

# **NYPE 2015**

## **TIME CHARTER PARTY**

### **EXPLANATORY NOTES**

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## **Introduction**

NYPE 2015 is the product of a co-operative effort between BIMCO, the Association of Shipbrokers and Agents (ASBA), who are the copyright holders of the NYPE form, and the Singapore Maritime Foundation (SMF) and is jointly authored by the three organisations. It is the result of three years work by a team of people who committed their greatly appreciated time and effort to the project. Valuable input was provided at the later stages of development from numerous individuals familiar with the NYPE charter who attended seminars on the new version of the charter held in London, Stamford and Singapore and shared their expertise. BIMCO, ASBA and the SMF are grateful to all of those who contributed to this important project and helped produce a modern NYPE charter that reflects current commercial practice and legal developments in the industry in a clearly worded, comprehensive and balanced form.

The members of the drafting groups from BIMCO, ASBA and the SMF deserve particular thanks for their time and effort:

### **BIMCO Sub-committee**

Chaired by Mrs Inga Froysa (*Torvald Klaveness*), with John Freydag (*Schulte*); Jonathan Young (*Cargill*); Lasse Brautaset (*Nordisk*); Paul Kaye (*West of England P&I Club*); Sun Jia Di (*COSCO*) and Harry Fafalios (*Greek Shipping Co-operation Committee*).

### **ASBA Committee**

Chaired by Nigel Hawkins (*N W Johnsen & Co, Inc*), with Soren Wolmer (*Quincannon Associates*); Paul Hirtle (*LB Chartering LLC*); Gerry Desmond (*Salient (Americas) Inc.*); and Robert J Dillon (*John F. Dillon & Co., LLC*).

### **SMF Committee**

Chaired by David Chin (*Chief Executive SMF*), with Henry Mytton-Mills (*Aries Shipbrokers*); and Gina Lee-Wan (*Allen & Gledhill LLP*).

## **Background**

The New York Produce Exchange Form ("NYPE") is the most widely used standard time charter party in the dry cargo sector of the industry. The first NYPE form was published in November 1913 and amended in 1921, 1931, 1946, 1981 and 1993 and for a sixth time with the 2015 revision. The 1946 edition is arguably still the most commonly used version of the NYPE charter, although many of its twenty-eight clauses are commonly amended or replaced with numerous rider clauses.

The decision to revise the 1993 edition was taken because it was felt by BIMCO, ASBA and the SMF that the industry would benefit from a modern and comprehensive dry cargo charter party that reflects contemporary commercial practice and legal developments that have taken place in the past twenty years. The objective of the revision has been to produce a version of NYPE that will have global appeal and which takes proper stock of the most commonly applied amendments and additional clauses used by practitioners in the dry cargo sector. The revision process has benefited from the direct involvement of owners and charterers with the aim of achieving a balance of their respective interests.

The form can be used either for trip charters or period time charters. There are some additional clauses that apply only to period time charters (where the minimum charter period exceeds five months) and parties are advised to check carefully whether the additional clauses (see Clause 52 (Period Applicable Clauses)) should or should not apply in the context of their own agreement.

## **Preamble**

**THIS CHARTER PARTY**, made and concluded in [ ] this [ ] day of [ ] 20 [ ]

Between [ ] of [ ]

as \*Registered Owners/\*Disponent Owners/\*Time Chartered Owners (the "Owners") of the Vessel described below

*\*delete as applicable*

To clearly identify the legal status of the "Owners" under the agreement, the parties are required to indicate whether the "Owners" are the legal or registered owners of the ship, or whether they are operating the ship under a bareboat (demise) agreement or are time chartering the ship from another entity.

The preamble contains boxes for the parties to include a short summary of the key descriptive information about the ship. Less information is required than in previous versions of NYPE because the new edition incorporates an Annex A (Vessel Description) - a detailed vessel questionnaire that forms part of the Charter Party. The parties may also agree to incorporate the Owners' own Vessel description or a completed Charterers' questionnaire as Appendix A.

The initial capability warranty contained in the NYPE '93 preamble in relation to speed and consumption has been replaced by a continuing warranty in a separate Speed and Consumption clause (Clause 12).

This Charter Party shall be performed subject to all the terms and conditions herein consisting of this main body including any additional clauses and addenda, if applicable, as well as Appendix A attached hereto. In the event of any conflict of conditions, the provisions of any additional clauses and Appendix A shall prevail over those of the main body to the extent of such conflict, but no further.

New preamble text sets out what constitutes the agreement between the parties and how any conflict of conditions should be dealt with in terms of the main body of the contract, as may be amended, including any additional clauses or riders added by the parties, and Annex A (Vessel Description).

### **Clause 1 (Duration/Trip Description)**

- (a) The Owners agree to let, and the Charterers agree to hire, the Vessel from the time of delivery, for [REDACTED] within below mentioned trading limits.

The amended title and content of Clause 1 reflects that parties can now choose to specify whether the agreement is for a period charter, by stating a number of months or years for the agreement to run (plus any options), or a trip charter, by stating the intended voyage.

Clause 1 has been expanded to consolidate related provisions previously found in separate clauses in NYPE '93, such as Trading Limits (formerly Clause 5), Berths (formerly Clause 12) and Sublet (formerly Clause 18). The berthing provisions of sub-clause 1(c) contain the charterers' usual safe berth/safe place warranty, but now also include a reference to "anchorage" in place of the previous "dock" (which is encompassed by "safe place" and is, in practice, no longer a term widely used).

- (d) The Vessel during loading and/or discharging may lie safely aground at any safe berth or safe place where it is customary for vessels of similar size, construction and type to lie at the following areas/ports [REDACTED] (if this space is left blank then this sub-clause 1(d) shall not apply), if so requested by the Charterers, provided it can do so without suffering damage.

The Charterers shall indemnify the Owners for any loss, damage, costs, expenses or loss of time, including any underwater inspection required by class, caused as a consequence of the Vessel lying aground at the Charterers' request.

New to the agreement is the inclusion of an optional NAABSA provision (Not Always Afloat But Safely Aground). The clause gives the charterers the right to order the ship to lie safely aground during loading and/or discharging under the specified conditions. However, the parties must agree from the outset of the charter if the ship is capable of lying aground and, if so, the places where it's permitted to lie aground. If the parties do not identify the places in writing in sub-clause 1(d) then the clause will not apply. The provision has been phrased in this way because of the potential class and insurance implications for owners in agreeing to allow their ship to lie aground at specified places, which they should consider on a case-by-case basis. A NAABSA provision is included in NYPE '46 (Clause 6), but was dropped from the '93 revision. It has been re-introduced because the practice of lying aground while loading is still common in grain trades and remains an important provision for those involved in such trades, but with a separate indemnity provision added.

- (e) Sublet - The Charterers shall have the liberty to sublet the Vessel for all or any part of the time covered by this Charter Party, but the Charterers remain responsible for the fulfillment of this Charter Party.

The sublet provision has been carried through from NYPE '46 and '93 (Clause 18) without amendment. It gives the charterers the right to sub-charter the ship (voyage or time) by entering into a contract with the sub-charterers. The owners will not be a party to any sub-charter but may have a contractual relationship to sub-charterers under bills of lading that are issued under the sub-charter.

### **Clause 2 (Delivery)**

- (b) The Vessel on delivery shall be seaworthy and in every way fit to be employed in the intended service, having water ballast and with sufficient power to operate all cargo handling gear simultaneously, and, with full complement of Master, officers and ratings who meet the Standards for Training, Certification and Watchkeeping for Seafarers (STCW) requirements for a vessel of her tonnage.

Notable amendments have been made to the delivery provisions of Clause 2. In NYPE '46 and '93 the owners are obliged to deliver the ship at the delivery port or place in a seaworthy condition, ready to receive cargo. However, it is not uncommon practice for ships to be delivered at one place but the first cargo to be load at another place. The delivery provisions of NYPE '46 and '93 are often amended to take this practice into account. To avoid the need for such amendments, the 2015 edition splits the owners' obligation to deliver the ship in a seaworthy condition from the owners' obligation in relation to cargo readiness. The parties have the option either to agree that the ship will be delivered ready to receive cargo, or that it will be ready to receive cargo at the first loading port if different from the delivery place.

Sub-clause 2(b) deals with the owners' strict obligation in respect of the condition of the ship on delivery in terms of seaworthiness and its suitability for the "intended" service. The phrase "...in every way fitted for ordinary cargo service"

found in NYPE '93 has been amended. Firstly, the word "fitted" has been replaced with "fit to be employed". The intention is to give a plain English meaning to an archaic term. Secondly, the phrase "ordinary cargo service" was felt to be too broad given the wide variety of dry cargo trades and other trades in which the NYPE form is used. For greater clarity the wording now refers to "the intended service" as it is considered reasonable that the charterers should indicate to the owners the likely nature of the employment of the ship.

New wording has been added relating to the obligation on owners to provide a Master, officers and ratings that meet STCW requirements. Although the usual obligation to provide a full complement of crew is still to be found in Clause 6 (Owners to Provide), this additional reference to the crew and the training standards they need to meet has been added to emphasise the importance of this obligation on delivery.

- (c) The Vessel's holds shall be clean and in all respects ready to receive the intended cargo, or if no intended cargo, any permissible cargo:
  - (i) On \*delivery; or
  - (ii) On \*arrival at first loading port if different from place of delivery. If the Vessel fails hold inspection then the Vessel shall be off-hire from the time of rejection until the Vessel has passed a subsequent inspection.

*\* (c)(i) and (c)(ii) are alternatives; delete as appropriate. If no deletion then Sub-clause (c)(i) shall apply.*

Sub-clause (c) provides two alternatives as to when the owners' obligation to provide the ship ready to receive cargo should apply. It is important that parties make a careful selection and delete the option not to apply. If parties overlook this sub-clause then the owners, by default, will be under a strict obligation to deliver the ship at the delivery place ready to receive cargo. It should be noted that if the charterers have indicated an intended first cargo, the owners' obligation is to make sure the holds are clean to the standard required of that particular cargo. If the ship has been trading coal cargoes prior to delivery and the time charterers intend the first cargo also to be coal, then the owners should not be under a broad obligation to meet hold cleanliness standards for the first voyage that exceed the requirements for the intended trade. However, if the time charterers have not indicated the intended first cargo, then the owners must present the vessel with holds cleaned to the standards required of any of the cargoes permitted under the charter party. In practical terms, this will often mean grain standard cleanliness.

Under option (c)(ii), the ship will be placed off-hire from the time of the failed inspection until the ship passes subsequent inspection. The charterers' usual right to have the option of cancelling the charter party if the ship is not delivered by the cancelling date applies only in relation to option (i). If option (ii) has been elected the Charterers' only remedy if the holds are not in a contractual condition on arrival at the first loading port is off-hire.

It should be noted that the "Extension of Cancelling" provision of Clause 16 (Delivery/Cancelling) first incorporated in NYPE '93 has not been included into the new edition. This so-called "interpellation clause", which is commonly found in many BIMCO voyage and time charter parties, requires the owners to notify the charterers in advance of any "unforeseen" delay to the ship beyond the cancelling date and to give an expected date of arrival. In return, the charterers are required to declare in advance of the ship arriving at the delivery place whether or not they will cancel the charter party. If the charterers decide not to cancel or simply fail to respond, then the later arrival date given by the owners becomes the new cancelling date.

The intention behind this clause is that it should be of practical and commercial benefit both to charterers and owners. The benefit to the owners is that they are otherwise legally obliged to tender the ship for delivery after perhaps a long ballast voyage knowing they cannot make the cancelling date. For the charterers it provides an advance warning of a potential delay to the ship and gives them the opportunity either to make arrangements for the delayed arrival or to seek an alternative ship.

The reason for not including the "Extension of Cancelling" wording in NYPE 2015 is that charterers' representatives involved in the revision project felt that it would be particularly difficult for charterers under a trip charter agreement to change at short notice the arrangements already in place for the cargo in terms of underlying sales contracts and letters of credit. They also felt that in terms of highlighting a potential delay to the ship en route to the delivery place, then vessel tracking methods and more stringent eta/itinerary provisions would serve much the same purpose from their perspective. While views on whether to maintain the "Extension of Cancelling" wording are split between owners who favour including the clause and charterers who are not in favour, BIMCO is of the view that it is beneficial to both parties to have as much advance warning of potential delays as possible and to have in place a mechanism for managing such delays should they occur. BIMCO encourages parties to discuss on a case-by-case the inclusion of the "Extension of Cancelling" clause if they feel it appropriate and important to their particular business.

- (d) The Owners shall keep the Charterers informed of the Vessel's itinerary. Prior to the arrival of the Vessel at the delivery port or place, the Owners shall serve the Charterers with [ ] days' approximate and [ ] days' definite notices of the Vessel's delivery. Following the tender of any such notice the Owners shall give or allow to be given to the Vessel only such further employment orders, if any, as are reasonably expected when given to allow delivery to occur on or before the date notified. The Owners shall give the Charterers and/or their local agents notice of delivery when the Vessel is in a position to come on hire.

Vessel itinerary prior to delivery: [REDACTED].

A new and detailed delivery notice provision in sub-clause (d) replaces lines 37-38 of Clause 2 (Delivery) of NYPE '93. Instead of just a series of notices to be given by the owners prior to the "expected date of delivery", the new wording places the owners under an obligation to keep the charterers informed of the ship's itinerary. This means that the owners should provide the charterers with an initial itinerary for the ship and then advise them of any subsequent changes to that itinerary. This obligation is in addition to the agreed notice of delivery requirements.

The final sentence of sub-clause (d) is triggered by the giving of the first notice of delivery and applies to all subsequent notices. Its purpose is to ensure that any orders for the further employment of the ship given prior to delivery can be reasonably expected to allow delivery by the date notified by the owners to the charterers. A reciprocal provision for the charterers when redelivering the ship applies as per Clause 4 (Redelivery). This is designed to give greater certainty to the effect of delivery and redelivery notices given under the charter party and follows the concept of "legitimate/illegitimate final voyage orders found in a number of more recent time charter forms (see, for example, Clause 4(d) (Redelivery) of GENTIME).

- (e) Acceptance of delivery of the Vessel by the Charterers shall not prejudice their rights against the Owners under this Charter Party.

Regardless of whether the charterers accept delivery of the ship arriving after the cancellation date or decide to exercise their right to cancel the charter party, sub-clause (e) provides that they do not lose their right to claim damages from the owners for any loss suffered by the charterers due to the owners' breach of any of its obligations under the charter party.

### **Clause 3 (Laydays/Cancelling)**

If required by the Charterers, time on hire shall not commence before [REDACTED] (local time) and should the Vessel not have been delivered on or before [REDACTED] (local time) at the port or place stated in Sub-clause 2(a), the Charterers shall have the option of cancelling this Charter Party at any time but not later than the day of the Vessel's notice of delivery.

The first paragraph of Clause 16 (Delivery/Cancelling) of NYPE '93 has been moved to a more prominent position so that it more closely reflects the chronological order of events. There have been a few improvements to the language used in the Clause. The reference to "*time shall not commence...*" has been amended for clarification to read "*time on hire shall not commence...*" and are based on local time at the place of delivery. If the ship arrives at the delivery port after the cancelling date and tenders notice of readiness, then if the charterers do not want the ship they must cancel the charter party by midnight local time on the day the notice of delivery is given.

The reference to the owners being required to give a "written" notice of readiness does not appear in the new edition of NYPE. This is because a general "Notices" clause has been added to the charter party. Clause 55 (Notices) sets out the manner of and the form in which notices and other communications required by any clause in NYPE 2015 must be given.

### **Clause 4 (Redelivery)**

- (a) The Vessel shall be redelivered to the Owners in like good order and condition, ordinary wear and tear excepted, at [REDACTED] (*state port or place*).

The redelivery provisions have been separated from the provisions dealing with rate of hire (NYPE '93 Clause 10 (Rate of Hire/Redelivery Areas and Notices)) to form a new "Redelivery" Clause that is the reciprocal of Clause 2 (Delivery).

- (b) The Charterers shall keep the Owners informed of the Vessel's itinerary. Prior to the arrival of the Vessel at the redelivery port or place, the Charterers shall serve the Owners with [REDACTED] days' approximate and [REDACTED] days' definite notices of the Vessel's redelivery. Following the tender of any such notices the Charterers shall give or allow to be given to the Vessel only such further employment orders, if any, as are reasonably expected when given to allow redelivery to occur on or before the date notified.

In addition to the usual series of notices to be given by the charterers prior to the "expected date of redelivery", the clause obliges the charterers to keep the owners informed of the ship's itinerary, which is of particular importance to the owners in securing the next employment for the ship at the end of the time charter period.

The final sentence of sub-clause (b) is triggered by the giving of the first notice of delivery and applies to all subsequent notices. Its purpose is to ensure that any orders for the further employment of the ship given prior to redelivery can be reasonably expected to allow redelivery by the date notified by the charterers to the owners. A reciprocal provision for the owners when delivering the ship applies as per Clause 2 (Delivery). This is designed to give greater certainty to the effect of delivery and redelivery notices given under the charter party and follows the concept of "legitimate/illegitimate final voyage orders found in a number of more recent time charter forms.

- (c) Acceptance of redelivery of the Vessel by the Owners shall not prejudice their rights against the Charterers under this Charter Party.

Whatever the circumstances under which the owners accept redelivery of the ship, they do not affect the owners' rights to claim damages from the charterers for any loss suffered by the owners due to the charterers' breach of any of its obligations under the charter party.

#### **Clause 5 (On/Off-Hire Survey)**

The wording of the On-Off Hire Survey Clause has been maintained from NYPE '93, Clause 3, with the exception of the final sentence. NYPE '93 provides that the on-hire survey is to be done on charterers' time and the off-hire survey on owners' time.

Any time lost as a result of the on-hire survey shall be for the Owners' account and any time lost as a result of the off-hire survey shall be for the Charterers' account.

In NYPE 2015 the wording of the final sentence simply addresses any time lost as a result of the surveys, with the owners bearing the risk at delivery and the charterers on re-delivery.

#### **Clause 6 (Owners to Provide)**

- (a) The Owners shall provide and pay for the insurances of the Vessel, except as otherwise provided, and for all provisions, cabin, deck, engine-room and other necessary stores, boiler water and lubricating oil; shall pay for wages, consular shipping and discharging fees of the crew and charges for port services pertaining to the crew/crew visas; shall maintain the Vessel's class and keep her in a thoroughly efficient state in hull, machinery and equipment for and during the service, and have a full complement of Master, officers and ratings.

Sub-clause (a) has been amended to include a reference to "lubricating oil" which the owners are to supply at their own expense. The owners are also made responsible for the cost of any crew visas that may need to be obtained for the purposes of crew changes or other local authority requirement. The complement of crew to be provided by the owners has been amended to correct an oversight in NYPE '93 that does not mention the Master. The term "crew" has been replaced by "ratings" – "crew" being the generic term to describe all seafarers employed on board the ship by the owners.

- (b) The Owners shall provide any documentation relating to the Vessel as required to permit the Vessel to trade within the agreed limits, including but not limited to International Tonnage Certificate, Suez and Panama tonnage certificates, Certificates of Registry, and certificates relating to the strength, safety and/or serviceability of the Vessel's gear. Such documentation shall be maintained during the currency of the Charter Party as necessary.

Owners shall also provide and maintain such Certificates of Financial Responsibility for oil pollution to permit the Vessel to trade within the agreed limits as may be required at the commencement of the Charter Party. However, in the event that, at the time of renewal, a Certificate of Financial Responsibility is unavailable in the market place, or, the premium for same increases significantly over the course of the Charter Party, then Owners and Charterers shall discuss each with the other to find a mutually agreeable solution for same, failing such solution the port(s) that require said Certificate of Financial Responsibility are to be considered as added to the Vessel's trading exclusions. (See also Clause 18 (Pollution)).

The first paragraph of sub-clause (b) is taken from Clause 40 (Documentation) of NYPE '93, but has been amended to deal with trade-specific documentation and certification other than that related to Certificates of Financial Responsibility for oil pollution. A new additional sentence extends the owners' documentary obligations to include maintaining such documentation and certificates during the entire charter period.

The second paragraph of sub-clause (b) deals exclusively with Certificates of Financial Responsibility (COFR) for oil pollution. The basic obligation on the owners is to meet all COFR requirements "*as may be required at the commencement of the Charter party*", which means only those requirements in force at the start of the charter for the trades in which the ship may be employed. Significantly, if a COFR comes up for renewal during the charter period and the cost of that renewal premium is considerably higher or if the COFR is no longer available in the market, then the owners and charterers are to try to find a solution acceptable to both. If they are unable to find a solution then the owners are no longer under an obligation to provide a COFR for that particular port (which will be deemed added to the list of excluded ports/areas under the charter party).

- (c) The Vessel to work night and day if required by the Charterers, with crew opening and closing hatches, when and where required and permitted by shore labor regulations, otherwise shore labor for same shall be for the Charterers' account.

Absent from NYPE '93 is a provision obliging the owners to provide and pay for the crew's assistance in opening and closing hatches, subject to local regulations. This has been added to NYPE 2015 as a new sub-clause 6(c).

### **Clause 7 (Charterers to Provide)**

- (a) The Charterers, while the Vessel is on-hire, shall provide and pay for all the bunkers except as otherwise agreed; shall pay for port charges (including compulsory garbage disposal), compulsory gangway watchmen and cargo watchmen, compulsory and/or customary pilotages, canal dues, towages, agencies, commissions, consular charges (except those pertaining to individual crew members or flag of the Vessel), and all other usual expenses except those stated in Clause 6, but when the Vessel puts into a port for causes for which the Vessel is responsible (other than by stress of weather), then all such charges incurred shall be paid by the Owners.

A few notable amendments have been made to the list of items that the charterers must pay for while the ship is on hire. The reference to the charterers' obligation to pay for "pilotages" found in Clause 2 of the '46 edition and Clause 7 of the '93 edition has been clarified so that it now states that the obligation applies not just to compulsory pilotages but also to customary pilotages. In addition, the charterers are obliged to pay for canal dues incurred during the charter period. Under previous editions of NYPE canal dues would most likely have been covered by "other usual expenses" – however, for the avoidance of doubt, the item has been added to the list of charterers' obligations.

- (b) Fumigations ordered because of illness of the crew or for infestations prior to delivery under this Charter Party shall be for the Owners' account. Fumigations ordered because of cargoes carried or ports visited while the Vessel is employed under this Charter Party shall be for the Charterers' account.

The fumigation provisions now exempt the charterers for responsibility for fumigations that are required due to infestations that occurred prior to delivery. The six-month time limit after delivery and before the charterers become liable for fumigations ordered due to cargoes carried or ports visited has been deleted. The reason for this is that the preceding sentence in sub-clause (b) deals with responsibility for fumigations ordered due to infestations that occurred before delivery. Infestations occurring after delivery are therefore a direct result of the employment orders given by the charterers and so they must bear the cost of fumigating the ship during the entire period of the charter party (other than fumigation required due to the illness of the crew).

For a more comprehensive fumigation provision, parties may wish to consider incorporating BIMCO's Cargo Fumigation Clause for Charter Parties.

- (c) The Charterers shall provide and pay for necessary dunnage, lashing materials and also any extra fittings requisite for a special trade or unusual cargo, but the Owners shall allow them the use of any dunnage already aboard the Vessel. Prior to redelivery the Charterers shall remove their dunnage, fittings and lashing materials at their cost and in their time.

The final part of Clause 7 is unchanged from NYPE '93 with the exception of the addition of a reference to "lashing materials" which is a common amendment to this provision.

### **Clause 8 (Performance of Voyages)**

- (a) Subject to Clause 38 (Slow Steaming) the Master shall perform the voyages with due despatch and shall render all customary assistance with the Vessel's crew. The Master shall be conversant with the English language and (although appointed by the Owners) shall be under the orders and directions of the Charterers as regards employment and agency; and the Charterers shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnaging, unlashings, discharging, and tallying, at their risk and expense, under the supervision of the Master.

The addition of a "slow steaming" provision (Clause 38), permitting the charterers to instruct the Master to reduce or adjust the speed of the ship, has an important bearing on the Master's strict obligation to perform voyages with "due despatch" (i.e., without delay or interruption and as quickly as circumstances and safe navigation permits). Clause 8 (Performance of Voyages) has now been made subject to the provisions of Clause 38 (Slow Steaming). The wording of the Performance of Voyages Clause is otherwise unchanged.

### **Clause 9 (Bunkers)**

This provision has been extensively re-written to provide a modern and comprehensive set of provisions dealing with all bunker-related matters under a time charter party. The seven separately headed provisions cover matters such as quantities and prices; bunkering prior to delivery/redelivery; bunkering operations and sampling; quality and liability; fuel testing; ECA trading; and grades and quantities on redelivery. All of these are matters that are commonly absent from or insufficiently provided for in many standard form time charter parties. Many older time charter forms contain bunker clauses covering the fundamental principles under the charter, but do not contemplate today's situation where ships are



required to carry and use different grades of fuel and where sampling and testing regimes are an integral part of the process.

(a) Bunker quantities and prices

\*(i) The Charterers on delivery, and the Owners on redelivery or any termination of this Charter Party, shall take over and pay for all bunkers remaining onboard the Vessel as hereunder. The Vessel's bunker tank capacities shall be at the Charterers' disposal. Bunker quantities and prices on delivery/redelivery to be [REDACTED].

The common position under most standard forms of time charter is that the charterers take over and pay for the fuel on board the ship at the time of delivery and the owners take over and pay for the fuel on board at redelivery. The fuel on board becomes the property of the charterers along with any fuel purchased during the charter period. NYPE 2015, however, offers two alternatives to this usual arrangement.

Sub-clause (a)(i) reflects the most common time charter bunker arrangement. Consistent with the bunker provisions of NYPE '93 Clause 9 (Bunkers), the parties can agree on the quantities and prices of fuel on board at delivery and redelivery. A reference to "or any termination" is intended to cover the transfer of property in the bunkers from the charterers to the owners in the event of the charter party being terminated, for example due to non-payment of hire (provided the charterers have paid their bunker suppliers for the fuel on board at the time of termination and have title to them).

\*(ii) The Owners shall provide sufficient bunkers onboard to perform the entire time charter trip. The Charterers shall not bunker the Vessel, and shall pay with the first hire payment for the mutually agreed estimated bunker consumption for the trip, namely [REDACTED] metric tons at [REDACTED] (price). Upon redelivery any difference between estimated and actual consumption shall be paid by the Charterers or refunded by the Owners as the case may be.

The second option (sub-clause (a)(ii)) provides for bunkering when NYPE 2015 is used for a trip time charter. In such cases, because of the short duration of the employment, it is often agreed by the parties that the owners will simply provide the necessary quantities and types of fuel required for the entire trip, much as they would do under a voyage charter arrangement. This means that the charterers do not purchase the fuel on board at delivery and they are not responsible for providing and paying for fuel during the voyage. Instead, the owners will invoice the charterers for the estimated fuel used based on an agreed daily consumption and price per ton cost. At the end of the trip the actual cost of the fuel used is calculated by the owners and the charterers are either reimbursed by the owners for any excess they have paid or are invoiced for any outstanding amount due.

\*(iii) The Charterers shall not take over and pay for bunkers Remaining On Board at delivery but shall redeliver the Vessel with about the same quantities and grades of bunkers as on delivery. Any difference between delivery quantity and redelivery quantity shall be paid by the Charterers or the Owners as the case may be. The price of the bunkers shall be the net contract price paid by the receiving party, as evidenced by suppliers' invoice or other supporting documents.

The third bunker option (sub-clause (a)(iii)) provides an alternative to the risk of price fluctuations in the bunker market that may leave the charterers receiving from the owners a considerably lower price per ton at redelivery than actually paid, or the owners being faced with buying bunkers from the charterers at redelivery for a much higher than market price. Under this option the owners get their ship back with the same grades and quantities of bunkers as were on board at delivery. The charterers provide and pay for fuel during the charter period – i.e., they pay only for what they consume. On redelivery, the financial exposure of the parties is limited to any differences in the quantities on board at delivery versus redelivery. The price for the difference in quantities is determined by the price actually paid.

(b) Bunkering Prior to Delivery/Redelivery

Provided that it can be accomplished at ports of call, without hindrance to the working or operation of or delay to the Vessel, and subject to prior consent, which shall not be unreasonably withheld, the Owners shall allow the Charterers to bunker for their account prior to delivery and the Charterers shall allow the Owners to bunker for their account prior to redelivery. If consent is given, the party ordering the bunkering shall indemnify the other party for any delays, losses, costs and expenses arising therefrom.

It is common practice in the industry for time charterers to agree with the owners to bunker the ship ahead of delivery – usually because fuel of the required grade or specification is not available at the place of delivery or because the cost of fuel is much higher there.

Sub-clause (b) provides a reciprocal arrangement for charterers to bunker the ship before delivery and for the owners to bunker prior to redelivery. It is important that each party obtains the consent of the other party before bunkering arrangements are made to avoid any interference with the operation the ship. This is of particular importance when bunkering prior to delivery as the ship may well be under the employment of another time charterer.

(c) Bunkering Operations and Sampling

(i) The Chief Engineer shall co-operate with the Charterers' bunkering agents and fuel suppliers during bunkering. Such cooperation shall include connecting/disconnecting hoses to the Vessel's bunker manifold, attending sampling, reading gauges or meters or taking soundings, before, during and/or after delivery of fuels.

(ii) During bunkering a primary sample of each grade of fuels shall be drawn in accordance with the International Maritime Organization (IMO) Resolution Marine Environment Protection Committee (MEPC) MEPC.182(59) Guidelines for the Sampling of Fuel Oil for Determination of Compliance with the Marine Pollution Convention (MARPOL) 73/78 Annex VI or any subsequent amendments thereof. Each primary sample shall be divided into no fewer than five (5) samples; one sample of each grade of fuel shall be retained on board for MARPOL purposes and the remaining samples of each grade distributed between the Owners, the Charterers and the bunker suppliers.

(iii) The Charterers warrant that any bunker suppliers used by them to bunker the Vessel shall comply with the provisions of Sub-clause (c)(ii) above.

(iv) Bunkers of different grades, specifications and/or suppliers shall be segregated into separate tanks within the Vessel's natural segregation. The Owners shall not be held liable for any restriction in bunker capacity as a result of segregating bunkers as aforementioned.

Few standard time charter forms deal with bunker sampling. Rather than attempt to spell out a complete procedure for sampling fuel, the revised NYPE refers to the procedures set out in the IMO Guidelines for the Sampling Fuel Oil for Determination of Compliance with the Marine Pollution Convention (MARPOL) 73/78 Annex VI. The taking of a MARPOL sample is of course mandatory, but making sure that commercial samples are taken in the same manner should ensure consistency of results.

Sub-clause (c)(iv) takes into account that different grades of fuel will be required for general trading purposes and that these fuels need to be stored in separate fuel tanks unless the Master or Chief Engineer advises that the fuels can be mixed. The consequence of this for some older ships is that there may be a limited number of separate bunker tanks on board. This may restrict the quantities of different types of fuel that can be loaded by the charterers resulting, in some cases, in the need to take on fuel more frequently.

(d) Bunker Quality and Liability

(i) The Charterers shall supply bunkers of the agreed specifications and grades: [REDACTED]. The bunkers shall be of a stable and homogeneous nature and suitable for burning in the Vessel's engines and/or auxiliaries and, unless otherwise agreed in writing, shall comply with the International Organization for Standardization (ISO) standard 8217:2012 or any subsequent amendments thereof. If ISO 8217:2012 is not available then the Charterers shall supply bunkers which comply with the latest ISO 8217 standard available at the port or place of bunkering.

(ii) The Charterers shall be liable for any loss or damage to the Owners or the Vessel caused by the supply of unsuitable fuels and/or fuels which do not comply with the specifications and/or grades set out in Sub-clause (d)(i) above, including the off-loading of unsuitable fuels and the supply of fresh fuels to the Vessel. The Owners shall not be held liable for any reduction in the Vessel's speed and/or increased bunker consumption nor for any time lost and any other consequences arising as a result of such supply.

Fuels supplied by the charterers are to comply with the latest ISO 8217 standard, but other standards may be accepted if compliance is not possible at the intended bunkering port due to lack of supply.

"Stable and homogenous" is a phrase commonly found in bunker clauses in many charter parties and basically means that the fuel provided must be of "satisfactory quality" consistent with sale of goods legislation.

Sub-clause (d)(ii) deals with loss or damage suffered by the owners/vessel (e.g. physical damage to or underperformance of the engines) caused by unsuitable or off-spec fuel. The charterers' liability extends not only to the consequences of them loading unsuitable fuel, but also to liability for the cost and expense of off-loading the unsuitable fuel and replacing it with suitable fuel. In this respect it goes beyond the current provisions of sub-clause 9(b) of NYPE '93.

As the unsuitability of the charterers' fuel may not be detected until actually burned in the vessel's engines, the last part of the Clause provides the owners with protection against any potential claim by the charterers for under-performance or increased bunker consumption that can be directly attributed to the unsuitable fuel.

(e) Fuel Testing Program

Should the Owners participate in a recognized fuel testing program one of the samples retained by the Owners shall be forwarded for such testing. The cost of same shall be borne by the Owners and if the results of the testing show the fuel not to be in compliance with ISO 8217:2012, or any subsequent amendment thereof, or such other specification as may be agreed, the Owners shall notify the Charterers and provide a copy of the report as soon as reasonably possible.

In the event the Charterers call into question the results of the testing, a fuel sample drawn in accordance with IMO Resolution MEPC.96(47) Guidelines for the Sampling of Fuel Oil for Determination of Compliance with Annex VI of MARPOL 73/78 or any subsequent amendments thereof, shall be sent to a mutually agreed, qualified and independent laboratory whose analysis as regards the characteristics of the fuel shall be final and binding on the parties concerning the characteristics tested for. If the fuel sample is found not to be in compliance with the specification as agreed in the paragraph above, the Charterers shall meet the cost of this analysis, otherwise same shall be for the Owners' account.

If the owners test the fuel as part of a fuel testing programme and it does not comply with the required specification, the charterers have the right to challenge the results and obtain a "second opinion" from another, mutually agreed" testing laboratory. The results of the second laboratory will be final and binding on the owners and charterers.

(f) Bunker Fuel Sulphur Content

(i) Without prejudice to anything else contained in this Charter Party, the Charterers shall supply fuels of such specifications and grades to permit the Vessel, at all times, to comply with the maximum sulphur content requirements of any emission control area when the Vessel is ordered to trade within that area.

The Charterers also warrant that any bunker suppliers, bunker craft operators and bunker surveyors used by the Charterers to supply such bunkers shall comply with Regulations 14 and 18 of MARPOL Annex VI, including the Guidelines in respect of sampling and the provision of bunker delivery notes.

The Charterers shall indemnify, defend and hold harmless the Owners in respect of any loss, liability, delay, fines, costs or expenses arising or resulting from the Charterers' failure to comply with this Sub-clause (f)(i).

(ii) Provided always that the Charterers have fulfilled their obligations in respect of the supply of fuels in accordance with Sub-clause (f)(i), the Owners warrant that:

1. the Vessel shall comply with Regulations 14 and 18 of MARPOL Annex VI and with the requirements of any emission control area; and
2. the Vessel shall be able to consume fuels of the required sulphur content,

when ordered by the Charterers to trade within any such area.

Subject to having supplied the Vessel with fuels in accordance with Sub-clause (f)(i), the Charterers shall not otherwise bear any loss, liability, delay, fines, costs or expenses arising or resulting from the Vessel's failure to comply with Regulations 14 and 18 of MARPOL Annex VI.

(iii) For the purpose of this Clause, "emission control area" shall mean an area as stipulated in MARPOL Annex VI and/or an area regulated by regional and/or national authorities such as, but not limited to, the European Union (EU) and the United States (US) Environmental Protection Agency.

Most standard forms of time charter in current use do not reflect contemporary requirements for ships to operate with different types of fuels – in particular low sulphur fuels in specified areas. The addition of this clause obliges the charterers to provide the ship with fuels of the appropriate maximum sulphur content to allow trading within emission control areas if they intend for the ship to trade in such areas.

The responsibility for the storage, management and use of the fuels supplied by the charterers lies with the owners as does the emission control requirements of Regulations 14 and 18.

(g) Grades and Quantities of Bunkers on Redelivery

Unless agreed otherwise, the Vessel shall be redelivered with the same grades and about the same quantities of bunkers as on delivery; however, the grades and quantities of bunkers on redelivery shall always be appropriate and sufficient to allow the Vessel to reach safely the nearest port at which fuels of the required types are available.

The final provision in the Bunker Clause addresses quantities on redelivery – and, most importantly, an obligation on the charterers to provide sufficient quantities of fuel of the appropriate type so that the ship can get to the nearest bunkering port to replenish stocks with appropriate fuels for the ships' next employment.

**Clause 10 (Rate of Hire; Hold Cleaning; Communications; Victualing and Expenses)**

The Rates of Hire Clause in NYPE '93 covers hire as well as redelivery areas and notices. These latter two provisions have been moved in NYPE 2015 to a new Clause 4 (Redelivery). Provisions relating to hold cleaning (formerly Clause 36

(Cleaning of Holds), communications, victualing (from Clause 14 (Supercargo and Meals) and expenses, have been consolidated into this clause.

- (a) The Charterers shall pay for the use and hire of the said Vessel at the rate of [REDACTED] per day or pro rata for any part of a day, commencing on and from the time of her delivery, as aforesaid, including the overtime of crew; hire to continue until the time of her redelivery to the Owners as per Clause 4 (Redelivery) (unless Vessel lost).

The parties must specify, in addition to the daily rate of hire, the currency in which hire is to be paid. This contrasts with previous editions of NYPE that applied United States dollars by default.

Unless otherwise mutually agreed, the Charterers shall have the option to redeliver the Vessel with unclean/unswept holds against a lumpsum payment of [REDACTED] in lieu of hold cleaning, to the Owners (unless Vessel lost).

Consistent with the final sentence of NYPE '93 Clause 36 (Cleaning of Holds), the charterers can pay to the owners on redelivery a lump sum to cover the cost of cleaning holds after the final discharge. Provision is made for the parties to agree and state a lumpsum figure in the charter party to avoid negotiations at redelivery. The currency should be clearly stated, failing which it should be assumed to be the same currency as the rate of hire.

The Owners shall victual pilots and such other persons as authorized by the Charterers or their agents. While on-hire, the Charterers shall pay the Owners along with the hire payments, [REDACTED] per thirty (30) days or pro rata, to cover all Communications, Victualing and Expenses properly incurred by the Vessel under the Charterers' employment.

The victualing of supercargoes is dealt with separately under Clause 14 (Supercargo). The communications, victualing and expenses (CVE) obligations are to be covered by an agreed lumpsum payment to the owners payable with each instalment of hire.

(b) Hold Cleaning/Residue Disposal

(i) The Charterers may request the Owners to direct the crew to sweep and/or wash and/or clean the holds between voyages and/or between cargoes against payment at the rate of [REDACTED] per hold, provided the crew is able safely to undertake such work and is allowed to do so by local regulations. In connection with any such operation the Owners shall not be responsible if the Vessel's holds are not accepted or passed. Time for cleaning shall be for the Charterers' account.

A detailed intermediate hold cleaning provision forms the second part of Clause 10, replacing Clause 36 (Cleaning of Holds) found in NYPE '93. Sub-clause (i) provides for a rate per hold to be agreed in advance.

(ii) Unless this Charter Party is concluded for a single laden leg, all cleaning agents and additives (including chemicals and detergents) required for cleaning cargo holds shall be supplied and paid for by the Charterers. The Charterers shall provide the Owners with a dated and signed statement identifying cleaning agents and additives that, in accordance with IMO Resolution 219(63) Guidelines for the Implementation of MARPOL Annex V, are not substances harmful to the marine environment and do not contain any component known to be carcinogenic, mutagenic or reprotoxic.

Sub-clause (ii) deals with mandatory obligations in relation to the use of cleaning agents and chemicals that are not harmful to the marine environment that the charterers must comply with when providing such material during the charter period.

(iii) Throughout the currency of this Charter Party and at redelivery, the Charterers shall remain responsible for all costs and time, including deviation, if any, associated with the removal and disposal of cargo related residues and/or hold washing water and/or cleaning agents and detergents and/or waste. Removal and disposal as aforesaid shall always be in accordance with and as defined by MARPOL Annex V, or other applicable rules.

If the charterers opt to redeliver the ship with unclean/unswept holds against an agreed lumpsum payment (see sub-clause (a)), this final part of the Hold Cleaning Clause will only apply in respect of the proper removal of residues, etc. after voyages during the currency of the charter.

### **Clause 11 (Hire Payment)**

(a) Payment

Payment of Hire shall be made without deductions due to Charterers' bank charges so as to be received by the Owners or their designated payee into the bank account as follows: [REDACTED] in the currency stated in Clause 10 (Rate of Hire; Hold Cleaning;

Communications; Victualing and Expenses), in funds available to the Owners on the due date, fifteen (15) days in advance, and for the last fifteen (15) days or part of same the approximate amount of hire, and should the same not cover the actual time, hire shall be paid for the balance day by day as it becomes due, if so required by the Owners. The first payment of hire shall be due on delivery.

Hire is to be paid by the charterers, free of bank charges. To reflect the global use of the NYPE form, the new edition leaves it open to the parties to agree the currency in which hire is to be paid. It should be noted that the payment of hire at the end of the charter period refers to the final fifteen days, which is consistent with the method used in NYPE 1946 and which is still well established in the industry.

(b) Grace Period

Where there is failure to make punctual payment of hire due, the Charterers shall be given by the Owners three (3) Banking Days (as recognized at the agreed place of payment) written notice to rectify the failure, and when so rectified within those three (3) Banking Days (as recognized at the agreed place of payment and the place of currency of the Charter Party) following the Owners' notice, the payment shall stand as punctual.

Sub-clause (b) now forms the "grace period" provision. It is no longer an "anti-technicality" provision in that the failure to make punctual payment of hire need not be due to "oversight, errors or omissions on the part of the Charterers or their bankers" as with NYPE 1993. It is now unqualified, meaning that whatever the reason for the charterers failing to make punctual payment of hire they will be in breach of the charter party. The reason for removing the qualification is that it can be a potential source of dispute as it relies on the owners being able to demonstrate that the non-payment is not due to one of the "qualifying" events. They may simply not have such facts at their disposal and risk making an erroneous judgement that could place them in breach of the charter.

(c) Withdrawal

Failure by the Charterers to pay hire due in full within three (3) Banking Days of their receiving a notice from Owners under Sub-clause 11(b) above shall entitle the Owners, without prejudice to any other rights or claims the Owners may have against the Charterers:

- (i) to withdraw the Vessel from the service of the Charterers;
- (ii) to damages, if they withdraw the Vessel, for the loss of the remainder of the Charter Party.

The regular and punctual payment of hire in full by the charterers is fundamental to the operation of the charter party. The consequence, therefore, of the charterers failing to pay hire within the three banking days "grace period" is to entitle the owners to withdraw the ship from the services of the charterers and bring the charter to an end. If the owners suffer a loss as a result of the early termination of the charter party they will be entitled to claim damages from the charterers to cover the remaining period of the contract. This provides a clear means of compensation to the owners should they be exposed to lower market rates than the charter hire rate due to the premature ending of the charter.

The withdrawal of a ship from a time charter has far reaching contractual and commercial consequences and involves procedures that must be carefully followed by the owners to avoid themselves breaching the charter party. It is highly recommended that owners contemplating withdrawing a ship under time charter do so in close consultation with their P&I Club/legal advisers.

(d) Suspension

At any time while hire is outstanding, the Owners shall, without prejudice to the liberty to withdraw, be entitled to withhold the performance of any and all obligations hereunder and shall have no responsibility whatsoever for any consequences thereof, and Charterers hereby indemnify the Owners for all legitimate and justifiable actions taken to secure their interests, and hire shall continue to accrue and any extra expenses resulting from such withholding shall be for the Charterers' account.

In many cases the withdrawal of a ship under time charter may not be advantageous to the owners when their main objective is simply to bring commercial pressure to bear on a charterer who is late with hire payments. An effective alternative method, which also provides a means of permitting the charter party to continue, is the suspension or partial suspension of the services of the ship. This can only be done with express wording in the charter party. Sub-clause (d) of NYPE 2015 gives the owners the right to withhold temporarily the performance of the charter party without liability or responsibility for the consequences until such time as the charterers fulfil their obligations in respect of hire payments. It is important to note that the suspension right can be invoked immediately once hire is outstanding, it is not subject to the grace period in sub-clause (b).

(e) Last Hire Payment

Should the Vessel be on her voyage towards port/place of redelivery at the time the last payment(s) of hire is/are due, said payment(s) is/are to be made for such length of time as the estimated time necessary to complete the voyage, including the deduction of estimated disbursements for the Owners' account before redelivery. Should said payments not cover the actual time, hire is to be paid for the balance, day by day, as it becomes due.

Unless Sub-clause 9(a)(ii) or (iii) has been agreed, the Charterers shall have the right to deduct the value of bunkers on redelivery from last sufficient hire payment(s).

When the Vessel has been redelivered, any difference in hire and bunkers is to be refunded by the Owners or paid by the Charterers within five (5) Banking Days, as the case may be.

The owners and the charterers are no longer required to agree upon the estimated time required to complete the final voyage under the charter party as in NYPE '93. In the revised wording the charterers are responsible for estimating the remaining time and to pay hire for that period – with any additional time beyond the estimated period paid on a day-by-day basis. This avoids an “agreement to agree” type provision which could give rise to disputes.

The second paragraph is new and relates to the option in Clause 9 (Bunkers) whereby the charterers do not bunker the ship but simply pay the owners for the bunkers consumed (this is mainly aimed at the trip charter market).

**Clause 12 (Speed and Consumption)**

NYPE 2015 incorporates a new clause dealing with speed and consumption obligations and claims.

- (a) Upon delivery and throughout the duration of this Charter Party the Vessel shall be capable of speed and daily consumption rates as stated in Appendix A in good weather on all sea passages with wind up to and including Force four (4) as per the Beaufort Scale and sea state up to and including Sea State three (3) as per the Douglas Sea Scale (unless otherwise specified in Appendix A). Any period during which the Vessel's speed is deliberately reduced to comply with the Charterers' orders/requirements (unless slow steaming or eco speed warranties have been given in Appendix A) or for reasons of safety or while navigating within narrow or restricted waters or when assisting a vessel in distress or when saving or attempting to save life or property at sea, shall be excluded from performance calculations.

Sub-clause (a) is a continuing warranty by the owners that the ship, as of the date of delivery and throughout the charter period, is capable of performing at the speed and with the fuel consumption set out in Appendix A (Vessel Description). This is new compared to the previous NYPE forms, which had capability warranties (in the Preamble) that applied only on delivery. Because NYPE 2015 contains a slow steaming provision (Clause 38) giving the charterers the right to order the ship to operate at reduced speeds, this clause excludes from performance calculations any periods during which the ship is “slow steaming” under the charterers' orders (unless Appendix A contains specific warranties for speeds and related daily consumptions for reduced speeds).

- (b) The Charterers shall have the option of using their preferred weather routing service. The Master shall comply with the reporting procedure of the Charterers' weather routing service and shall follow routing recommendations from that service provided that the safety of the Vessel and/or cargo is not compromised.

It is common practice in the industry for time charterers to employ the services of a weather routing company and so sub-clause (b) provides that option. Consistent with the “Hill Harmony” judgment, the Master has the right to deviate from the customary or recommended route for reasons of safety of the ship, crew and cargo – but if the weather routing service provides routing advice, the Master is otherwise obliged to follow it.

- (c) The actual route taken by the Vessel shall be used as the basis of any calculation of the Vessel's performance.
- (d) If the speed of the Vessel is reduced and/or fuel oil consumption increased, the Charterers may submit to the Owners a documented claim limited to the estimated time lost and/or the additional fuel consumed, supported by a performance analysis from the weather routing service established in accordance with this Clause. The cost of any time lost shall be off-set against the cost of any fuel saved and vice versa.

Claims by the charterers are expressly limited to compensation for the time lost as a result of the underperformance or the cost of any additional fuel consumed. Credit is given for under-consumption offset against time lost and vice versa.

- (e) In the event that the Owners contest such claim then the Owners shall provide copies of the Vessel's deck logs for the period concerned and the matter shall be referred to an independent expert or alternative weather service selected by mutual agreement, whose report shall take Vessel's log data and the Charterers' weather service data into consideration and whose determination shall be final and binding on the parties. The cost of such expert report shall be shared equally.

If there is a dispute over a performance claim the owners and the charterers can refer it to an independent expert for determination. The expert will take into account the ship's deck logs as evidence and compare it with weather data provided by the routing service. The use

of a mutually agreed expert determination service, whose decision is binding on both parties is intended to help reduce the time and cost involved in performance claims.

### **Clause 13 (Spaces Available)**

- (b) In the event of deck cargo being carried, the Owners are to be and are hereby indemnified by the Charterers for any loss and/or damage and/or liability of whatsoever nature howsoever caused to the deck cargo which would not have arisen had the deck cargo not been loaded. Bills of Lading shall be issued as per Clause 31(c).

In order to protect the owners from responsibility for any and all deck cargo, Clause 13(b) has been amended to “...of whatsoever nature *howsoever* caused to the deck cargo...” (emphasis added). Note that in this context, loss and/or damage and/or liability refers now to the cargo and not the ship as in the '93 edition.

### **Clause 14 (Supercargo)**

The Charterers are entitled to appoint a supercargo, who shall accompany the Vessel at the Charterers' risk and see that voyages are performed with due despatch. He is to be furnished with free accommodation and meals same as provided for the Master's table. The Charterers and the supercargo are required to sign the standard letter of waiver and indemnity recommended by the Vessel's Protection and Indemnity Association before the supercargo comes on board the Vessel.

It is common practice in the industry and a requirement of owners' P&I Clubs that supercargoes and other personnel placed on board the ship at the charterers' request sign a standard form of waiver prior to embarking.

### **Clause 15 (Sailing Orders and Logs)**

The Charterers shall furnish the Master from time to time with all requisite instructions and sailing directions, in writing, in the English language, and the Master shall keep full and correct deck and engine logs of the voyage or voyages, which are to be patent to the Charterers or their agents, and shall furnish the Charterers, their agents or supercargo, when required, with a true copy of such deck and engine logs, showing the course of the Vessel, distance run and the consumption of bunkers. Any log extracts required by the Charterers shall be in the English language.

The Sailing Orders and Logs provision is unchanged from the wording in NYPE '93. The clause covers the obligation on the charterers to provide instructions to the Master in writing and in English. The Master and the chief engineer must keep full deck and engine logs for each voyage and these logs must be made available (“patent”) to the charterers and their agents for inspection on request.

### **Clause 16 (Cargo Exclusions)**

This provision is taken from sub-clause 4(a) (Dangerous Cargo/Cargo Exclusions) of NYPE '93 and lists specified cargoes that are excluded from carriage under the charter party such as livestock, explosives and radioactive material. Additional space is provided for the parties to add further excluded cargoes if they so wish.

### **Clause 17 (Off-Hire)**

In the event of loss of time from deficiency and/or default and/or strike of officers or ratings, or deficiency of stores, fire, breakdown of, or damage to hull, machinery or equipment, grounding, detention by the arrest of the Vessel, (unless such arrest is caused by events for which the Charterers, their sub-charterers, servants, agents or sub-contractors are responsible), or detention by Port State control or other competent authority for Vessel deficiencies, or detention by average accidents to the Vessel or cargo, unless resulting from inherent vice, quality or defect of the cargo, drydocking for the purpose of examination, cleaning and/or painting of underwater parts and/or repair, or by any other similar cause preventing the full working of the Vessel, the payment of hire and overtime, if any, shall cease for the time thereby lost. Should the Vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the cargo or where permitted in Clause 22 (Liberties) hereunder, the hire to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom. All bunkers used by the Vessel while off-hire shall be for the Owners' account. In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbors or to rivers or ports with bars, any detention of the Vessel and/or expenses resulting from such detention shall be for the Charterers' account. If upon the voyage the speed be reduced by defect in, or breakdown of, any part of her hull, machinery or equipment, the time so lost, and the cost of any extra bunkers consumed in consequence thereof, and all extra proven expenses may be deducted from the hire. Bunkers used by the Vessel while off-hire and the cost of replacing same shall be for the Owners' account and therefore deducted from the hire.

The exceptions to the ship being placed off-hire as a result of detention now include events for which sub-charterers of the charterers are responsible, as the ship may be operating under sub-time charters or voyage charters during the time charter period.

Vessel deficiencies discovered as a result of the ship being inspected by Port State control that leads to the ship being detained are now expressly covered in the clause as an event that places the ship off-hire.

Additionally listed events that will place the ship off-hire, if there is a loss of time, include hull, propeller and rudder cleaning and repairs.

A new final sentence addresses the owners' liability for fuel consumed during off-hire periods. If the parties have agreed that bunkers are to be provided on the basis of sub-clause 9(a)(ii) or 9(a)(iii), whereby the owners provide bunkers and the charterers pay for what they have consumed, then any amounts used by the owners during off-hire periods should be taken into account at the final calculation of fuel used. In all other cases the charterers should deduct from hire the cost of bunkers consumed by the owners during periods of off-hire.

#### **Clause 18 (Pollution)**

The Owners shall provide for standard oil pollution coverage equal to the level customarily offered by the International Group of P&I Clubs, together with the appropriate certificates to that effect. (See also Clause 6 (Owners to Provide)).

This new provision is linked to the COFR requirements of Clause 6 (Owners to Provide), setting out the owners' obligation to provide certificates of financial responsibility for oil pollution damage (currently only required for U.S. trade). Clause 18 obliges the owners to have and maintain standard oil pollution coverage equal to the level currently offered by members of the International Group of P&I Clubs (the cover does not necessarily need to be provided by an International Group club).

#### **Clause 19 (Drydocking)**

Except in case of emergency or under Clause 52(b), no drydocking shall take place during the currency of this Charter Party.

Under the main terms of NYPE 2015 dry docking is not permitted other than for reasons of emergency. This is because the duration of the charter party may be too short to allow drydocking without significantly affecting the charterers' commercial use of the ship – particularly in the case of a trip charter agreement. If, however, the minimum period of the charter party exceeds five months then the owners have the option to drydock the ship by prior agreement with the charterers.

#### **Clause 20 (Total Loss)**

Should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once.

This clause remains unchanged and simply provides that should the ship be lost, all payments made by charterers but not earned by the owners are to be repaid as of the actual or declared date of the loss.

#### **Clause 21 (Exceptions)**

The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers and navigation, and errors of navigation throughout this Charter Party, always mutually excepted.

The mutual exceptions provisions of NYPE '93 remain unchanged in the new edition.

#### **Clause 22 (Liberties)**

The Vessel shall have the liberty to sail with or without pilots, to tow and be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

The liberties provision is unchanged from the '93 and '46 editions of NYPE and is a common wording used in many time charter parties. Its application is in the context of the Master's obligation to proceed with due despatch and to comply with the charterers' employment orders.

#### **Clause 23 (Liens)**

The Owners shall have a lien upon all cargoes, sub-hires and sub-freights (including deadfreight and demurrage) belonging or due to the Charterers or any sub-charterers, for any amounts due under this Charter Party, including general average contributions, and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.



The Charterers will not directly or indirectly suffer, nor permit to be continued, any lien or encumbrance, which might have priority over the title and interest of the Owners in the Vessel. The Charterers undertake that during the period of this Charter Party, they will not procure any supplies or necessaries or services, including any port expenses and bunkers, on the credit of the Owners.

The lien provision from NYPE '93 has been extended to cover "sub-hires" from sub-time charters – it previously referred only to "sub-freights" which could be construed as voyage charter freight only. Sub-freights now expressly include demurrage and deadfreight components due to the charterers or their sub-charterers, over which the owners can exercise a lien – not possessory but in the form of "intercepting" a payment due to the charterers.

The second part of the clause is effectively a "non-lien" provision designed to prevent suppliers who have a contract with the charterers, such as bunker suppliers, from placing a lien over the ship for non-payment of goods. The effectiveness of this provision may vary from jurisdiction to jurisdiction. Owners may wish to consider additional measures such as requiring the charterers to notify their suppliers that goods are being purchased on their account and not the owners and that a lien cannot be placed on the ship if payment is not made. BIMCO has developed a Bunker Non-Lien Clause that may provide greater protection to owners in such circumstances.

It should be noted that the words "*or in the Owners' time*" in relation to the charterers procuring "*supplies or necessaries or services*" that formed the final words of the last sentence of the Lien Clause in the '93 edition have been deleted. It was unclear what the significance of services, etc., being procured in the owners' time added to the provision in terms of a non-lien.

#### **Clause 24 (Salvage)**

All derelicts and salvage shall be for the Owners' and the Charterers' equal benefit after deducting the Owners' and the Charterers' expenses and crew's proportion.

This is a standard wording dividing the benefit of any salvage award between the owners and the charterers taking into account the expenses of the parties. Such expenses may include hire paid for time lost while engaged in the salvage operation, bunkers consumed and repairs to damage to the owners' ship.

#### **Clause 25 (General Average)**

General average shall be adjusted according to York-Antwerp Rules 1994 and settled in US dollars in the same place as stipulated in Clause 54 (Law and Arbitration). The Charterers shall procure that all bills of lading issued during the currency of this Charter Party will contain a provision to the effect that general average shall be adjusted according to York-Antwerp Rules 1994 and will include the "New Jason Clause" as per Clause 33(c). Time charter hire will not contribute to general average.

The 1994 edition of the York-Antwerp Rules is the most commonly used version relied on by the industry. As the majority of general average claims are settled in US dollars this has been inserted as the default currency. Parties no longer need to elect a place of settlement as the clause provides for settlement in the same place as the chosen arbitration venue (New York, London, Singapore or other named venue).

#### **Clause 26 (Navigation)**

Nothing herein stated is to be construed as a demise of the Vessel to the Charterers. The Owners shall remain responsible for the navigation of the Vessel, acts of pilots and tug boats, insurance, crew, and all other matters, same as when trading for their own account.

This standard charter party provision asserts that the Master and officers remain the servants of the owners in terms of the operation of the ship including navigation. The phrase "*and all other matters*" is not intended to cover responsibility for cargo claims, which are dealt with under Clause 27 (Cargo Claims).

#### **Clause 27 (Cargo Claims)**

Cargo claims as between the Owners and the Charterers shall be settled in accordance with the Inter-Club NYPE Agreement 1996 (as amended 1 September 2011), or any subsequent modification or replacement thereof.

The latest edition of the Inter-Club Agreement, updated in 2011, is incorporated into NYPE 2015 for the handling of cargo liability claims. The Inter-Club Agreement was first developed in 1970 as a mechanism designed for quickly and fairly apportioning liability for cargo claims between owners and charterers to avoid costly and lengthy litigation. The Agreement has been amended several times since 1970. In 2011 the Agreement was amended to address concerns over the time and cost involved in obtaining security between owners and charterers.

**Clause 28 (Cargo Handling Gear and Lights)**

The Owners shall maintain the cargo handling gear of the Vessel providing lifting capacity as described in Appendix A (Vessel Description). The Owners shall also provide on the Vessel for night work lights as on board, but all additional lights over those on board shall be at the Charterers' expense. The Charterers shall have the use of any cargo handling gear on board the Vessel. If required by the Charterers, the Vessel shall work night and day and all cargo handling gear shall be at the Charterers' disposal during loading and discharging. In the event of disabled cargo handling gear, or insufficient power to operate the same, the Vessel is to be considered to be off-hire to the extent that time is actually lost to the Charterers and the Owners to pay stevedore stand-by charges occasioned thereby, unless such disablement or insufficiency of power is caused by the Charterers' stevedores. If required by the Charterers, the Owners shall bear the cost of hiring shore gear in lieu thereof, in which case the Vessel shall remain on-hire, except for actual time lost.

The introduction of a new Appendix A (Vessel Description) means that specific details about any cargo handling gear on the ship no longer need to be set out in the charter party itself. Consequently the reference to "*all derricks or cranes*" has been removed as superfluous.

The final sentence of the provision relating to the owners' obligation to bear the cost of hiring shore cargo handling gear at the charterers' request if the ship's gear is not functioning, has been modified to clarify that the ship will remain on-hire with the exception of the time actually lost to the charterers.

**Clause 29 (Solid Bulk Cargoes/Dangerous Goods)**

This new clause replaces the "dangerous cargo" provision previously found in sub-clause 4(b) (Dangerous Cargo/cargo Exclusion) of NYPE '93.

- (a) The Charterers shall provide appropriate information on the cargo in advance of loading in accordance with the requirements of the IMO International Maritime Solid Bulk Cargoes (IMSBC) Code to enable the precautions which may be necessary for proper stowage and safe carriage to be put into effect. The information shall be accompanied by a cargo declaration summarising the main details and stating that the cargo is fully and accurately described and that, where applicable, the test results and other specifications can be considered as representative for the cargo to be loaded.

The purpose of sub-clause (a) is to oblige the charterers to provide sufficient advance notice to the owners of any solid bulk cargo they intend to load that may be prone to liquefaction and therefore require the Master to take specific safety measures.

- (b) If a cargo listed in the IMO International Maritime Dangerous Goods (IMDG) Code (website: [www.imo.org](http://www.imo.org)) is agreed to be carried, the Charterers shall provide a dangerous goods transport document and, where applicable, a container/vehicle packing certificate in accordance with the IMDG Code requirements. The dangerous goods transport document shall include a certificate or declaration that the goods are fully and accurately described by the Proper Shipping Name, are classified, packaged, marked and labelled/placarded correctly and are in all respects in proper condition for transport according to applicable international and national government regulations.

Sub-clause (b) provides for the procedures to be followed by the charterers in accordance with the IMO International Maritime Dangerous Goods Code. Provided the charterers follow the IMO procedures and give the necessary information about the nature of the cargo and handle it correctly, there is no specific requirement to limit the amount of such cargo carried by the ship as in the '93 edition of NYPE.

- (c) The Master shall be entitled to refuse cargoes or, if already loaded, to unload them at the Charterers' risk and expense if the Charterers fail to fulfil their IMSBC Code or IMDG Code obligations as applicable.

The final sub-clause is of particular significance in respect of solid bulk cargoes that can liquefy and the particular risk to the safety of the ship and crew that can result from the instability of the cargo. The safety of the ship and crew is the Master's prime responsibility and this provision gives the Master the right to refuse to load cargo or to require its removal from the ship if it transpires that the charterers are in breach of their obligations.

**Clause 30 (Hull Fouling)**

- (a) If, in accordance with the Charterers' orders, the Vessel remains at or shifts within a place, anchorage and/or berth for an aggregated period exceeding:

- (i) a period as the parties may agree in writing in a Tropical Zone or Seasonal Tropical Zone\*; or
- (ii) a period as the parties may agree in writing outside such Zones\*

any warranties concerning speed and consumption shall be suspended pending inspection of the Vessel's underwater parts including, but not limited to, the hull, sea chests, rudder and propeller.

*\*If no such periods are agreed the default periods shall be 15 days.*

Under most standard forms of time charter party, including NYPE, it is the owners' obligation to maintain the ship's hull in a "thoroughly efficient state". This obligation means keeping the hull and other underwater parts free of fouling. If hull fouling is permitted to build up to the extent that it affects the performance of the ship, the owners may face a claim from the charterers for underperformance. In some circumstances, however, it may be due to the charterers' employment orders that the ship spends an extended period of time at anchor off a particular port. If fouling occurs under these circumstances and the ship's performance is affected then the Hull Fouling Clause is designed to transfer hull cleaning obligations to the charterers.

The period of time before the clause takes effect may be determined by the particular paint coating used on the ship's hull in terms of its general effectiveness, durability and paint manufacturer's recommendations. Although in some cases parties may negotiate longer periods to apply, 15 days has been chosen as the default period to reflect current commercial practice.

### **Clause 31 (Bills of Lading)**

- (a) The Master shall sign bills of lading or waybills for cargo as presented in conformity with mates' receipts. However, the Charterers or their agents may sign bills of lading or waybills on behalf of the Master, with the Owners'/Master's prior written authority, always in conformity with mates' receipts.

Consistent with Articles 21 and 22 of UCP (Uniform Customs and Practice for Documentary Credits) 600, bills of lading and waybills may be signed on behalf of the Master by the charterers or their agents. Sub-clause (a) has been amended to reflect these signature options. The Bills of Lading Clause is otherwise unchanged from NYPE '93.

### **Clause 32 (Electronic Bills of Lading)**

Bills of lading produced in electronic format are designed to replicate the purposes and processes (such as endorsements or reservations) of their paper equivalent so as to offer "functional equivalence". Electronic bills can, if required by parties in the trading chain, be replaced by paper bills of lading at any point. In practical terms, while electronic bill of lading systems do not entirely eliminate the problem of cargoes arriving at discharge ports before bills of lading, their use should result in a significant reduction in the number, and associated risks, of LOIs issued to owners.

- (a) At the Charterers' option, bills of lading, waybills and delivery orders referred to in this Charter Party shall be issued, signed and transmitted in electronic form with the same effect as their paper equivalent.

The decision to use bills of lading, waybills and delivery orders in an electronic format is in the charterers' option. Their use will be in the same manner under the charter party as their paper equivalent. The words "issued, signed and transmitted in electronic form" describe the process of paperless trading. The closing phrase "with the same effect as their paper equivalent" establishes the equal status of electronic and paper documents.

NOTE: It is important that charterers, their sub-charterers and others in a charter party chain fully understand the need to sign-up to the chosen system or systems if they want to benefit from paperless trading procedures. They cannot participate without registration.

- (b) For the purpose of Sub-clause (a) the Owners shall subscribe to and use Electronic (Paperless) Trading Systems as directed by the Charterers, provided such systems are approved by the International Group of P&I Clubs. Any fees incurred in subscribing to or for using such systems shall be for the Charterers' account.

If the charterers decide to use electronic bills of lading the owners are obliged to subscribe to and use the charterers' chosen electronic bill of lading "platform" – which must be one approved by the International Group of P&I Clubs. Fees are for the charterers' account – although at present none of the companies providing approved systems make a charge to owners to register and use their respective platforms.

- (c) The Charterers agree to hold the Owners harmless in respect of any additional liability arising from the use of the systems referred to in Sub-clause (b), to the extent that such liability does not arise from Owners' negligence.

The charterers provide the owners with an indemnity for any "additional" liabilities that are not the result of the owners' negligence. P&I Clubs provide the same degree and scope of cover to paper and approved systems of paperless trading. Consequently, these "additional" liabilities are not readily identifiable and use of electronic bills of lading to date has not given rise to any such liabilities.

### **Clause 33 (Protective Clauses)**

The Clause Paramount, the Both-to-Blame Collision Clause and the New Jason Clause are by this provision incorporated into all bills of lading and waybills issued under the charter party. The three clauses also apply to the charter party.

#### *(a) General Clause Paramount*

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, the Hague Rules, or the Hague Visby Rules, as applicable, or such other similar national legislation as may mandatorily apply by virtue of origin or destination of the bill of lading, (or if no such enactments are mandatorily applicable, the terms of the Hague Rules shall apply) which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

The Clause Paramount provides for the applicable cargo liability regime under bills of lading issued under the charter party. The wording found in NYPE 93 has been maintained save for the addition of the phrase in parentheses “*or if no such enactments are mandatorily applicable, the terms of the Hague Rules shall apply*”. These additional words serve the purpose of making sure that in the absence of compulsorily applicable rules in a particular trade, the Hague Rules will apply by default. Without these words it may give rise to uncertainty as to the applicable liability regime to apply in these (admittedly uncommon) circumstances.

#### *(b) Both-to-Blame Collision Clause*

This clause is of particular importance when the law of the United States may apply to apportioning liability for a collision between two ships where both ships have acted negligently to cause the casualty. It is a means of restoring the owners' position under the Hague/Hague-Visby Rules whereby the owners are exempted from liability to the cargo owners for loss of or damage to the cargo resulting from “act, neglect or default” in the navigation or management of the ship. The reason for the clause is that the United States has signed but not ratified the Brussels Collision Convention 1910, whereas most other maritime states have ratified the Convention.

#### *(c) New Jason Clause*

This clause entitles the owners to receive general average contributions from other interests in the “maritime adventure” even if the owners failed to exercise due diligence to make the ship seaworthy, provided the casualty giving rise to the claim in general average was not caused by that unseaworthiness. It is of particular importance when the law of the United States may apply. It is a common requirement of P&I Club cover to have the clause incorporated into all bills of lading. As such, it is not recommended that the wording be in any way amended.

### **Clause 34 (War Risks)**

This provision is the latest edition of BIMCO's standard War Risks Clause, CONWARTIME. A significant change to the earlier edition of the Clause arises from the case of the “Triton Lark”<sup>1</sup> and the construction of CONWARTIME in relation to measuring the risk of attack by pirates. The court placed considerable emphasis on the meaning of “may be” and “are likely to be” for determining the existence of the risk of attack by pirates and when owners have the right to refuse to proceed. In order to remove potential uncertainty, the test for determining whether to proceed has been amended and is now based on whether an area is dangerous. The level of danger is likely to be high but a stated reference point removes the need for complex analysis of degree of risk and whether or not it is more or less likely to occur. Sub-clauses (a) and (b) have been amended to reflect the position.

(a) For the purpose of this Clause, the words:

(i) “Owners” shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and  
 The definition of “Piracy” (sub-clause (a)(ii)) has been aligned with the provision in the Piracy Clause to include acts of “violent robbery and/or capture/seizure”. Attacks of this type often occur in territorial waters and, while not technically piracy under international law, are treated as such for insurance purposes.

<sup>1</sup> Pacific Basin Ihx Ltd v Bulkhandling Handymax AS (The Triton Lark) (2012)

- (b) The Vessel shall not be obliged to proceed or required to continue to or through, any port, place, area or zone, or any waterway or canal (hereinafter "Area"), where it appears that the Vessel, cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be exposed to War Risks whether such risk existed at the time of entering into this Charter Party or occurred thereafter. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or may become dangerous, after entry into it, the Vessel shall be at liberty to leave it.

The revised edition also clarifies the mechanism triggering the Clause. It had been understood that CONWARTIME took effect if the identified risks arose after a charter party had been concluded and had not, therefore, been contemplated by the parties. This is in contrast with the BIMCO Piracy Clause for Time Charters that expressly applies whether or not the risk in question was known at the time of fixing. However, it was held in the recent case of the "Paiwan Wisdom" that CONWARTIME did not contain a requirement that a war risk must have escalated since the date of the charter party. In order to avoid any doubt about the position and remove the inconsistency with the Piracy Clause (given that CONWARTIME also covers piracy risks), an amendment to sub-clause (b) now provides that the Clause applies "whether such [war] risk existed at the time of entering into this charter party or occurred thereafter".

In line with the approach in the Piracy Clause, sub-clause (b) no longer requires charterers to obtain owners' written consent before ordering the vessel to proceed to or through a war risk area. It is understood that consent is rarely requested in practice. Nevertheless, owners ultimately retain the right to refuse to navigate in an area of danger.

- (d) If the Vessel proceeds to or through an Area exposed to War Risks, the Charterers shall reimburse to the Owners any additional premiums required by the Owners' insurers and the costs of any additional insurances that the Owners reasonably require in connection with War Risks.

The insurance provisions in sub-clause (d) make the charterers liable for any additional premium (i.e. beyond the owners' normal war risk insurance cover) imposed by underwriters as a result of the vessel navigating in an area of enhanced risk. The charterers are also liable for the cost of any additional insurances required by the owners which, where CONWARTIME is used for piracy risks, is likely to include War Loss of Hire and/or maritime Kidnap and Ransom (K&R) cover.

- (g) The Vessel shall have liberty:

(ii) to comply with the requirements of the Owners' insurers under the terms of the Vessel's insurance(s); Insurers have no authority to give orders or instructions about routing or navigation. Insurers might, however, require an assured to comply with reporting arrangements such as UKMTO (United Kingdom Marine Trade Operations) or follow Best Management Practices. This is reflected in sub-clause (g)(ii) which provides that owners have liberty to comply with requirements "*under the terms of the Vessel's insurance(s)*".

- (h) If in accordance with their rights under the foregoing provisions of this Clause, the Owners shall refuse to proceed to the loading or discharging ports, or any one or more of them, they shall immediately inform the Charterers. No cargo shall be discharged at any alternative port without first giving the Charterers notice of the Owners' intention to do so and requesting them to nominate a safe port for such discharge. Failing such nomination by the Charterers within forty-eight (48) hours of the receipt of such notice and request, the Owners may discharge the cargo at any safe port of their own choice. All costs, risk and expenses for the alternative discharge shall be for the Charterers' account.

Procedures to be followed in the event that owners invoke their rights to discharge cargo other than at the contractual destination are set out at sub-clause (h). A new final sentence makes clear that charterers are liable for any resulting costs, risk and expenses.

### **Clause 35 (Ice)**

The Vessel shall not be obliged to force ice but, subject to the Owners' prior approval having due regard to its size, construction and class, may follow ice-breakers. The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or area where lights or lightships have been or are about to be withdrawn by reason of ice, nor where there is risk that in the ordinary course of things the Vessel will not be able on account of ice to safely enter and remain in the port or area or to get out after having completed loading or discharging.

While the wording of the ice clause is largely unchanged from Clause 33 of NYPE '93, a new first sentence makes it clear that the ship is not obliged to force ice (but if the Master decides to do so and the ship is damaged then it will be for the owners' account). The final sentence of the '93 edition, Clause 33, then follows requiring the owners' prior approval to permit the ship to follow ice-breakers.

### **Clause 36 (Requisition)**

Should the Vessel be requisitioned by the government of the Vessel's flag or other government to whose laws the Owners are subject during the period of this Charter Party, the Vessel shall be deemed to be off-hire during the period of such requisition, and any hire paid by the said government in respect of such requisition period shall be retained by Owners. The period during which the Vessel is on requisition to the said government shall count as part of the period provided for in this Charter Party.

Although the requisitioning of merchant ships is nowadays a very rare occurrence, this provision has been maintained. Previously limited to requisition by the ship's flag state, the provision has been broadened to include the possibility of requisition of the ship by the government of the country to whose laws the owners are subject.

If the period of requisition exceeds ninety (90) days, either party shall have the option of cancelling this Charter Party and no consequential claim in respect thereof may be made by either party.

Frustration of the charter party due to requisition over an extended period of time would normally need to be determined by the courts in relation to the period of the charter party. To avoid uncertainty, the provision sets a time limit of 90 days after which either party may terminate the agreement.

### **Clause 37 (Stevedore Damage)**

Notwithstanding anything contained herein to the contrary, the Charterers shall pay for any and all damage to the Vessel caused by stevedores provided the Master has notified the Charterers and/or their agents in writing within twenty-four (24) hours of the occurrence but in case of hidden damage latest when the damage could have been discovered by the exercise of due diligence. Such notice to describe the damage and to invite Charterers to appoint a surveyor to assess the extent of such damage.

The stevedore damage provision found in NYPE '93 has been modified to bring it in line with contemporary trade practice. The re-worded clause places a strict obligation on the owners/master to report any damage within 24 hours of its occurrence. This is in contrast to the '93 wording that gave the owners 48 hours after "discovery of the damage" to report it to the charterers. The discovery of damage that is hidden (due to cargo) is now subject to due diligence. This means that the reporting time of 24 hours runs from when the hidden damage could have been discovered by the exercise of due diligence.

### **Clause 38 (Slow Steaming)**

An important part of the "modernisation" of the NYPE form includes the incorporation of contemporary clauses that reflect changes in trade practice or new issues affecting the industry. One such clause is "Slow Steaming" which provides the charterers with the right to order the ship to proceed at a reduced speed or to adjust speed to arrive at a specified time. Ordinarily, a time charterer does not have such rights. The owners are under a strict obligation to prosecute voyages under a time charter with "due" or "utmost" despatch and this obligation extends not only to the time charterers but also to third parties, such as bill of lading holders. An express provision permitting the ship to slow steam at the charterers' request is important to avoid the risk of owners facing claims from third parties and to deal with the potential technical aspects relating to operating a ship at reduced speeds for prolonged periods.

(a) The Charterers may at their discretion provide, in writing to the Master, instructions to reduce speed or Revolutions Per Minute (main engine RPM) and/or instructions to adjust the Vessel's speed to meet a specified time of arrival at a particular destination.

(i) \*Slow Steaming – Where the Charterers give instructions to the Master to adjust the speed or RPM, the Master shall, subject always to the Master's obligations in respect of the safety of the Vessel, crew and cargo and the protection of the marine environment, comply with such written instructions, provided that the engine(s) continue(s) to operate above the cut-out point of the Vessel's engine(s) auxiliary blower(s) and that such instructions will not result in the Vessel's engine(s) and/or equipment operating outside the manufacturers'/designers' recommendations as published from time to time.

(ii) \*Ultra-Slow Steaming – Where the Charterers give instructions to the Master to adjust the speed or RPM, regardless of whether this results in the engine(s) operating above or below the cut-out point of the Vessel's engine(s) auxiliary blower(s), the Master shall, subject always to the Master's obligations in respect of the safety of the Vessel, crew and cargo and the protection of the marine environment, comply with such written instructions, provided that such instructions will not result in the Vessel's engine(s) and/or equipment operating outside the manufacturers'/designers' recommendations as published from time to time. If the manufacturers'/designers' recommendations issued subsequent to the date of this Charter Party require additional physical modifications to the engine or related equipment or require the purchase of additional spares or equipment, the Master shall not be obliged to comply with these instructions.

*\*Sub-clauses (a)(i) and (a)(ii) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative (a)(i) shall apply.*

Sub-clause (a) provides the parties with two alternatives depending on their needs. It is generally accepted that provided a ship's engines operate above the cut-out point for the engine's auxiliary blowers, most owners should be prepared to allow an adjustment of speed within the normal service speed and the cut-out point of the auxiliary blowers. This "zone" reflects normal operating parameters and has been defined as alternative (i) "Slow Steaming". Engine designers have advised that slow steaming above the cut-out point of the auxiliary blowers can be achieved by most ships without requiring any modification of the engine or the installation of additional equipment, provided that the engine has been well maintained.

The second alternative, "Ultra Slow Steaming", provides the full range of slower speeds to the charterers by also permitting the engines to operate below the cut-out point of the auxiliary blowers down to minimal engine loads. For this type of slow steaming operation, engine designers have advised that in most cases engine modification and additional equipment would be required.

It should be noted that alternative (ii) ONLY applies if the parties have expressly agreed to it by deleting alternative (i), which otherwise applies by default.

It has been left for the parties to agree on appropriate speed reductions on a case by case basis, rather than incorporating a particular speed range in the clause. However, it should be noted that such reductions are always subject to what has been agreed regarding 'slow steaming' or 'ultra slow steaming'; the safety of the vessel, crew and cargo and protection of the marine environment; and recommendations from manufacturers'/designers' of the engine(s) and other related equipment.

The Clause does not address whether physical modifications, update of equipment and keeping of extra spares related to 'Ultra Slow Steaming' should be for the owners' or charterers' account. As slow steaming becomes more common, it is expected that those owners who market the capability of their vessel to operate at very slow speeds will already have undertaken any necessary modifications to the engines and equipment.

- (b) At all speeds the Owners shall exercise due diligence to ensure that the Vessel is operated in a manner which minimises fuel consumption, always taking into account and subject to the following:
  - (i) the Owners' warranties under this Charter Party relating to the Vessel's speed and consumption;
  - (ii) the Charterers' instructions as to the Vessel's speed and/or RPM and/or specified time of arrival at a particular destination;
  - (iii) the safety of the Vessel, crew and cargo and the protection of the marine environment; and
  - (iv) the Owners' obligations under any bills of lading, waybills or other documents evidencing contracts of carriage issued by them or on their behalf.

The warranted consumption relating to a particular speed is not affected by the clause. This means that any speed and consumption warranties that the owners have given under the charter party still apply despite agreeing to slow steam. If, however, the ship proceeds *below* any warranted speed, at the charterers' request, this will fall outside the performance guarantee.

Sub-clause (b)(iii) emphasises that the safety of the ship, crew, cargo and environment are paramount and therefore the speed of the ship can be increased at any time to avoid a particular hazard, at the Master's discretion.

If the bills of lading issued under the charter party are charterers' bills, as is typical in the liner trade, then sub-clause (b)(iv) is not relevant.

- (c) For the purposes of Sub-clause (b), the Owners shall exercise due diligence to minimise fuel consumption:
  - (i) when planning voyages, adjusting the Vessel's trim and operating main engine(s) and auxiliary engine(s);
  - (ii) by making optimal use of the Vessel's navigation equipment and any additional aids provided by the Charterers, such as weather routing, voyage optimization and performance monitoring systems; and
  - (iii) by directing the Master to report any data that the Charterers may reasonably request to further improve the energy efficiency of the Vessel.

Slow steaming performance monitoring systems provided by the charterers are intended to be standalone devices to avoid any possible corruption of or interference with the ship's systems.

The owners are only obliged to use equipment/aids provided by the charterers, *if the use of such equipment/aids has been agreed between the parties beforehand*. The intention of this provision is not to place any additional burden on the owners but merely to indicate that if the use of such equipment/aids has been agreed by the parties – in which case the owners are then under an obligation to use them optimally.

- (d) The Owners and the Charterers shall share any findings and best practices that they may have identified on potential improvements to the Vessel's energy efficiency.

Sub-clause (d) requires the owners and the charterers to share findings and best practices that may be of interest to the other party - in particular findings on how the vessel's energy efficiency can be improved. They are not, however, obliged to exchange information and best practices with regards to savings or any other information of a sensitive nature.

- (e) For the avoidance of doubt, where the Vessel proceeds at a reduced speed or with reduced RPM pursuant to Sub-clause (a), then provided that the Master has exercised due diligence to comply with such instructions, this shall constitute compliance with, and there shall be no breach of, any obligation requiring the Vessel to proceed with utmost and/or due despatch (or any other such similar/equivalent expression).

This provision sets out how to deal with the 'due despatch' obligations common to charter parties and contracts of carriage. Where due despatch obligations apply, some mechanism needs to be included in the clause to permit slow steaming without liability for delay. Sub-clause (e) emphasises that compliance with the charterers' instructions in terms of slow steaming will not constitute a breach of any obligation that the owner may have under the charter party or contracts of carriage to proceed with due despatch.

- (f) The Charterers shall procure that this Clause be incorporated into all sub-charters and contracts of carriage issued pursuant to this Charter Party. The Charterers shall indemnify the Owners against all consequences and liabilities that may arise from bills of lading, waybills or other documents evidencing contracts of carriage being issued as presented to the extent that the terms of such bills of lading, waybills or other documents evidencing contracts of carriage impose or result in breach of the Owners' obligation to proceed with due despatch or are to be held to be a deviation or the imposition of more onerous liabilities upon the Owners than those assumed by the Owners pursuant to this Clause.

The charterers are obliged to incorporate the Slow Steaming clause in any bills of lading issued under the time charter. As it may not necessarily be a realistic proposition to expect the clause to be incorporated into every bill of lading, the charterers are required to indemnify the owners against any consequences and liabilities in relation to issuing bills of lading where the terms of the bills result in the imposition of liabilities greater than those assumed by the owners under the clause.

### **Clause 39 (Piracy)**

The wording of the Piracy Clause is taken from the BIMCO Piracy Clause for Time Charter Parties, which was revised together with BIMCO's CONWARTIME in 2013 to reflect industry experience and legal developments relating to piracy (see note on Clause 34 (War Risks) above).

- (a) The Vessel shall not be obliged to proceed or required to continue to or through, any port, place, area or zone, or any waterway or canal (hereinafter "Area") which, in the reasonable judgement of the Master and/or the Owners, is dangerous to the Vessel, her cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter "Piracy"), whether such risk existed at the time of entering into this Charter Party or occurred thereafter. Should the Vessel be within any such place as aforesaid which only becomes dangerous, or may become dangerous, after her entry into it, she shall be at liberty to leave it.

When determining the risk of attack by pirates and whether the owners have the right to refuse to proceed, the key "test" is to judge if it "is dangerous" to the ship to proceed or continue to proceed. The level of danger is likely to be high but a stated reference point removes the need for complex analysis of degree of risk and whether or not it is more or less likely to occur.

- (c) If the Owners consent or if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:
- (i) to take reasonable preventative measures to protect the Vessel, crew and cargo including but not limited to re-routeing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel and/or deploying equipment on or about the Vessel (including embarkation/disembarkation);
  - (ii) to comply with underwriters' requirements under the terms of the Vessel's insurance(s);
  - (iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and
  - (iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;



and the Charterers shall indemnify the Owners for any claims from holders of Bills of Lading or third parties caused by the Vessel proceeding as aforesaid, save to the extent that such claims are covered by additional insurance as provided in Sub-clause (d)(iii).

Sub-clause (c) sets out the owners' liberties to take appropriate precautions when a vessel proceeds to or through an area exposed to piracy risks. Sub-paragraph (i), covering on-board and navigational preventative measures, includes an express reference to the embarkation/disembarkation of security personal and equipment.

In Sub-clause (c)(ii) insurers may require an assured to comply with reporting arrangements such as UKMTO (United Kingdom Marine Trade Operations) or follow Best Management Practices – but they have no authority to give orders or instructions about the routing or navigation of a ship.

(d) Costs

(i) if the Vessel proceeds to or through an Area where due to risk of Piracy additional costs will be incurred including but not limited to additional personnel and preventative measures to avoid Piracy, such reasonable costs shall be for the Charterers' account. Any time lost waiting for convoys, following recommended routing, timing, or reducing speed or taking measures to minimise risk, shall be for the Charterers' account and the Vessel shall remain on hire;

(ii) if the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous in the manner defined by the said terms, then the actual bonus or additional wages paid shall be reimbursed to the Owners by the Charterers;

(iii) if the Vessel proceeds to or through an Area exposed to the risk of Piracy, the Charterers shall reimburse to the Owners any additional premiums required by the Owners' insurers and the costs of any additional insurances that the Owners reasonably require in connection with Piracy risks which may include but not be limited to War Loss of Hire and/or maritime Kidnap and Ransom (K&R); and

(iv) all payments arising under Sub-clause (d) shall be settled within fifteen (15) days of receipt of the Owners' supported invoices or on redelivery, whichever occurs first.

Under the cost-related provisions of sub-clause (d) the charterers are liable for any additional premium (i.e. beyond owners' normal war risk insurance cover) imposed by underwriters as a result of the vessel navigating in an area of enhanced risk. The charterers are also liable for the cost of any additional insurances required by owners with the stated, but non-exhaustive, illustrative examples of War Loss of Hire and/or maritime Kidnap and Ransom (K&R) cover.

(f) If the Vessel is seized by pirates the Owners shall keep the Charterers closely informed of the efforts made to have the Vessel released. The Vessel shall remain on hire throughout the seizure and the Charterers' obligations shall remain unaffected, except that hire payments shall cease as of the ninety-first (91st) day after the seizure until release. The Charterers shall pay hire, or if the Vessel has been redelivered, the equivalent of Charter Party hire, for any time lost in making good any damage and deterioration resulting from the seizure. The Charterers shall not be liable for late redelivery under this Charter Party resulting from the seizure of the Vessel.

Sub-clause (f) deals with the seizure of the ship by pirates and the position on subsequent release. The 90 day cap on charterers' exposure to hire during captivity is maintained - although this does not affect charterers' other contractual obligations which remain in place no matter how long the period of detention. The cap represents a sharing of risk but it is a starting point and parties are free to negotiate a figure that meets their specific needs. In any event, the capping of hire payments should be viewed together with owners' option in sub-clause (d)(iii) to take out War Loss of Hire cover with the costs payable by charterers.

A ship on release is likely to require repairs to make good damage and deterioration arising from the period of detention. The charterers are liable for hire, or if after redelivery the equivalent of charter party hire, for any time lost for repairs.

**Clause 40 (Taxes)**

Charterers are to pay all local, State, National taxes and/or dues assessed on the Vessel or the Owners resulting from the Charterers' orders herein, whether assessed during or after the currency of this Charter Party including any taxes and/or dues on cargo and/or freights and/or sub-freights and/or hire (excluding taxes levied by the country of the flag of the Vessel or the Owners). In the event the Owners/Vessel/her flag state are exempt from any taxes, the Owners shall seek such exemption and filing costs for such exemption, if any, shall be for the Charterers' account and no charge for such taxes shall be assessed to the Charterers.

While the charterers are liable for all taxes other than those that are directly attributable to the owners (such as taxes on the ship levied by the flag state), a new final sentence has been added to the clause requiring the owners to seek any entitlements to exemption from taxes so that the charterers may benefit from the exemption.

**Clause 41 (Industrial Action)**

In the event of the Vessel being delayed or rendered inoperative by strikes, labor stoppages or boycotts or any other difficulties arising from the Vessel's ownership, crew or terms of employment of the crew of the chartered Vessel or any other vessel under the same ownership, operation and control, any time lost is to be considered off-hire. The Owners guarantee that on delivery the minimum terms and conditions of employment of the crew of the Vessel are in accordance with the International Labour Organization Maritime Labour Convention (MLC) 2006, and will remain so throughout the duration of this Charter Party.

This new provision addresses the potential consequences of industrial action resulting from the terms and condition of employment of the crew and extends to other ships owned or operated by the owners – effectively placing the ship off-hire in the event of a delay to the ship due to these factors.

**Clause 42 (Stowaways)**

- (a) If stowaways have gained access to the Vessel by means of secreting away in the goods and/or containers or by any other means related to the cargo operation, this shall amount to breach of this Charter Party. The Charterers shall be liable for the consequences of such breach and hold the Owners harmless and keep them indemnified against all claims; costs (including but not limited to victualing costs for stowaways whilst on board and repatriation); losses; and fines or penalties, which may arise and be made against them. The Charterers shall, if required, place the Owners in funds to put up bail or other security. The Vessel shall remain on hire for any time lost as a result of such breach.
- (b) Save for those stowaways referred to in Sub-clause (a), if stowaways have gained access to the Vessel this shall amount to a breach of this Charter Party. The Owners shall be liable for the consequences of such breach and hold the Charterers harmless and keep them indemnified against all claims; costs; losses; and fines or penalties, which may arise and be made against them. The Vessel shall be off-hire for any time lost as a result of such breach.

This Clause allocates responsibility and liability for any costs associated dealing with stowaways. While the means by which stowaways gains access to a ship is not always apparent after the event (and stowaways may not always be too forthcoming about how they got on board), the clause allocates the responsibility to the charterers if it is evident that the stowaway hid themselves in the cargo to get on board, and to the owners if access to the ship was gained by any means other than cargo related.

The presence of stowaways can expose the owners to fines, delays, and repatriation costs. These costs are normally recoverable by the owners from their P&I Club, subject to a deductible. This clause apportions the liability more equally in the case of a time charter where the charterers are issuing orders for employment. The owners still have a duty to search for stowaways and take steps to remove them, but if the stowaways have gained access to the ship via the cargo or cargo related operations then the costs can be recovered from the charterers.

**Clause 43 (Smuggling)**

- (a) In the event of smuggling by the Master, other Officers and/or ratings, this shall amount to a breach of this Charter Party. The Owners shall be liable for the consequences of such breach and hold the Charterers harmless and keep them indemnified against all claims, costs, losses, and fines and penalties which may arise and be made against them. The Vessel shall be off-hire for any time lost as a result of such breach.

Smuggling remains a serious issue in the industry and this new provision for NYPE makes clear that smuggling by the crew is a breach of the charter party. The owners will be responsible for all consequences of the breach, and the ship will be off-hire for any time lost as a consequence of the smuggling activities.

- (b) If unmanifested narcotic drugs and/or any other illegal substances are found secreted in the goods and/or containers or by any other means related to the cargo operation, this shall amount to a breach of this Charter Party. The Charterers shall be liable for the consequences of such breach and hold the Owners, Master, officers and ratings of the Vessel harmless and keep them indemnified against all claims, costs, losses, and fines and penalties which may arise and be made against them individually or jointly. The Charterers shall, if required, place the Owners in funds to put up bail or other security. The Vessel shall remain on hire for any time lost as a result of such breach.

If illegal substances are found in or related to the cargo then it is a breach by the charterers and they will be responsible for the consequences. As the ship and/or crew may be arrested as a result of the discovery of illegal drugs hidden in the cargo, the charterers are required to put up bail or provide other security to secure their release if necessary.

**Clause 44 (International Safety Management (ISM))**

During the duration of this Charter Party, the Owners shall procure that both the Vessel and "the Company" (as defined by the ISM Code) shall comply with the requirements of the ISM Code. Upon request the Owners shall provide a copy of the relevant Document of Compliance (DOC) and Safety Management Certificate (SMC) to the Charterers. Except as otherwise provided in

this Charter Party, loss, damage, expense or delay caused by failure on the part of the Owners or "the Company" to comply with the ISM Code shall be for the Owners' account.

The ISM provision is a basic statement of the law in that the owners are legally obliged to make sure that the ship and the "Company" comply with the ISM Code during the charter period.

#### **Clause 45 (ISPS/MTSA)**

- (a) (i) The Owners shall comply with the requirements of the ISPS and the relevant amendments to Chapter XI of Safety of Life at Sea (SOLAS) (ISPS Code) relating to the Vessel and "the Company" (as defined by the ISPS Code). If trading to or from the US or passing through US waters, the Owners shall also comply with the requirements of the MTSA relating to the Vessel and the "Owner" (as defined by the MTSA).
- (ii) Upon request the Owners shall provide the Charterers with a copy of the relevant International Ship Security Certificate (ISSC) (or the interim ISSC) and the full style contact details of the Company Security Officer (CSO).
- (iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Owners or "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Owners' account, except as otherwise provided in this Charter Party.

This clause covers the requirements in relation to the owners and the charterers in respect of the ISPS Code (the International Code for the Security of Ships and Port Facilities and amendments to Chapter XI of SOLAS). Similarly, in case of trading to or from the U.S., the owners are required to comply with the MTSA Act (US Maritime Transportation Security Act 2002). This applies not only to ships calling at US ports but also to those passing through US waters en route to other destinations.

Compliance with the ISPS Code and the MTSA is a strict obligation on the owners and they are liable for loss, damages, expenses or delays that may result from their non-compliance.

- (b) (i) The Charterers shall provide the Owners and the Master with their full style contact details and, upon request, any other information the Owners require to comply with the ISPS Code/MTSA. Where sub-letting is permitted under the terms of this Charter Party, the Charterers shall ensure that the contact details of all sub-charterers are likewise provided to the Owners and the Master. Furthermore, the Charterers shall ensure that all sub-charter parties they enter into during the period of this Charter Party contain the following provision:

*"The Charterers shall provide the Owners with their full style contact details and, where sub-letting is permitted under the terms of the charter party, shall ensure that contact details of all sub-charterers are likewise provided to the Owners".*

- (ii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account, except as otherwise provided in this Charter Party.

Under a time charter the charterers must provide the owners with information, such as contact details, required to ensure the owners' compliance with the ISPS Code/MTSA. If there is a chain of sub-charters under the time charter then the head charterers must make sure that the sub-charters contain a "back-to-back" provision requiring key information to be passed to the head-owners. Delays, etc, arising out of failure by the charterers or sub-charterers to provide the required information will be for the charterers' account.

- (c) Notwithstanding anything else contained in this Charter Party all delay, costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Charterers' account, unless such costs or expenses result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew, crew visas, the Vessel's flag or the identity of the Owners' managers. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

The ISPS/MTSA Clause provides for a division of responsibility for ISPS Code and MTSA related matters – the owners are responsible for all ship-related ISPS/MTSA matters and the charterers are responsible for all port-related ISPS/MTSA matters. Sub-clause (c) provides that delays, costs and expenses in relation to security measures required by the port(s) or relevant authorities are for the charterers' account. If the port authority because of the current security level at the port requires security guards to be posted on the ship, then this cost is for the charterers. If, however, the reason the guards are required is due to negligence by owners/master/crew or known characteristics such as ports recently visited, or the ship's flag or crew, then the cost is for the owners to bear.

**Clause 46 (Sanctions)**

- (a) The Owners shall not be obliged to comply with any orders for the employment of the Vessel in any carriage, trade or on a voyage which, in the reasonable judgement of the Owners, will expose the Vessel, Owners, managers, crew, the Vessel's insurers, or their re-insurers, to any sanction or prohibition imposed by any State, Supranational or International Governmental Organization.

The purpose of the sanctions clause is to provide the owners with a means to assess and act on any voyage order issued by a time charterer that might expose the Vessel to the risk of sanctions. The test is one of "reasonable judgement" by the owners in determining whether the risk of the imposition of sanctions is tangible.

- (b) If the Vessel is already performing an employment to which such sanction or prohibition is subsequently applied, the Owners shall have the right to refuse to proceed with the employment and the Charterers shall be obliged to issue alternative voyage orders within forty-eight (48) hours of receipt of the Owners' notification of their refusal to proceed. If the Charterers do not issue such alternative voyage orders the Owners may discharge any cargo already loaded at any safe port (including the port of loading). The Vessel to remain on hire pending completion of the Charterers' alternative voyage orders or delivery of cargo by the Owners and the Charterers to remain responsible for all additional costs and expenses incurred in connection with such orders/delivery of cargo. If in compliance with this Sub-clause (b) anything is done or not done, such shall not be deemed a deviation.

As sanctions are often brought into force within a short period of time, the clause covers the application of sanctions after the Vessel has begun an employment under the charter. Whether the sanctions existed at the time the order of employment was issued or whether they were subsequently applied, the owners will have the right not to comply with such orders or to refuse to proceed. The owners must advise the charterers promptly of their refusal to proceed with the voyage and the charterers must provide alternative voyage orders with 48 hours of being notified by the owners.

Failure by the charterers to issue alternative voyage orders will result in the owners having the right to discharge any cargo on board at a safe port at charterers' cost. In all circumstances the ship will remain on hire and the charterers will be obliged to indemnify the owners against any claims brought by the cargo owners or holders of bills of lading or sub-charterers as a consequence of the change of orders or the owners' discharge of the cargo.

**Clause 47 (Designated Entities)**

- (a) The provisions of this clause shall apply in relation to any sanction, prohibition or restriction imposed on any specified persons, entities or bodies including the designation of specified vessels or fleets under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America.

The Designated Entities Clause applies in respect of persons or entities (including designated vessels), regardless of where they operate from, whose activities are restricted or prohibited and are identified under United Nations Resolutions, European Union laws and regulations or by the United States of America. It can be seen as a complement to Clause 46 (Sanctions) above which applies to sanctions imposed against certain trades/cargoes.

- (b) The Owners and the Charterers respectively warrant for themselves (and in the case of any sublet, the Charterers further warrant in respect of any sub-charterers, shippers, receivers, or cargo interests) that at the date of this fixture and throughout the duration of this Charter Party they are not subject to any of the sanctions, prohibitions, restrictions or designation referred to in Sub-clause (a) which prohibit or render unlawful any performance under this Charter Party or any sublet or any Bills of Lading. The Owners further warrant that the nominated vessel, or any substitute, is not a designated vessel.

The clause sets out a requirement for the owners and the charterers respectively to warrant that they are not designated entities. The warranty continues throughout the currency of the charter party. Lists of designated persons and entities are liable to be updated and amended at frequent intervals; details are publically available and, as appropriate, can be monitored.

- (c) If at any time during the performance of this Charter Party either party becomes aware that the other party is in breach of warranty as aforesaid, the party not in breach shall comply with the laws and regulations of any Government to which that party or the Vessel is subject, and follow any orders or directions which may be given by any body acting with powers to compel compliance, including where applicable the Owners' flag State. In the absence of any such orders, directions, laws or regulations, the party not in breach may, in its option, terminate the Charter Party forthwith or, if cargo is on board, direct the Vessel to any safe port of that party's choice and there discharge the cargo or part thereof.

In the event that a party is, or becomes, identified as a designated person or entity, or a designated Vessel, the clause provides flexibility for the innocent party to act as necessary in the circumstances. It is assumed that, in most cases, guidance will be requested from regulatory authorities but, where this is not available, the charter party can be terminated forthwith or the vessel redirected for discharge of any offending cargo.

- (d) If, in compliance with the provisions of this Clause, anything is done or is not done, such shall not be deemed a deviation but shall be considered due fulfilment of this Charter Party.
- (e) Notwithstanding anything in this Clause to the contrary, the Owners or the Charterers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.

In contrast to international agreement on designated entities, some states apply their own anti-blocking or similar legislation to counter the effects of a boycott or other targeted action affecting their trading interests. The clause therefore includes a provision that parties shall not be required to break their own laws. This is a potentially difficult area and legal advice is likely to be needed in the event of tension between regulatory obligations.

- (f) The Owners or the Charterers shall be liable to indemnify the other party against any and all claims, losses, damage, costs and fines whatsoever suffered by the other party resulting from any breach of warranty as aforesaid.
- (g) The Charterers shall procure that this Clause is incorporated into all sub-charters, contracts of carriage and Bills of Lading issued pursuant to this Charter Party.

Sub-clause (f) contains the customary liberty and indemnity provisions. However, while the owners and the charterers each undertake to indemnify the other for any breach of warranty, this is unlikely to be enforceable where one of the two contracting parties is or becomes designated and, therefore, no longer able to receive or make any payments. Nevertheless, the provision could have effect where, for example, a breach is attributable to the charterers' cargo interests.

**Clause 48 (North American Advance Cargo Notification)**

- (a) If the Vessel loads or carries cargo destined for the US or Canada or passing through US or Canadian ports in transit, the Charterers shall comply with the current US Customs regulations (19 CFR 4.7) or the Canada Border Services Agency regulations (Memorandum D3-5-2) or any subsequent amendments thereto and shall undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and expense:
  - (i) have in place a Standard Carrier Alpha Code (SCAC)/Canadian Customs Carrier Code;
  - (ii) for US trade, have in place an International Carrier Bond (ICB);
  - (iii) provide the Owners with a timely confirmation of (i) and (ii) above as appropriate; and
  - (iv) submit a cargo declaration by Automated Manifest System (AMS) to the US Customs or by ACI Automated Commercial Information (ACI) to the Canadian customs, and provide the Owners at the same time with a copy thereof.

The customs notification requirements for cargoes imported into or passing through the United States or Canada are provided for in this harmonised clause for North American trades. The clause sets out the charterers' requirements to have in place a carrier code and an International Carrier Bond (for the US only) and to submit a cargo declaration to the customs authorities in advance of the ship's arrival. The charterers assume the role of the carrier only for the purpose of complying with the customs regulations relating to cargo. They assume this role because they are the party that will have arranged the cargo for the ship and will, therefor, have the necessary information to hand to comply with the regulations. It has no bearing on the "carrier" identified under a bill of lading issued under the time charter party.

**Clause 49 (U.S. Census Bureau Mandatory Automated Export System (AES))**

The US Census Bureau covers cargo notification requirements for exports from the United States only, but otherwise follows the provisions and procedures of the North American Advance Cargo Notification Clause above.

**Clause 50 (EU Advance Cargo Declaration Clause for Time Charter Parties 2012)**

This provision addresses the European Union equivalent of the US customs notification regime for imports and exports, compliance with which is required for cargoes either loaded at a EU port or destined for a EU port or a cargo passing through EU ports. The charterers are the party responsible for complying with the cargo notification requirements in accordance with the EU Regulations.

**Clause 51 (Ballast Water Exchange Regulations)**

If ballast water exchanges are required by any coastal state where the vessel is trading, the Owners/Master shall comply with same at the Charterers' time, risk, and expense.

With increasing focus on controlling the spread of invasive marine species carried in ballast water and the implementation by a number of coastal states of ballast water regulations, this new provision for NYPE allocates the time, risk and expense of obligatory ballast water exchanges for the charterers' account on the basis that they are determining the employment of the ship.

**Clause 52 (Period applicable Clauses)**

NYPE 2015 is designed both for "trip" (single voyage) and "period" (generally multiple voyage) time charter agreements. The majority of clauses in the charter party apply to trip and period charters. In the case of period charters extending over longer periods of time, however, there are a number of special provisions that the parties should take carefully into account.

The point in time in which "period" charter provisions should apply has been set at a minimum period of five months. If the period exceeds this number of months then the four "period applicable" clauses are given effect – namely last voyage; drydocking; addition of off-hire; and charterers' "colors".

Parties should carefully consider when negotiating the charter party and agreeing on durations whether they think a five-month minimum period is appropriate to their business. The figure of five months has been chosen to reflect common industry practice, but it may not be appropriate in every case and so parties may wish to amend it to suit their own needs.

If the minimum period of this Charter Party exceeds five (5) months, the following Sub-clauses shall apply:

- (a) Should the Vessel at the expiry of the described employment period be on a ballast voyage to the place of redelivery or on a laden voyage, reasonably expected to be completed within the employment period when commenced, the Charterers shall have the use of the Vessel on the same conditions and at the same rate or the prevailing market rate, whichever is higher, for any extended time as may be necessary for the completion of the last voyage of the Vessel to the place of redelivery.

Last voyage orders and the risk of the ship over-running the agreed charter period are an issue on which many existing standard forms of time charter are silent. For any period of time that extends beyond the agreed maximum period of the charter party, the charterers must pay a rate of hire for the ship equivalent to the current prevailing market rate. It should be noted that this provision applies only in the case of legitimate last orders given by the charterers that were given in the reasonable expectation that they could be completed within the charter period.

- (b) Drydocking

The Owners shall have the option to place the Vessel in drydock during the currency of this Charter Party at a convenient time and place, to be mutually agreed upon between the Owners and the Charterers, for bottom cleaning and painting and/or repair as required by class or dictated by circumstances. (See also Clause 19 (Drydocking)).

For shorter charter periods and trip charters it is uncommon for charterers to agree to the ship being drydocked for non-emergency work as it would otherwise severely restrict their commercial use of the ship. For longer charter periods where the owners are expected to maintain the condition and efficiency of the ship, provision is made in clause 52(b) giving them the option to drydock the ship for essential maintenance purposes at the convenience of both parties.

- (c) Off-hire

The Charterers to have the option of adding any time the Vessel is off-hire to the Charter period. Such option shall be declared in writing not less than one (1) month before the expected date of redelivery, or latest one (1) week after the event if such event occurs less than one (1) month before the expected date of redelivery.

Off-hire time accumulated during the charter can be added to the charter period if the charterers so wish, provided they notify the owners in advance. The charterers will pay hire at the charter party rate for this added time and the redelivery date will be adjusted accordingly.

- (d) Charterers' Colors

The Charterers shall have the privilege of flying their own house flag and painting the Vessel with their own markings. The Vessel shall be repainted in the Owners' colors before termination of the Charter Party. Cost and time of painting, maintaining and repainting those changes effected by the Charterers shall be for the Charterers' account.

In common with many standard forms of time charter, NYPE 2015 permits the charterers on longer period charters to have the option of re-painting the ship with their own “house” colours and flying their company flag.

### **Clause 53 (Commissions)**

A commission of [ ] per cent is payable by the Vessel and the Owners to [ ] on hire earned and paid under this Charter Party, and also upon any continuation or extension of this Charter Party.

An address commission of [ ] per cent on the hire earned shall be deducted by the Charterers on payment of the hire earned under this Charter Party.

The provision relating to broker and address commissions is carried over from NYPE '93. It should be noted that address commission has been re-worded to clarify that it is an agreed reduction (rebate) of the hire that is deducted by the charterers on payment of hire earned, including hire earned as a result of an extension of the charter period.

### **Clause 54 (Law and Arbitration)**

It is essential that parties agree from the outset the law that applies to the charter and the manner in which any disputes arising under the time charter party are to be resolved.

NYPE 2015 provides a comprehensive choice of law and arbitration options reflecting the global market in which the form will be used. The three named choices of London, New York and Singapore represent commonly used applicable laws and related arbitration venues across the globe. Further flexibility is provided by an “open” choice where the parties can select an applicable law and arbitration venue other than the three named.

In view of the importance of agreeing law and arbitration at the time of concluding the agreement to avoid this issue itself becoming a future dispute, the clause defaults to US law and New York arbitration if the parties fail to make or clearly indicate a choice.

All three arbitration venues – New York, London and Singapore – offer a small claims procedure. Parties should note that the size of claims or counter-claims refer to a fixed amount not exceeding US\$100,000 in the case of New York and London and US\$150,000 in the case of Singapore. Should the parties wish to agree different amounts, this must be clearly indicated as an amendment.

### **Clause 55 (Notices)**

All notices, requests and other communications required or permitted by any clause of this Charter Party shall be given in writing and shall be sufficiently given or transmitted if delivered by hand, email, express courier service or registered mail and addressed if to the Owners, to or such other address or email address as the Owners may hereafter designate in writing, and if to the Charterers to [ ] or such other address or email address as the Charterers may hereafter designate in writing. Any such communication shall be deemed to have been given on the date of actual receipt by the party to which it is addressed.

This is a general notice provision dealing with how contractual notices should be given and when they should be treated as received. The use of e-mail is referred to expressly in this notice provision as a common means of exchanging notices between the owners and the charterers (provided they have given an e-mail address in their contact details indicating their acceptance of this method of communications). Parties should use the most appropriate method for sending notices and other communications under the charter party. Although e-mail is perfectly acceptable for most general communications, parties may wish to consider other more traditional methods such as courier service or registered mail for more important notices.

### **Clause 56 (Headings)**

The clause headings used in NYPE 2015 are simply labels describing some or all of the content of a particular clause and are not intended to be taken into account in the interpretation of the charter party.

### **Clause 57 (Singular/Plural)**

To make the charter party easier to read the authors have avoided the practice of using singular terms with pluralisation in parentheses after the term – such as “party(ies)”. Whether a term is to be applied in the singular or plural is determined by the actual context of the clause.

**Annex A (Vessel Description)**

An annex has been added to NYPE 2015 in which it is intended that the owners set out the comprehensive details of the ship. The owners should use the standardised “vessel questionnaire” in Annex A to detail ship-related measurements and information required by the charterers. The parties may also agree to use the owners’ own vessel description or a completed charterers’ questionnaire as Annex A.

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