Bonded warehouses

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Key contract issues

This guide sets out key points to consider when contracting for bonded warehousekeeping services. It has been designed to be relevant to both warehousekeepers and customers, although relevant contractual issues and priorities will differ depending on whether you are the warehousekeeper or the customer.

1. Structuring your contract

As a means to ensure flexibility and manage risk, the contract should be structured to reflect the specific requirements of your business. The diagram below is an example of a modular contract comprising Commercial Terms (eg an order form) that incorporates a range of standard documents ie legal terms and conditions and, depending on the parties' requirements, standard service descriptions, processes and policies. The parties can amend the contract after it has been executed through a variation or change control process which should be incorporated into the terms and conditions.

This structure means that only the Commercial Terms needs to be negotiated and agreed for each new service requirement – which is likely to be the preferred approach for a warehousekeeper. A customer may prefer all the terms of the contract to be tailored to their requirements to allow more room for negotiation.

Commercial Terms
Parties, goods/services procured, bespoke pricing, timetable, derogations from T&Cs

INCORPORATES

Terms and conditions
(or BWA or UKWA standard terms)
- Definitions
- Invoicing and payment
- Liability
- Regulatory compliance (inc privacy)
- Termination
- Boilerplate

Standard service descriptions/SLAs
- Warehousing
- Carriage
- Fulfilment
- Consolidation

Pricing schedule

Customer policies

Order/forecasting process

Supplier policies (eg H&S)

Variations/change notes

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2. Incorporating standard terms

When incorporating standard terms (eg BWA or UKWA terms), consider:

- Are the terms appropriate for the deal – are they too one-sided or omit terms you would expect to see in a commercial contract?
- Have they been properly incorporated – the standard terms do not apply by default - they must be expressly incorporated into your contract.
- Are they up to date and specific enough – the terms need to reflect any changes in law and any nuances of your deal.
- How do they interact with agreed terms – agreed terms typically take precedence over standard terms in the event of conflict but this should be clearly stated.

3. Contract terms – ensuring flexibility

Structure	As mentioned above, consider how to structure the agreement to reflect the deal. Should the contract be modular (with standard terms incorporated) or full-length to reflect a negotiated position?
Term	What is the duration of the contract? Should the parties be able to renew or extend the contract term and, if so, how?
Parties	Which entity (from either the customer or warehousekeeper group) should enter into the contract? Will the contract need to be transferred to another entity? Should any of the contracting entity's affiliates have rights under the contract?
Ordering	Does the customer need to submit a forecast of requirements? Is there a specific process for submitting and agreeing orders?
Changes	How can the parties make changes to the contract? What if these changes are required by law? Who should bear the cost of any changes?
Termination	What rights should either party have to terminate the contract? What are the consequences of the contract being terminated eg payment of outstanding invoices? Which clauses in the agreement need to survive termination eg confidentiality?

4. Contract terms – managing risk

Service scope	Is the contract clear on what each party is expected to do? Does the customer have any specific requirements around storage (eg temperature, humidity etc)? Does the warehousekeeper have discretion on handling and storage? Do the goods need to be stored separately from other customers' goods? What is the process around delivery?
Fees and security	How are the fees structured? Are there additional fees for ancillary services (eg loading, labelling etc)? Are there minimum purchase obligations on the customer? Does the warehousekeeper have a lien and right to dispose of goods to settle unpaid fees?
Governance	How will the contract be managed – will each party appoint a contract manager? Is the warehousekeeper required to provide regular service reports? How are disputes escalated and managed?
Liability	When does risk in the goods pass from either party to the other? What types of loss is each party liable for? Are these losses capped and, if so, what is the structure of the liability cap (eg based on fees or fixed amount per tonne)? Who is responsible for insuring the goods? What indemnities does either party provide to the other for any loss suffered?
Compliance	Is each party required to comply with applicable laws and requirements/directions from a regulator (eg HMRC)? If the customer is an individual, does the contract include the required clauses to ensure compliance with consumer law?
Managing disruption	How are unforeseen events dealt with (eg force majeure provisions)? Does the warehousekeeper have a disaster recovery/business continuity plan to ensure continuity of service in the event of a disruption or disaster?

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