then you must compensate him with that amount unless this amount exceeds your total freight charges for the movement, in which case you will refund your freight charges.

12 Can I lose my right to limit the compensation payable to the claimant?

The Series 100 terms do not provide that you can lose your right to limit your liability. However if a compulsory international convention applies then this may render ineffective your right to limit.

TT Series 100 are bill of lading conditions and should not be used as Standard Trading Conditions. TT Series 400 Conditions for Freight Forwarders are available to TT Club members. Non TT Club members may use the National Forwarding Association Conditions.

1 Who normally trades under the FIATA terms?

Members of those organisations which are members of the International Federation of Freight Forwarder Associations (FIATA). The British International Freight Association (BIFA) is a member of FIATA; therefore if your firm is a BIFA member it is entitled to trade under the FIATA terms.

2 What mode(s) of transport movement do the FIATA terms apply to?

All modes including carriage of goods by sea, road, air and rail.

3 How can the FIATA terms apply to a transport movement arranged by my firm?

The terms apply if your firm issues a FIATA Multimodal Bill of Lading naming it as Carrier (i.e. principal).

If the FIATA terms apply, then they will take effect only in so far as they do not conflict with any applicable compulsory international convention. For example, if the claimant proves that the loss occurred during an international road leg of a multimodal movement, then CMR and not FIATA will regulate your firm's liability.

4 How do the FIATA terms affect terms expressly agreed between my firm and our customer?

If the FIATA terms apply but you have also agreed other express terms by correspondence then the express terms may possibly take precedence over any FIATA terms which are in conflict with them. Nonetheless, when defending claims you should (i) maintain that your FIATA terms apply and (ii) contact the Club for advice.

5 Can I amend the FIATA terms to improve my firm's legal position?

Yes, but if the claimant proves that a compulsory international convention applies then the convention will override any inconsistent unamended or amended FIATA terms.

6 Who can make a claim against my firm under the FIATA terms?

The lawful holder of the FIATA Bill of Lading.

7 What defences do I have against claims under these terms?

If the claimant proves that he has suffered a loss then your firm's legal liability is presumed. You can defeat the presumption if your firm can show:

that the loss occurred during a sea or inland water leg of the movement owing to:

- (i) the master's (or his servants) error of navigation or management of the ship; or
- (ii) fire during the voyage, unless the fire was caused by your firm's personal negligence or the ship owner's personal negligence; or

*the actual cause of the loss **and** that your firm's negligence did not give rise to this cause; or*

*that your customer can't show that a particular act caused the loss **and** that the carriage occurred without incident **and** that the loss might have been caused due to:*

- (i) cargo interests' action or failure to act where they should have acted; or
- (ii) inadequate packaging or marks and/or numbers; or
- (iii) cargo interests' negligent handling, loading, stowage or unloading; or
- (iv) inherent vice of the goods; or
- (v) strike, lockout, stoppage or restraint of labour.

If the claimant proves that a compulsory international convention applies then the above defences will not be available but the specific defences available under the applicable international convention will apply instead.

8 When and how must the claimant notify me that he has suffered a loss

Visible Losses: A notice in writing must be given to you/your agent on delivery of the goods to the consignee or his agent or to any state authority which is entitled to delivery of the goods.

Invisible Losses: A notice in writing must be given to you/your agent within six days after the goods were delivered to the consignee or his agent or to any state authority which is entitled to delivery of the goods.

Failure to provide a written notice gives rise to a presumption in your firm's favour that the goods were received without loss. This presumption can be rebutted with evidence of loss. However the claimant's ability to rebut the presumption becomes increasingly difficult with the passage of time.

9 When must the claimant send me a formal written letter of claim

The FIATA terms themselves do not require the claimant to send you a formal written letter of claim. However if the claimant proves that the loss occurred during a road leg of a multimodal movement, then CMR may apply. Therefore, if the claimant sends you a written letter of claim then the CMR time bar will be suspended until the date when you reject the claim in writing and return any supporting documents to him.

10 After what date does the claimant lose his right to sue me?

After nine months have passed since the date when the goods were delivered to either (i) the Consignee or (ii) his agent or (iii) to any state authority which is entitled to take over the goods before delivery, *unless* a compulsory international convention gives the claimant longer.

11 Can I limit the compensation I pay the claimant for his loss and if so to what amount?

If limitation provided for in a compulsory international convention *does not apply* the following limits will:

Cargo Loss/Damage:

Declared Value: If the FIATA Bill contains a Declared Value for the goods then your firm must generally compensate the claimant with this amount (pro-rata if only a portion of the goods are affected) *providing* the claimant has paid any increased freight which is payable. You cannot limit your liability below the Declared Value. Please advise the Club before agreeing a Declared Value as failure to do so may prejudice your cover.

No Declared Value: If the FIATA Bill does not contain a Declared Value then you must compensate the claimant with the difference between the actual value of the goods on delivery (if any) and the Sound Arrived Value of the goods on delivery (ie usually the local market wholesale value). However if this difference in value exceeds 2SDRs (see p.9 on SDRs) per kilogram of the cargo affected then you can limit your compensation to the per kilogram figure.

Delay: No compensation is payable *unless* the FIATA Bill states that the goods are required to be delivered on a particular date or as soon as is reasonably possible (a declaration of interest in timely delivery).

Consequential Losses (including loss of profit):

You can limit your liability to twice the amount of your freight charges providing that the total compensation payable (eg. say compensation for cargo damage and loss of profit) does not exceed the amount that would be payable on total loss of the goods (ie the lower of the Sound Arrived Value and the 2SDRs per kilogram amount).

The above limits can be increased by express agreement between you and your customer, but please inform the Club before doing so to avoid compromising your cover.

12 Can I lose my right to limit the compensation payable to the claimant?

To lose your right to limit your liability the claimant must prove all three of the following:

- (i) the loss resulted from your firm's negligent act or omission; and
- (ii) the negligent act or omission must have been intentional or committed recklessly and with knowledge that such loss or damage would probably result (Wilful Misconduct); and
- (iii) the negligent act or omission is attributable to your firm personally.

1 Who normally trades under RHA terms?

Most UK based road hauliers (and some UK freight forwarders who contract as principal) use these conditions as their standard trading terms in respect of their domestic movements.

2 What mode(s) of transport movement do the RHA terms apply to?

The conditions only regulate carriage of goods by road.

If you engage a sub-contractor to carry your customer's goods by another mode of transport then the RHA terms provide that you engage the sub-contractor as your customer's agent. This means that a new contract is formed between your customer and the sub-contractor, the terms of which will (probably) be the latter's standard terms.

3 How can the RHA terms apply to a transport movement arranged by my firm?

The RHA terms will only apply if you and your customer expressly agree they will (see Do I have a contract with the party who has suffered the loss? on page 3-4.) RHA usually applies to UK domestic movements as CMR usually automatically applies to most international movements (pp. 14-17).

4 How do the RHA terms affect terms expressly agreed between my firm and our customer?

If the RHA terms apply but you have also agreed other express terms by correspondence then the express terms may possibly take precedence over any RHA terms which conflict with them. Nonetheless, when defending claims you should (i) maintain that your RHA terms apply and (ii) contact the Club for advice.

5 Can I amend the RHA terms to improve my firm's legal position?

Yes, but amendments which are particularly favourable to you may be struck out as unfair by UK consumer protection laws. If you want amendments these should only be agreed by one of your directors.

6 Who can make a claim against my firm under the RHA terms?

Under the RHA terms only your customer can make a claim against you.

If a third party claims against you in the Law of Negligence, then in some cases you may be entitled to an indemnity from your customer for any liability you are found to have above your RHA limitation (see

11). You should ask the Club for further advice.

7 What defences do I have against claims under the RHA terms?

RHA provides that you may carry the goods at your customer's risk if he agrees to this in writing. (However, such agreement may be ineffective owing to unfairness). Usually, your customer will not agree that you are carrying the goods at his risk, in which case the available defences depend upon the type of cargo being carried:

Livestock, Bullion, Money, Securities, Stamps, Precious Metals or Precious Stones

Your firm can decline liability if your *customer* cannot:

- (i) produce written evidence that you agreed in writing to carry such goods; and
- (ii) produce written evidence that he agreed in writing to reimburse to you all above normal costs incurred in carrying such goods; and
- (iii) prove that the loss occurred during carriage and was caused by your negligence.

Other Types of Cargo

Your firm can decline liability if you can prove that the loss was caused by one of the causes listed below and that once the loss occurred you took all reasonable steps to minimise the extent of the loss.

- (i) An Act of God : some natural occurrence which could not have been foreseen or, if foreseen, could not have been guarded against by any ordinary or reasonable precaution; or
- (ii) the consequences of war (or similar foreign and domestic hostilities); or
- (iii) seizure or forfeiture under a court order; or
- (iv) your customer's act or failure to act (even if the act or failure to act did not amount to negligence); or
- (v) an inherent vice or latent defect in the cargo; or
- (vi) insufficient or improper packing; or
- (vii) insufficient or improper labelling or addressing; or
- (viii) riots, strikes (or similar labour unrest); or
- (ix) consignee's refusal to accept the goods within a reasonable time after you tendered them for delivery.

8 When and how must the claimant notify me that he has suffered a loss?

Damage/Partial Loss: Your customer must notify you of his claim in writing (a mere note on a consignment note or delivery document is insufficient) within 3 days after the delivery of the goods.

Total Loss/Mis-delivery/Non delivery: Your customer must notify you of his claim in writing (a note on a consignment note or delivery document is insufficient) within 28 days after you collected his goods.

However if your customer shows that he was reasonably unable to send you a written notification within the appropriate timetable above, he instead has to send you a notification as soon as he can thereafter.

9 When must the claimant send me a formal written letter of claim?

Damage/Partial Loss: Within 7 days after the delivery of the goods.

Total Loss/Mis-delivery/Non delivery: Within 42 days after the collection of the goods.

However if your customer shows that he was reasonably unable to send you a letter of claim within the appropriate timetable above, he instead has to send you his letter of claim as soon as he can thereafter.

10 After what date is the claimant barred from suing me?

The RHA terms do not provide a suit time bar. Therefore the general law will apply: your customer must sue you within six years from the date of the incident giving rise to the loss.

11 Can I limit the compensation I pay the claimant for his loss and if so to what amount?

Damage/Loss to the Cargo:

Declared Value: If your customer gave you, at least 7 days before the movement, a written notice containing (i) a declaration of his cargo's value, and (ii) a requirement that you compensate him with this sum on the cargo's loss, then you must compensate him with the cargo's full value. You should refuse to accept such a notice.

No Declared Value: You must pay your customer the smaller of (i) the value of the lost/damaged cargo or (ii) £1,300 per tonne of the goods damaged/lost. Tonnage is calculated according to the type of cargo carried:

- (i) *Generally*: The gross tonnage of the goods damaged/lost.
- (ii) *Large Light Cargoes*: RHA 1991 says that 2.25 cubic metres of goods are equivalent to a gross tonne.
- (iii) *Awkward Shaped Cargoes*: RHA 1991 says that if you and your customer agree that the goods are equivalent to a certain gross tonnage owing to their size/shape then that tonnage should be applied.

Consequential Losses (including loss of profit): The smaller of the actual amount lost and your carriage charges unless when you made the contract your customer declared a special interest in the goods, in which case you must pay your customer this amount as well as compensation calculated as above.

Delay: No compensation will be due to your customer *unless* when you made the contract your customer declared a special interest in delivery on a particular date (and you do not comply with this special interest) in which case you must pay this amount.

The above limits can be increased by express agreement between you and your client.

12 Can I lose my right to limit the compensation payable to the claimant?

The RHA terms do not provide that you can lose your right to limit your liability.

THE RHA 1998 CONDITIONS OF CARRIAGE

The Road Haulage Association has recently started promoting a revised version of its 1991 Conditions. These introduce some important changes. If you are trading under these terms you will be entitled to limit your liability to £1,300 per gross tonne even in respect of light cargoes and you will only have to pay more if you expressly agree to increase this limit. The 1998 Conditions also say that the claimant loses his right to sue you if he does not issue proceedings within 1 year after the cargo was collected from the sender.

1 Who normally trades under the UKWA terms?

Warehouse keepers, and freight forwarders who contract to store goods as principal. To use the terms, the warehouse keeper or freight forwarder should be a member of The United Kingdom Warehousing Association.

2 What mode(s) of transport movement do the UKWA terms apply to?

Generally the UKWA terms only apply to contracts for the storage of goods. However, exceptionally the UKWA terms may apply to carriage contracts and freight forwarding contracts.

Making carriage or freight forwarding contracts subject to the UKWA terms should be avoided because the limitation provisions may be ineffective.

3 How can the UKWA terms apply to a contract arranged by my firm?

The UKWA terms will only apply if you and your customer have expressly agreed that they will do so by one of the methods discussed under 'Do I have a contract with the party who has suffered the loss?' (p.p 3-4).

The terms will not apply if your firm contracted as agent.

4 How do the UKWA terms affect terms expressly agreed between my firm and our customer?

If the UKWA terms apply but you have also agreed other express terms by correspondence then it is possible that the inconsistent terms may take precedence over those UKWA terms which conflict with the terms agreed by correspondence. Nonetheless, when defending claims you should (i) maintain that your UKWA terms apply and (ii) contact the club for advice.

5 Can I amend the terms to improve my firm's legal position in relation to the UKWA terms?

Yes, but amendments which are particularly favourable to you may be ineffective.

6 Who can make a claim against my firm under the UKWA terms?

The only party who can claim against your firm under its UKWA storage or carriage contract is your customer (if he contracted on his own behalf) or his principal (if your customer contracted on behalf of a third party).

However, if your customer, or his principal, is not the true-owner of the goods then the true-owner may be able to claim against you in the Law of Negligence. If the true-owner claims against your firm then you may be entitled to an indemnity from your customer in respect of your liability to the true-owner and for your reasonable legal fees incurred in fighting the true owner's claim.

7 What defences do I have against claims under the UKWA terms?

The loss was caused or partially caused by (a) inadequate packing or (b) your customer's failure to warn you about any special precautions necessitated by the nature, weight or condition of the goods.

8 When and how must the claimant notify me that he has suffered a loss under the UKWA terms?

Warehousing Claims

Within 21 days from the date on which your customer learns of the incident that gave rise to the claim.

Carriage Claims

Within 7 days from the date on which your customer learns of the incident that gave rise to the claim.

The notification must be in writing. If the claimant fails to send you a written notification within the appropriate period (above) then his claim becomes time barred.

9 When must the claimant send me a formal written letter of claim under the UKWA terms?

The UKWA terms do not require the claimant to send a written letter of claim in addition to a notification.

10 After what date is the claimant barred from suing me under the UKWA terms?

If the claimant fails to issue and serve his proceedings on your firm within nine months after the incident giving rise to the claim then his claim is time barred.

11 Under the UKWA terms can I limit the compensation payable and if so to what amount?

Cargo Loss/Damage:

Declared Value: If your customer gave you at least seven days before the incident that gave rise to his claim a written notice that he wished to give the goods a Declared Value (inclusive of duty and taxes paid or payable on the goods) then you must compensate your customer with this amount. Generally your firm will only agree to a Declared Value if your customer pays an increased storage or carriage fee. You should contact the Club before agreeing Declared Values as failure to do so may prejudice your cover.

No Declared Value: If your customer did not give you a Declared Value, within the appropriate time period (above) or at all, then your firm's liability is limited to £100 per gross tonne of the goods lost/damaged.

Financial/Consequential Losses: Your firm has no liability for financial losses whatsoever.

12 Can I lose my right to limit the compensation payable to the claimant?

The UKWA terms do not expressly provide for circumstances when you may lose your right to limit the compensation payable. However owing to the extremely favourable limitation regime described above, it is possible that in some cases the limitation provisions will be ineffective.

Nonetheless, in dealing with claims, you should maintain that the UKWA limitation provisions apply and contact the Club for further advice.

WHO CAN I CLAIM AN INDEMNITY FROM?

If you have been held liable to cargo interests as principal carrier for loss or damage to goods, or if you anticipate that you will be found liable in the future, you should take the following steps to claim an indemnity from the sub-contractor(s), if any, who actually damaged the goods.

(i) Identify the party against whom you wish to pursue a recourse action

You should read the terms of the contract with your sub-contractor to verify that the sub-contractor is the legal carrier under the contract. It is possible that the contract may provide that the bill was issued by your sub-contractor as agent on behalf of another party (eg. a charterer issuing a contract of carriage on behalf of the Master of a ship) in which case you would need to seek an indemnity from the legal carrier instead.

In some cases you will not have a contract with the party against whom you are seeking a recourse. You may however be able to sue that party in the Law of Negligence. This is a complicated area of law and you should consult the Club if you have no claim in contract against the party who actually caused the loss.

(ii) Identify the terms governing your contract with your sub-contractor/the legal carrier

You should consider whether an international convention applies or whether your sub-contractor/the legal carrier's standard terms and conditions apply.

(iii) Send your sub-contractor/the legal carrier a written notice of claim

Once you have identified the applicable contractual terms you should check if the terms require you to send a written notice of claim within a specified period. Even if the contract terms do not appear to require you to, it is good practice to do so immediately after you discover a loss.

(iv) Where can I sue my sub-contractor/the legal carrier?

Although your contract with your customer may provide for English Law and jurisdiction which means that your customer should sue you in England under English law, it is possible that your contract with your sub-contractor/the legal carrier requires you to sue your sub-contractor in a foreign jurisdiction under foreign law.

WHO CAN I CLAIM AN INDEMNITY FROM?

In such cases there is a risk that your customer's prospects of making a recovery against you are considerably better than your prospects of making a recovery against your sub-contractor (or vice versa). You should contact the Club for further advice if this appears to be the case.

(v) By what date must I sue my sub-contractor/the legal carrier?

If the terms of your contract with your sub-contractor/the legal carrier provide for a time bar which is shorter than the time bar which is in your contract with your customer, then you should request a time extension from your sub-contractor/the legal carrier so that your recourse action will not become time barred before the expiry of the time bar in your contract with your customer. If your sub-contractor refuses to grant a time extension you should ask the Club to issue (or threaten to issue) proceedings to protect time.

(vi) Can I make a full recovery?

You should check that the limitation of liability provisions within your contract with your sub-contractor/the legal carrier entitle you to recover the sum which you will be obliged to pay your customer as compensation under the limitation of liability provisions contained in your contract with your sub-contractor.

In some cases, you may find that the limitation provisions in your contract with your sub-contractor mean that you cannot make a full recovery. For example, if your contract with your customer is regulated by the BIFA Conditions your liability for cargo loss/damage is based upon a 2 SDR s per kilogram limit (see p.24) whereas your contract with your sub-contractor could be made subject to the UKWA terms which provided for only £100 per gross tonne of the goods lost/damaged (p.40).

(vii) Does your sub-contractor/the legal carrier have liability insurance?

It is advisable to confirm that any sub-contractor, agent etc, has liability insurance. It would be prudent to obtain a copy of the policy or a letter from the Insurer to confirm cover. In recourse actions against sub-contractors/legal carriers who are insured you may be able to pursue an action directly against their insurer at the same time as taking an action against your sub-contractor.

WHO CAN I CLAIM AN INDEMNITY FROM?

(viii) Evidence

You should obtain copies of:

- (a) your contract with your customer;
- (b) the relevant contract between your firm and your sub-contractor(s);
- (c) your sub-contractors' invoices in respect of their charges to you;
- (d) any correspondence created both prior to and after the incident;
- (e) any relevant survey reports; and
- (f) any other documentation which may have a bearing on the case.

You should send copies of these to the Club as soon as possible.

TT CLUB and TRANSPORT DISPUTES

The TT Club was founded in 1970 and has Members in over 80 countries from all areas of the transport and logistics industry. It is directed by a non-executive Board drawn predominantly from the senior management of the Members themselves. The Club provides liability and equipment insurance to logistics operators, forwarders and NVOCs by sea, air, road, rail and river as well as hauliers, railway operators, warehouse owners, tanker and refrigerated container operators. The Club also covers the transport industry including Ship Operators for their container risks, Cargo Handling Facilities and Port Authorities.

Freight forwarders, NVOCs or transport operators face special problems and are exposed to a unique combination of risks. Traditionally, freight forwarders saw themselves as agents, with minimal liabilities, acting on behalf of others for a small commission. Nowadays, increase in competition and legal pressures have forced forwarders to become principals (eg, NVOCs), thereby accepting greater liabilities. With such wide liabilities freight forwarders need to know that their risks are understood and properly covered by their insurer.

Members of the TT Club enjoy the services of an expert management team and are allocated a personal account executive. He or she will be experienced in the transport industry and be committed to maintaining a close working relationship with the Member and the Member's broker. This personal approach means that the TT Club can gain a much deeper understanding of a Member's business and its particular insurance requirements than is normally possible.

As a mutual insurance association the TT Club does not seek to make a profit and has no shareholders. Cover is priced according to an individual assessment of the assured's risks and claims record. Insurance at cost allows the Club to maintain stable pricing, minimising the swings typical in the commercial insurance market.

Standard risks insured include:

- Liability for the loss of or damage to cargo
- Errors and omissions liabilities, including those for delay and unauthorised delivery
- Third party liabilities (including sudden and accidental pollution)

TT CLUB and TRANSPORT DISPUTES

- Customs liabilities and fines for breaches of regulations relating to immigration, pollution or safety at work
- Investigation, defence and mitigation costs
- Misdirection costs
- Disposal costs
- Quarantine and disinfection costs
- General Average and salvage guarantees and contributions
- Extra carriage costs
- Discretionary Cover

The Club's insurance and support services are available in any part of the world. Regional centres are located in London, Hong Kong and in New Jersey (USA) and these are backed up by a network of local offices.

Holman Fenwick & Willan's shipping and multimodal transport lawyers provide a comprehensive service to the global business community in solving problems in the world of international and domestic carriage and storage of goods.

The firm is one of the largest shipping law firms in the world and deals with all aspects of carriage of goods by sea, charterparties, bills of lading, casualties and salvage. The firm's multimodal practice has grown out of this traditional area of expertise.

The firm also has extensive experience of marine and non-marine insurance and acts for insurers and assured, advising on policy wordings, coverage disputes, and claims.

Holman, Fenwick & Willan offers international capability, through its principal offices in London, Paris, Piraeus, Hong Kong and Singapore. Our offices provide a round-the-clock service between Europe and the Far East. With over a hundred years experience of international legal practice, members of the firm are used to travelling at short notice and working with local lawyers throughout the world.

The firm places high emphasis on understanding its clients' business needs and implementing their commercial objectives through legal action. Every case brings a different legal challenge, and all require the commercial judgment with which the firm brings to bear.

Holman, Fenwick & Willan has an open-minded practical approach to all aspects of its cases and is equally happy to work with individual traders or with in-house Counsel. The firm is open about its fees.

Accurate as of:**11th July 1997**

Parties	Date of entry into force
Australia	16/10/1993
Belgium	06/12/1978
Denmark	23/06/1977
Ecuador	23/06/1977
Egypt, Arab Republic of	30/04/1983
Finland	01/03/1985
France	23/06/1977
Georgia	20/05/1996
Greece	23/06/1993
Ireland	15/07/1998
Italy	22/11/1985
Japan	01/06/1993
Lebanon	23/06/1977
Luxembourg	18/05/1991
Mexico	20/08/1994
Netherlands	26/07/1982
New Zealand	20/03/1995
Norway	23/06/1977
Poland	12/05/1980
Singapore	23/06/1977
Spain	06/04/1982
Sri Lanka	21/01/1982
Sweden	23/06/1977
Switzerland	23/06/1977
Syria, Arab Republic	23/06/1977
Tonga	13/09/1978
United Kingdom	23/06/1977

STATES WHICH APPLY CMR 1956**Accurate as of:
19th August 1997**

Parties	Date of entry into force
Austria	02/07/1961
*Belarus	04/07/1993
Belgium	17/12/1962
*Bosnia and Herzegovina	30/11/1993
*Bulgaria	18/01/1978
*Croatia	01/11/1992
*Czech Republic	30/09/1993
Denmark	26/09/1965
Estonia	01/08/1993
Finland	25/09/1973
France	02/07/1961
Germany	04/02/1962
Greece	22/08/1977
Hungary	28/07/1970
Ireland	01/05/1991
Italy	02/07/1961
*Kazakhstan	15/10/1995
Latvia	14/04/1994
Lithuania	15/06/1993
Luxembourg	19/07/1964
Macedonia, former Yugoslav Republic	20/06/1996
*Moldova	24/08/1993
*Morocco	24/05/1995
Netherlands	02/07/1961
Norway	29/09/1969
*Poland	11/09/1962
Portugal	21/12/1969
Romania	23/04/1973
*Russian Federation	01/12/1983
*Slovakia	26/08/1993
*Slovenia	02/10/1992
Spain	13/05/1974
Sweden	01/07/1969
Switzerland	29/05/1970

STATES WHICH APPLY CMR 1956

Accurate as of:

19th August 1997

Parties	Date of entry into force
*Tajikistan	10/12/1996
Tunisia	24/03/1994
Turkey	31/10/1995
Turkmenistan	17/12/1996
United Kingdom	19/10/1967
Uzbekistan	27/12/1995
*Yugoslavia	02/07/1961

*These states marked with a star do not apply the 8.33SDRs (see p.9 on SDRs) per kilo limitation regime (pursuant to the CMR Protocol of 1978). They instead apply 25 gold francs per kilogram, weighing 10/31 of a gramme and being of millesimal fineness 900. Please ask the Club how to convert gold francs into £ Sterling, etc.

**CONVENTION 1929 (as amended by
THE HAGUE PROTOCOL OF 1955)**

**Accurate as of
21 October 1997**

Parties	Date of entry into force
Afghanistan	21/05/1969
Algeria	31/08/1964
Argentina	10/09/1969
Australia	01/08/1963
Austria	24/06/1971
Bahamas	10/07/1973
Bangladesh	26/03/1971
Belarus	01/08/1963
Belgium	25/11/1963
Benin	01/08/1963
Brazil	14/09/1964
Bulgaria	13/03/1964
Byelorussian S.S.R.	01/08/1963
Cambodia	12/03/1997
Cameroon	01/08/1963
Canada	17/07/1964
Chile	31/05/1979
China	18/11/1975
Colombia	13/11/1966
Congo	01/08/1963
Costa Rica	08/08/1984
Croatia	08/10/1991
Cuba	26/02/1966
Cyprus	21/10/1970
Czechoslovakia (it is not clear if the Czech Republic and Slovakia are now parties following the dissolution of Czechoslovakia)	01/08/1963
Denmark	01/08/1963
Dominican Republic	25/05/1972
Ecuador	01/03/1970
Egypt	01/08/1963
El Salvador	01/08/1963
Fiji	10/10/1970

**CONVENTION 1929 (as amended by
THE HAGUE PROTOCOL OF 1955)**

**Accurate as of
21 October 1997**

Parties	Date of entry into force
Finland	23/08/1977
France	01/08/1963
Gabon	16/05/1969
Germany	01/08/1963
Greece	21/09/1965
Grenada	13/11/1985
Guatemala	26/10/1971
Guinea	07/01/1991
Hungary	01/08/1963
Iceland	01/08/1963
India	15/05/1973
Iran, Islamic Republic of	06/10/1975
Iraq	26/09/1972
Ireland	01/08/1963
Israel	03/11/1964
Italy	02/08/1963
Ivory Coast	01/08/1963
Japan	08/11/1967
Jordan	13/02/1974
North Korea	02/02/1981
South Korea	11/10/1967
Kuwait	09/11/1975
Laos P.D.R.	01/08/1963
Lebanon	08/08/1978
Lesotho	15/01/1976
Libyan Arab Jamahiriya	14/08/1969
Liechtenstein	03/04/1966
Lithuania	19/02/1997
Luxembourg	01/08/1963
Madagascar	01/08/1963
Malawi	07/09/1971
Malaysia	19/12/1974
Maldives	11/01/1996
Mali	29/03/1964

**CONVENTION 1929 (as amended by
THE HAGUE PROTOCOL OF 1955)**

**Accurate as of
21 October 1997**

Parties	Date of entry into force
Mauritius	15/01/1990
Mexico	01/08/1963
Moldova, Republic of	19/06/1997
Monaco	08/07/1979
Morocco	15/02/1976
Nauru	31/01/1968
Nepal	13/05/1966
Netherlands	01/08/1963
New Zealand	14/06/1967
Niger	01/08/1963
Nigeria	29/09/1969
Norway	01/08/1963
Oman	02/11/1987
Pakistan	01/08/1963
Panama	10/01/1997
Papua New Guinea	16/09/1975
Paraguay	26/11/1969
Peru	03/10/1988
Philippines	28/02/1967
Poland	01/08/1963
Portugal	15/12/1963
Qatar	22/03/1987
Romania	01/08/1963
Rwanda	27/03/1991
Samoa	14/01/1973
Saudi Arabia	27/04/1969
Senegal	17/09/1964
Seychelles	22/09/1980
Singapore	04/02/1968
Solomon Islands	07/07/1978
South Africa	17/12/1967
Spain	06/03/1966
Sri Lanka	22/05/1997
Sudan	12/05/1975

**CONVENTION 1927 (as amended by
THE HAGUE PROTOCOL OF 1955)**

Accurate as of

21 October 1997

Parties	Date of entry into force
Swaziland	18/10/1971
Sweden	01/08/1963
Switzerland	01/08/1963
Syrian Arab Republic	01/08/1963
Togo	30/09/1980
Tonga	22/05/1977
Trinidad & Tobago	08/08/1983
Tunisia	13/02/1964
Turkey	23/06/1978
U.S.S.R. (It is not clear if the new Russian deration is a party to the Convention following the dissolution of U.S.S.R.)	01/08/1963
Ukrainian S.S.R	01/08/1963
United Arab Emirates	16/01/1994
United Kingdom	01/06/1967
Vanuatu	24/01/1982
Venezuela	01/08/1963
Vietnam	09/01/1983
Yemen	04/08/1982
Yugoslavia (It is not clear if the new Federal Republic of Yugoslavia consisting of Serbia and Montenegro is a party to the Convention)	01/08/1963
Zambia	23/06/1970
Zimbabwe	25/01/1981