



Restrictive Container Line Terms – Beware!

Demurrage and detention charges have been a staple of the shipping container industry for many years and it has become an increasingly burdensome topic for merchants, particularly in the current climate.

Containers are typically owned or leased by shipping lines and then provided to their customers to facilitate the transport of goods. The cost of containers is usually consumed within the freight price and as a result, shipping lines need to turn their containers around quickly. This need is managed by way of demurrage and detention charges:

- Demurrage - a charge imposed on a merchant by a shipping line in respect of the use of a container within a terminal beyond the nominated “free time period”.
- Detention - essentially the same, but rather it is the charge imposed on the merchant for use outside of the terminal or depot, beyond the nominated “free time period”.

Whilst one objective of the above charges is to facilitate trade, shipping lines are known to be imposing uncomfortably high rates – raising concerns as to reasonableness. Helpfully, the International Federation of Freight Forwarders Associations (FIATA) have addressed and promoted some of these issues (by way of a best practice guide) in an attempt to level the playing field. In a similar vein, there is a growing trend in the industry to protect merchants.

That said, we anticipate some merchants may need to take further precautions (particularly where there is an obvious imbalance in the powers of negotiation) to ensure shipping lines are negotiating in good faith and to protect financial interests at a time where cash flows are ever more important and concessions (inspired by the Coronavirus) are encouraged.

Beware:

We shortlist some of the key restrictive terms in container contracts:

1. The absence of a limitation placed on the accrual of demurrage and detention charges – meaning charges often exceed the value of the container;

2. Charges being imposed in unreasonable circumstances, for example bad weather and terminal strikes causing terminal delays;
3. Charges imposed when containers are held in customs clearance;
4. Charges imposed due to delayed departures of the vessel;
5. Lack of timely notification provisions to inform the expiry of “free time periods”; and most importantly,
6. Incredibly short “free time periods”.

What to do?

It is difficult to see why and how shipping lines are allowed to charge demurrage and detention for an indefinite period of time, specifically in circumstances where a merchant is physically prevented from taking delivery of the container. It all comes down to the power of contract negotiation. LA Marine are on hand to assist and if approached in the right way, merchants can protect themselves further by (amongst others); increasing free time periods, inserting contractual limitation clauses on the accrued charges and inserting time bars for notification of demurrage and detention charges.