

## Quotation Equals A Contract

In the recent case of *Immingham Storage Company Ltd v Clear plc (2011)*, the Court of Appeal held that an exchange of e-mails which included the phrase 'a formal contract will then follow in due course' was capable of constituting a binding contract.

The claimant, Immingham Storage Company Limited, provide storage facilities for petroleum and petrochemical products at its terminal at Immingham, Lincolnshire. The defendant, Clear plc, was at the material time engaged in trading various commodities, including fuel. The director of the defendant company enquired about storage space for its ultralow sulphur diesel at the claimant's facilities. Following a visit, e-mail exchanges occurred referring to the defendant's enquiry regarding space and likely costs.

### The Facts:

A quotation from the claimant attached to an e-mail was sent providing the minimum storage period and monthly charges. Within the quotation, a statement that "all other terms will be as per our General Storage Conditions Version 2008 which shall be deemed to apply to this quotation." The final sentence of the document was 'a formal contract will then follow in due course'. Following the signature of the claimant, a space for the signature for the defendant and the words 'we hereby accept the terms of your quotation subject to your board approval' was included. Attached to the e-mail was a copy of the defendant's General Storage Conditions Version 2008. This was the detailed 13-page document.

Following this quotation, the defendants then e-mailed to confirm that the signed quotation had been faxed. The claimant subsequently forwarded to the defendants original copies of the contract signed by the Managing Director of the claimant. The contracts were never signed nor returned by the defendants.

The defendants subsequently were unable to source the appropriate fuel for storage and never made a delivery to the claimant's storage facility. The claimant had the capacity available for the defendant and raised invoices for monthly storage charges for two months. The claimant appealed that the contract was made by the acceptance of the e-mail quotation by faxed signature. The defendant claims that the return of the quotation was not an offer capable of acceptance because of the inclusion in the quotation the sentence 'a formal contract will then follow in due course'.

### Decision:

The Court of Appeal held that the judge was right to draw attention to the absence of conditions such as 'subject to contract'. Further the terms on which the quotation was signed made clear the limited conditionality. The limited conditionality here referred

#### CRESCO LEGAL SOLICITORS

London: 12 Melcombe Place Marylebone London NW1 6JJ UK T: +44 (0)20 3356 4938 F: +44 (0)20 3356 4938

Oxford: Prama House 267 Banbury Road Oxford Oxfordshire OX2 7HT UK T: +44 (0)1865 339 360 F: +44 (0)1865 861 915

[www.crescolegal.com](http://www.crescolegal.com)

Cresco Legal Solicitors is the trading name of Cresco Legal Limited a company registered in England and Wales with Company Number 7243150 and Registered Office at Prama House 267 Banbury Road Oxford Oxfordshire OX2 7HT UK Regulated by the Solicitors Regulation Authority with SRA Number 450744 | We use the word "partner" to refer to a shareowner or director of the company



to the fact that the quotation was expressed subject to board approval and confirmation of tank availability. Both were certain, requiring no further discussion or negotiation between the parties and in the action by the claimant. The claimant did subsequently confirm that those conditions were satisfied.

The quotation once signed by the customer and accepted by the claimant, applied the General Storage Conditions that were attached. Although no formal agreement had been signed, in the court's judgement, there was clearly intention to create a contract when the defendant signed the quotation and faxed back.

### **Points to Note:**

- Always include words such as “subject to contract” in your email exchanges if you wish to rebut a conclusion that a legal contract has been formed
- A quotation can be tantamount to a valid and binding contract if the terms relating to the contract are clear. Essential terms will include price, quantity, delivery times.
- By incorporating your General Terms and Conditions into a quotation, it is easier to argue the terms upon which the contract has been created.
- A quotation that provides the recipient a statement of acceptance and signature will convert into a contract at the time of the signing of that quotation.

### **For further information**

If you have any further queries, please contact Francesca Lee on 01865 339360 or 020 3356 4938 or email [fsclee@crescolegal.com](mailto:fsclee@crescolegal.com).

© May 2011 Cresco Legal

The contents of this article are for the purposes of general awareness only. They do not purport to constitute legal or professional advice. The law may have changed since this article was published. Readers should not act on the basis of the information included and should take appropriate professional advice upon their own particular circumstances.