

## WEBINAR QUESTIONS AND ANSWERS

**1      Should operators have separate subcontractor agreements in place, if they're contracting work out?**

Yes, we strongly recommend separate subcontractor agreements are implemented. This is to ensure the terms of the relationship is clear and including the extent of each party's liability is understood. The subcontract could also include the parties understanding in respect of multiple actual carrier responsibility to ensure clarity.

**2      If a Contracting Carrier organises a carriage and takes payment on behalf, is the Contracting Carrier responsible for any damage? Can you exempt yourself from this if you have a disclaimer stating that you are a Contracting Carrier organising the load and that all liability is with the Actual Carrier?**

The Contracting Carrier is responsible under the Contract and Commercial Law Act 2017 ("the Act"), regardless of who causes the loss or damage. A disclaimer would likely have no effect on that responsibility under the Act. As per the previous question, this further emphasises the need for a written agreement between parties.

It is therefore critical that contracting carriers have adequate contractual protections in place with Actual Carriers, and that they are satisfied with the Actual Carrier's reputation and reliability.

**3      Where do we stand as a transport operator when the customer expects costs to be covered up to at least their insurance excess?**

This depends on the type of contract you have with the customer.

If you agreed to cover those costs, the understanding needs to be in writing and signed by both parties. This includes the specific excess amounts, i.e. a contract on Declared Terms/Declared Value Risk.

The default position under clause 10 of the Terms is that the customers are responsible to ensure the goods, and you can agree to affect insurance as the customers agent at the customers cost.

**4      Should the Terms refer to a rates schedule, and prompt a regular review? I.e., unless any other agreement in place, quarterly Grant Thornton Transport Index or annual CPI adjustment?**

Rather than the Terms, a statement to the effect that certain increases are to be made at certain intervals may be better inserted as an addition to your quote/bill of lading document.

We are happy to discuss this further with specific members to see how best to incorporate this into any appropriate contracts.

**5      While there is no requirement for a carrier to hold any insurances, should \$5/10m Public liability be the standard type of insurance held?**

The current wording of the Terms allows carriers to be flexible and agree on insurance with a customer from time to time. This is critical to discuss with your insurer and/or broker.

Your company should be properly advised by an insurance expert prior to signing up to any insurance. As carrier companies will vary in size and insurance requirements, there will be no 'one size fits all' approach to insurance.

6 **Is the carrier required to maintain and hold all relevant licenses, permits or authorities to operate vehicles, and ensure drivers are also licensed?**

All carriers should meet their licencing and other obligations under the Land Transport Act 1998.

Carriers should also ensure any drivers within their company meet such requirements.

7 **Does a carrier have the right to remove or discard any product that is already in transport should it leak, damage or spoil other freight or the vehicle in any way? Could they hold a customer liable for damage of any other cargo or property?**

Given clause 9.3 of the Terms requires the customer to properly package the goods, clause 9.4 gives the carrier the ability to hold the customer liable for damage that may occur under clause 9.3. This includes if the goods are not packaged or labelled correctly.

There is also the indemnity at clause 8.1 of the Terms whereby the customer is liable for losses from a breach of the Terms. A customer's cargo damaging other cargo would be covered under this.

8 **Could a carrier insert a confidentiality clause?**

Yes, any carrier can insert a confidentiality clause. However, it would need to be clear what particular information is confidential (especially if you have your Terms readily available on your website).

If a carrier includes a confidentiality clause, we suggest including that any obligations surrounding the contracts confidentiality will continue once the contract expires or is terminated.

9 **Could operators refer to customers having obligations under Chain of Responsibility provisions of the Land Transport Act?**

While there may be a chain of responsibility, we have aimed at managing the customers obligations clearly in the Terms, particularly regarding labelling goods, packaging goods, and indemnity to carriers for dangerous goods.

It is important to note there have been little to no prosecutions brought under the chain of responsibility provisions. So, we have aimed at keeping the Terms 'Act specific', which will adequately cover the parties respective responsibilities.