

Contract Review Checklist



This checklist sets out a summary of important issues that you should consider when reviewing a transport contract between you and your customer.

Issue	Considerations	Yes	N/A
Parties	Have you checked that your company or business name and ACN/ABN on any agreement is correct?	☐	☐
	Have you checked that the ABN and ACN of your customer on any contract is correct?	☐	☐
Liability and indemnity*	Have you ensured that there are no provisions that seek to exclude the operation of any of proportionate liability legislation?	☐	☐
	Have you made sure that the contract does not contain any reflexive indemnities? <i>Any form of reflexive indemnity may affect insurance cover. A reflexive indemnity is one that requires the transport operator to indemnify the customer for damages even where the customer's own negligence causes an accident or any loss or damage. Such a clause should be modified so that you are not liable for the negligent acts or omissions of any third parties or of your customer.</i>	☐	☐
Consequential loss*	Have you checked that you are not liable for consequential loss? <i>Consequential loss (indirect loss such as loss of profits because of delay) is very difficult to quantify and to insure against, so you should attempt to include provisions that remove or at least limit your liability for these losses.</i>	☐	☐
Guarantee	Have you checked that there are no directors' guarantees in the contract? <i>Directors' guarantees expose the directors' personal assets if your company is sued for breaching the contract.</i>	☐	☐
Security	Have you checked that there are no charging clauses or other clauses creating security rights in favour of the customer?	☐	☐
Pricing	Have you checked the price is sufficient to allow you to make a reasonable profit margin?	☐	☐
	Is there a provision for price review? Does the mechanism work?	☐	☐
	Have you considered the effect on your business if third party charges are increased? (e.g. port fees, tolls?) Can you increase the price if these charges are increased?	☐	☐
	Is there a provision for a fuel levy? Does the mechanism work?	☐	☐
	Consider the term of the agreement. The longer the term, the greater the likelihood that your costs will change over that period and the greater the risk of accepting a fixed price for work.	☐	☐
Payment terms	Is the payment term for invoices satisfactory? Can you manage cashflow while waiting to be paid?	☐	☐

Issue	Considerations	Yes	N/A
Exclusivity and restrictions	Have you checked whether you have the exclusive right to provide services regarding particular freight or a particular area? If not, is this acceptable?	☐	☐
	Have you ensured that you are not locked in to accepting any job, regardless of the details or delivery timeframe?	☐	☐
	Have you checked that you are not restrained from providing services to clients of your customer for a period of time after contract ends? If you are so restrained, have you checked that the period and area of the restraint is acceptable?	☐	☐
Dispute resolution	Have you checked that you are not agreeing to another state (where you do not have an office) having jurisdiction?	☐	☐
	Have you considered the dispute resolution clause and whether it requires participation in expensive processes such as arbitration or mediation?	☐	☐
Right to subcontract	Can you engage subcontractors without providing written notice or seeking consent on each and every occasion?	☐	☐
Force majeure	Will you be protected if the event 'out of your control' occurs (e.g. fire, flood, fuel shortage)?	☐	☐
KPIs	Are the KPIs practical and achievable?	☐	☐
Codes, policies and procedures	Have you been provided with copies of any codes, policies or procedures incorporated into the contract and checked that compliance is practicable?	☐	☐
Chain of responsibility	Does the contract contain chain of responsibility warranties that apply to the customer? (e.g. in relation to packaging of goods for transport and delivery requirements)	☐	☐
	Have you checked that there are no clauses in the contract that would provide an incentive to breach the Heavy Vehicle National Law?	☐	☐
Reporting, auditing, meetings, training and equipment/vehicles	Is the amount you will be paid appropriate having regard to your likely costs to comply with: - reporting requirements; - audit requirements; - meeting requirements; - training and induction for drivers or other staff; and - altering or modifying vehicles or vehicle systems to meet contractual requirements?	☐	☐

* These clauses should be always referred to your insurance broker/insurer for comment/confirmation that they will not affect your rights under your insurance policies.

The Heavy Vehicle National Law (HVNL) and regulations imposes a primary duty in the chain of responsibility. Businesses are required to comply by identifying their risks, and develop and implement control measures tailored to their circumstances. This Form is a **guide only** and does not contain a definitive list of Heavy Vehicle National Law and regulatory requirements. To meet your obligations under the HVNL and regulations you are required to seek independent advice to assess your circumstances