

## **Member Update**

**Title:** **Incorporation of GTA Trade & Dispute Resolution Rules**

**Update No.:** **11 of 11**

**Date of Issue:** **4<sup>th</sup> May 2011**

### **1 Background**

In Member Update No. 13 of 10 (attached) we advised Members of the importance of properly incorporating the GTA trade & Dispute Resolution Rules into written contracts.

Recent **Court and arbitration decisions** have highlighted the importance of proper incorporation of GTA terms into oral contracts, in circumstances where a counter-party does not sign a subsequently issued contract document.

In those circumstances, while it may be possible to establish that a binding contract has been created, **unless you can prove that the GTA Dispute Resolution Rules are referenced during that call, you may not be able to refer any dispute to GTA arbitration.**

It is critical therefore that during telephone negotiations, your agents say (words to the effect that) *"This contract is subject to the GTA Trade and Dispute Resolution Rules"*.

The GTA Trade & Dispute Resolution Rules are available on the GTA website.

This should be a standard instruction issued to all traders and agents who negotiate over the phone as even if calls are not taped, and the agent does not recall the exact content of a particular call, he or she should be able to give evidence that they believe that they would have complied with the company's standard contracting procedure.

Obviously the written contract confirmation subsequently issued should be consistent with the terms negotiated over the phone.

It should go without saying that the difficulties highlighted by these recent decisions would have been avoided if Members had insisted on obtaining signed contract confirmation from the counter-party.

If you have any queries, speak to your legal counsel, or GTA.

## **Member Update**

**Title: Incorporation of GTA Trade & Dispute Resolution Rules**

**Update No.: 13 of 10**

**Date of Issue: 12<sup>th</sup> May 2010**

### **Reissue of Member Update 6 of 09**

#### **1 Background**

The GTA Trade Rules and Dispute Resolution Rules are only as good as your contract which incorporates them. If you don't incorporate them properly, you may not be able to rely on them.

**To be clear, simply saying "All other terms as per GTA" MAY NOT be sufficient to incorporate the GTA Trade and Dispute Resolution Rules. To put it beyond doubt, use the sample clauses below and see your solicitor.**

#### **2 Managing Your Contracts**

- Remember to send a written contract confirmation of any new contracts, as well as any variations to the contract, this can be by email, fax, or post (and keep a copy for your records as well as proof of sending).
- Try and get it signed by your counterparty.

#### **3 Incorporation of GTA Trade & Dispute Resolution Rules**

To properly incorporate GTA Trade Rules into your contract the following should be expressly stated in your contract:

*"This contract expressly incorporates the GTA Trade Rules [or standard GTA contract reference] and Dispute Resolution Rules in force at the time of this contract."*

The best way to ensure that you can take any disputes to GTA arbitration is to incorporate an express arbitration agreement to resolve disputes by GTA arbitration. The following clause is an example of the clause which should appear in your contract terms and conditions:

*"Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the GTA Dispute Resolution Rules in force at the time of contract."*

#### **4 Applicable Rules**

While the default under the Trade Rules is for the Dispute Resolution Rules current at the time the contract was entered into, the parties can agree to contract according to the version of the Rules current when the arbitration is commenced.

**Seek legal advice if you have questions**