4
Contract to Provide Logistics Services: Warehousing and Resources

4.1 Introduction

As we have already explained, 3PL providers nowadays provide more than just transport services. Market demands have led 3PL providers to be considered as ‘solution providers’, offering and developing capabilities that exceed the traditional domain of transport; in other words, 3PL providers must offer value-added services.

This chapter will focus on those aspects of logistics contracts that do not concern transportation and that are usually seen as offering no added value because they are related to the administration of the services as opposed to the services themselves. However, in our view, if parties approach these issues in a constructive way they can cut costs and therefore provide better service.

We will first consider warehousing: the main obligations of the 3PL provider and the liability and other common contract clauses related to warehousing activities.

Secondly, the chapter will address issues concerning personnel. Outsourcing has become a major issue in labour relations since it often results in job losses. Increasingly, worker representatives are insisting they be given information and consulted prior to any possible outsourcing; at times they are even suggesting that joint management–union committees be set up to study outsourcing proposals. We will focus on the following main questions: what are the legal obligations in an outsourcing situation, in the case of both labour force outsourcing and any other business activity? When do temporary employment agency workers become ‘de facto’ employees of the client? And lastly, what are the special obligations imposed by European directives and conventions in outsourcing scenarios?
Finally, this chapter will cover the insurance issues arising from a logistics contract through a concise and comprehensive study of the general principles and a description of the related risks, practices, rights and obligations.

4.2 Warehousing

4.2.1 Obligations of the warehouse owner

4.2.1.1 The obligation of warehousing

The essence of a ‘deposit’ type of contract consists in the depositary accepting the obligation to store the property of another party, through taking possession of this property, when so requested by the depositor. A priori, it is not possible to determine the specific obligations concerning warehousing that are incumbent on the professional depositary, i.e. to identify the specific measures that may need to be taken with respect to the property deposited. However, in general terms, this type of contractual agreement will contain the following aspects:

- The depositary is responsible for the necessary surveillance to prevent any loss or theft of the property deposited.
- The depositary must preserve the property deposited in accordance with the nature thereof.
- In compliance with the obligations relating to storing the property, the depositary can employ and use any auxiliary staff and employees that they consider necessary.
- In principle, the depositary is not obliged to insure the property deposited.

However, the obligations of the depositary in respect of the storage of the property deposited do not merely consist of complying with a fairly broad range of appropriate forms of conduct, but in addition, they include the obligation to observe a certain degree of care in undertaking the former. This is referred to as an obligation of diligent activity. In this section, we will discuss ways of determining of the level of care that can be required from a professional depositary, and analyse the functions that the care satisfies within the warehousing obligation regime.

4.2.1.2 The obligation to maintain the establishment in the condition it was in prior to delivery

The property is delivered on the assumption that the depositary’s obligations concerning the storage and return thereof are exigible. However, in the case of a professional deposit, the depositary will be