



Trucking Contracts – Owner/Operators

Purpose

The purpose of this document is to outline the basic exposure associated with owner/operators. This is accomplished by using a claim example and detailing some basic requirements for a trucking contract.

Exposure

Example: XYZ Custom Harvester hired an owner/operator to haul harvesting equipment between job sites. At a job site, the owner/operator fell and seriously injured his back as he was exiting a truck he owned. The owner/operator did not have any insurance coverage for workplace injuries. Since the owner/operator did not have a Workers' Compensation waiver and was performing a job under the control of XYZ, he was deemed their employee by the State Workers' Compensation Commission and their Workers' Compensation Insurance had to pay the claim.

In order to appropriately transfer the risk in this example, a proper contract would need to clearly state that the owner/operator is an independent contractor and that the owner/operator is required have, and provide proof of, Workers' Compensation insurance.

Sample language

Identification and permits

The contract should require the owner/operator to carry all necessary permits and cab cards. It should specify that the owner/operator should only use their personal DOT identification number on the cab. The owner/operator should have no right to use the hiring company ("Company")'s identification number.

Insurance/indemnification

The owner/operator shall at all times maintain the following insurance coverages in effect and shall indemnify and be liable to the Company for any loss or damage to third persons, their property or the Company's property covered under the insurance policies:

- 1) Owner/operator shall provide, at its expense:
 - a. Workers' Compensation Insurance or Occupational Accident Insurance for itself and any employees or subcontractors in the amount of one million dollars (\$1,000,000) or such greater amount as may be required by any applicable law. Alternatively, where the owner/operator qualifies under state law, they should have a completed Workers' Compensation waiver form. A copy of the waiver form should be maintained by the Company; and
 - b. Non-trucking ("Bobtail") coverage, naming the Company as an Additional Insured, in the amount of one million dollars (\$1,000,000) combined single limit per occurrence; and

Commercial General Liability and Umbrella coverage is required to be provided by the party that has the Federal Motor Carrier Safety Administration authority (permit) to operate as a for-hire carrier. If the Company has the for-hire authority, then this insurance would be provided by the Company.

- c. Commercial General Liability in the amount of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate, and naming the Company as an Additional Insured, with no less than 30 days notice of cancellation; and

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- d. Commercial Auto Liability in the amount of one million dollars (\$1,000,000) each accident and two million dollars (\$2,000,000) general aggregate, or such greater amount as may be required by any applicable law, and naming the Company as an Additional Insured, with no less than 30 days notice of cancellation; and
 - e. Cargo Insurance in amounts acceptable to the Company on an "all risk" perils of loss basis.
 - f. Umbrella Coverage in the amount of \$X,XXX,XXX, naming the Company as an Additional Insured, with no less than 30 days notice of cancellation. *Note: The limit should be based on potential exposure. If the contractor hauls hazardous materials/liquids, the contract must require a minimum of \$5,000,000 in auto coverage and compliance with Food Safety Modernization Act regulations. This typically includes an MCS-90 endorsement on the trucker's policy, i.e. the Auto Policy would have \$1,000,000 of coverage and the Umbrella would have \$4,000,000 of coverage.*
- 2) Contractor shall provide Company with a certificate of insurance or other evidence satisfactory to Company that the required coverage is in place.
 - 3) Contractor agrees to provide, at its expense, collision, fire and theft insurance on Contractor's equipment in amounts sufficient to ensure Contractor is able to safely transport the cargo and truck freight in accordance with this Agreement.
 - 4) Contractor agrees to defend, indemnify and hold Company harmless from and against, any and all claims, demands, actions, liabilities, damages, costs and expenses, including, but not limited to attorneys' fees, paralegal fees, expert witness fees and consultant fees, relating to or arising out of the use, maintenance or operation of the equipment when not under dispatch or in the business of Company. Contractor expressly agrees that, in the case of any claims or losses arising out of the use, maintenance or operation of the equipment when not under dispatch or in the business of Company, the insurance maintained by Contractor shall be deemed primary, and Contractor (for itself and on behalf of Contractor's insurance company) agrees that it shall not seek or be permitted to obtain any contribution from Company or Company's insurance company with respect to any such claims or losses.

Independent contractor status

The contract should reaffirm that the owner/operator is an independent contractor, is not under the control of the Company, has exclusive possession and control of their equipment, has the authority to determine their own matter, methods or hours worked and has the authority to hire and fire their own employees.

Performance with laws

The contract should require that the owner/operator comply with all applicable laws and regulations governing performance of this Agreement including, but not limited to, the loading and securement of freight; driver safety regulations including, but not limited to, hiring, safety of passengers, use of controlled substances and hours of service; sanitation and temperature requirements for transporting food and other perishables; qualification and training of drivers for transporting hazardous materials (if applicable) and non-hazardous materials; maintenance of equipment; and control of the means and method of transportation including, but not limited to, performance of the owner/operator's drivers.

Unauthorized use

The contract should prohibit unauthorized use of any of the Company's equipment. Example: "During the performance of transportation services for Company, Contractor will be entrusted from time to time with the possession of trailers, accessories and tools belonging to Company; Contractor agrees that he will not engage in any unauthorized use or other misuse of such property."

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Damage to carrier's equipment

In every instance where Contractor or its Employees or its Sub-contractors cause damage to Company's equipment or Company's cargo intentionally, or while under the influence of alcohol or drugs, or through negligence or violation of DOT safety regulations, Contractor shall be responsible for such damage.

Cargo

The Contractor should be responsible for loss or damage to the cargo while in their care, custody and control.

Operating and maintenance expenses

Contractor shall pay all operating and maintenance expenses for its equipment used to perform the services under this Agreement including, but not limited to: base plates, licenses, tolls, oils, fuels, tires, tubes, lubricants, washing, and painting. Contractor shall also maintain its equipment in accordance with specifications and regulations as set forth by the US Department of Transportation or any State or Federal agency having jurisdiction over such equipment. The contractor should be responsible for all maintenance and condition of the truck and trailer.

Conclusion

The above are samples of contract language to give you an idea of the key language you should see in a trucking contract, as well as different ways it may be worded. The parties are typically described in the first paragraph of the contract. You may see different terms such as, Shipper and Hauler instead of Company and Contractor.

If an insured is using an owner/operator or hired hauler without a proper contract in place the Risk Management Consultant should make an insurability recommendation.