

# Terms and conditions: on solid ground?

*A recent High Court decision has highlighted the importance of terms and conditions in contracts – employers and management should pay close attention, writes John O’Riordan, Partner at law firm Dillon Eustace.*



*John O’Riordan, Partner, Dillon Eustace.*

All employers, and senior management in particular, should be aware of the recent High Court decision in *Noreside Construction Limited –v– Irish Asphalt Limited* when they are negotiating contracts on behalf of their companies.

Noreside contracted with Dublin City Council to develop a number of houses and senior citizen units on Griffith Avenue in Dublin. They then contacted a number of parties, including Irish Asphalt, to supply aggregate for this development.

After negotiations between the parties, it was agreed that Irish Asphalt would supply this material to Noreside.

## AT ISSUE

The court was asked to decide what terms and conditions covered the relationship between the parties for the purchase and sale of this material.

A purchase order, containing terms and conditions on the back, was faxed to Irish Asphalt by Noreside. Noreside claimed these terms and conditions applied. Soon after, Irish Asphalt began supplying aggregate to Noreside. For each delivery a delivery docket was signed on behalf of both parties which stated: “This material is sold subject to the terms and conditions available on request”.

Irish Asphalt claimed these conditions, and in particular their limitation of liability clause, applied.

In December 2008, Irish Asphalt told Noreside that the products it had delivered were defective.

A dispute arose as to what terms and conditions applied, with both sides arguing that their terms and conditions should apply.

Noreside issued court proceedings looking for, among other things, confirmation that the terms and conditions binding the agreement between Noreside and Irish Asphalt were the conditions on the back of its purchase order. Irish Asphalt argued that its standard terms and conditions, referred to on its delivery dockets were incorporated into the contract between the parties.

Noreside claimed that the signing of the delivery dockets by a haulier could not bind it to those conditions. It also claimed that the employees signing the dockets had no authority to negotiate or agree any contractual terms relating to the purchase of the aggregate and that those employees could not vary the contract in any way.

The evidence in court was that the terms of supply were negotiated between senior management of both companies. Each side gave evidence that in negotiating the contract they needed to consult with their superiors before reaching an agreement.

## HIGH COURT DECISION

The High Court held that neither a reasonable man nor any haulier or site operator signing a delivery docket on behalf of Noreside would have understood that signing the delivery docket potentially varied the terms of the contract already agreed between the parties.

Ms. Justice Finlay Geoghegan concluded that on the facts, the system which operated between Noreside and Irish Asphalt was that the contractual terms applicable to supply were agreed at senior management level. Once agreed, they were to last for the duration of the construction contract and the purchase orders signed by the operatives could not vary the original terms agreed.

## THE CONSEQUENCES

The effect of Ms. Justice Finlay Geoghegan’s decision was that Irish Asphalt was not entitled to rely on a clause in its terms and conditions limiting its liability and consequently there could be no limitation on the liability of Irish Asphalt for the defective product.

The consequences for senior management are clear. The stance taken by the High Court highlights the potential exposure for companies in negotiating terms and conditions and underscores the importance of ensuring that conditions are negotiated at the beginning of the process by people who have authority to bind that company. Failure to do so could mean that efforts to change terms and conditions after the relationship is up and running may be too late.