

BOXTIME 2004

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BOXTIME revised – BOXTIME 2004

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BOXTIME was originally developed in 1990 and was the first standard time charter party designed specifically for container vessels.

BOXTIME has always been considered by the market to be a well-drafted and balanced document providing details that were missing from non-trade specific documents like the NYPE form. Although it has enjoyed good use in certain sectors of the container vessel time charter market, its more widespread adoption has been inhibited by changes in commercial practice not currently reflected in the form.

In 2001 BIMCO appointed a specialised sub-committee to revise and update BOXTIME. The result of this work is BOXTIME 2004 Standard Time Charter Party for Container Vessels which offers modern and comprehensive time charter terms and conditions tailored specifically for the container sector. BIMCO is confident that BOXTIME 2004 will become the document of choice for container vessel time chartering.

The structure and some of the content of BOXTIME 2004 has been modelled on BIMCO's General Purpose Time Charter Party, GENTIME, published in 1999.

BOXTIME 2004 consists of three parts: Part I - box layout for variable information; Part II - for terms and conditions; and Part III - for vessel's description. The following notes summarises the changes and improvements made to BOXTIME and explain some of the reasoning behind the clauses.

Part I

As the written details to be provided in the boxes should be considered against the background of the corresponding clauses in Part II, it is considered more practical to make the observations in connection with the comments to Part II. However, some boxes are new to the form and need to be introduced. Box 6 contains vessel specific details such as flag, size, speed and consumption. Box 17 allows for a list of excluded cargoes in addition to those stated in Clause 4(b). Box 25 has been added in order for the parties to single out the monthly lumpsum allowable in representation expenses and Box 29 states the monthly lumpsum for replacement cost for the vessel's lost or damaged lashings. Finally, Box 30 states the payment per man hour for reefer repair work undertaken by the crew.

Part II

Clause 1 - Period of Charter Party and Delivery

Sub-clause 1(b) *Delivery Place* provides for the place of delivery of the vessel.

Sub-clause 1(c) *Delivery Time* provides for the dates within which delivery must take place. It should be noted that the times to be inserted in Boxes 12 and 13, respectively, are local times and not universal time co-ordinated (U.T.C).

The "interpellation provision" has been revised and is based on the equivalent provision found in GENTIME. The intention behind the interpellation provision is that a vessel at risk of arriving after the cancelling date/time, should not have to proceed on a long voyage towards the delivery place, not knowing whether or not the charterers will accept or cancel the vessel once it has arrived. The interpellation provision provides a mechanism whereby the charterers are required to declare their intention to cancel following the owners' notice that the vessel will be late. This is an important provision, since the basic position under English law is that unless there is a relevant clause in the governing charter party the charterers can wait until the vessel tenders its notice of delivery before they decide whether or not to cancel, thus obliging the owners to make a potential fruitless ballast voyage.

If the owners anticipate with reasonable certainty that the vessel will not be ready for delivery within the agreed date/time then, according to sub-clause (c), the owners can demand that the charterers declare whether they wish to maintain or cancel the charter party. The charterers will have to declare their option within two working days after the owners have given notice of the delay. If the charterers chose to cancel, the owners may save considerable costs in not bringing the vessel to the delivery port and may be able to fix the vessel on another charter at an earlier time. The interpellation mechanism can be invoked repeatedly, if required.

In sub-clause 1(d) *Vessel's condition* the reference to "ISO standard" has been deleted as the vessel should be prepared also to receive containers others than those included by that reference. Furthermore sub-clause (d) stipulates that the vessel will be put off hire until she is in the required condition and that this would be the only remedy available to the charterers. In other words, the charterers would not be able to cancel the charter if the owners failed to deliver the vessel in accordance with this sub-clause.

Clause 2 - Owners' Undertaking

Pursuant to this clause the owners undertake to deliver a vessel which conforms to the description which has been given by the owners in Parts I and III. It is of importance for the charterers' use of the vessel, in particular within the container trade, that details of the vessel provided by the owners are accurate. Accordingly there is a strict obligation on the part of the owners to ensure that, at the time of delivery, the vessel is as described by them.

Clause 3 - Trading Limits

According to sub-clause 3(a) *Trading Limits*, the employment of the vessel is subject to the following restrictions:

(i) Lawful Trades

i.e. the vessel must not be involved in smuggling of passengers or goods, etc.

(ii) Within International Navigating Limits:

i.e. the vessel must only trade within the limits as defined by the Institute of London Underwriters as being the normal trading limits imposed on vessels for hull and machinery purposes without the payment of additional insurance premium. Previously, reference used to be made to Institute Warranty Limits (IWL), however, as of 1 November 2003, these have now been redefined and the name changed to International Navigating Limits (INL).

Sub-clause (b) *Excepted Countries* addresses the problem of blacklisting and boycotts. The charterers will want to ensure that the past employment of the vessel will not affect their intended employment of the vessel. In the original Clause 3, the owners' warranty took effect at the time of signing the charter party. In the revised form, however, the warranty takes effect at the time of delivery.

Clause 4 - Cargo Restrictions and Exclusions

The reference to "ISO standard containers" in Clause 4 in the original BOXTIME resulted in a limitation on business practices since it made only 20' and 40' containers acceptable, whereas high-cube and 45' containers, which are used particularly in the US trade, were excluded. Therefore, the text has been amended to ensure that high cube and 45' containers will not be excluded on the condition that they are in compliance with the International Convention for Safe Containers which already implies ISO Standards for testing and specification of corner fittings. Additionally, it is stipulated that the containers have to be in accordance with the vessel's configuration.

Furthermore, as the transportation of hazardous cargo may potentially be infringing P&I cover, a new provision, sub-clause 4(b) *Excluded Cargoes*, has been inserted based on the GENTIME which provide owners some protection by explicitly listing the relevant cargoes to be excluded. The list includes the usual exclusions as well as chemical and toxic waste.

Finally, in sub-clause 4(d) *Radioactive Goods* "Hull and Machinery cover" was inserted on the same basis as "P&I cover" as certain types of cargo may cause damage not only to other cargo carried but also to the vessel.

Clause 5 - Redelivery

Given its importance this provision, previously found in Clause 6(m), now forms a clause in its own right.

Sub-clause 5(a) *Place of Redelivery* contains the usual provisions pertaining to redelivery of the vessel.

Sub-clause 5(b) *Notices* provides a formula for the notices to be given by the charterers in connection with the redelivery of the vessel. The formula provides the owners with timely information regarding redelivery while at the same time granting the charterers the flexibility necessary to trade the vessel. However, it should be noted that Box 15 in Part I allows the parties to agree to an alternative schedule for notices, if deemed necessary.

Finally, sub-clause 5(d) *Final Voyage* is taken over from the original Clause 7(f). The charterers are expected to arrange the trading pattern of the vessel so that they can redeliver in accordance with the terms of the charter party. However, recognising that even the best planned schedule can be disrupted, this sub-clause attempts to provide for such eventuality.

Clause 6 - Owners' Obligations

The Preamble has been amended to make it clear that the owners' obligation in respect of maintaining the vessel after delivery is one of "due diligence".

Sub-clause 6(a) *Lashings* is based on the original Clause 10(a) and (d)(ii) and stipulates that the owners undertake to provide and pay the cost of making sufficient lashings and securing equipment available throughout the charter party period. Furthermore, sub-clause (a)(ii) prescribes that the Master is obliged to supervise the stevedores and to ensure that lashings are checked regularly when the vessel is at sea, subject to prevailing weather conditions. The term "supervise" should be interpreted in a practical sense, i.e., that crew and Master must assist in case the charterers encounter problems during the lashing operations, which, e.g., require in-depth knowledge of the vessel's configuration or equipment. However, it is important to note that this Clause does not regulate liability for lashings; this issue is dealt with under the liability provisions in Clauses 18 and 19. Finally, sub-clause 6(a) must be read in conjunction with Clause 7(c) *Lashings* which sets out the charterers' obligations concerning lashings.

Sub-clause 6(b) *Crew Assistance* contains a catalogue of provisions setting out to what extent the owners will have to provide and pay crew assistance on the request of the charterers in connection with the loading and discharging operations, bunkering, etc., provided port and local labour regulations permit.

In relation to sub-clause 6(c) *Documentation*, any vessel employed to trade internationally needs a substantial amount of documentation if it is to proceed and operate without hindrance. Provision of documentation relating to the vessel is the responsibility of the owners, whilst the documentation relating to goods in containers is the responsibility of the charterers.

In view of legislative developments particularly in the US, i.e. the enactment of the Anti-Drug Abuse Act 1986, specific reference has been made to smuggling under sub-clause 6(f) *Smuggling*. Fines imposed under the Anti-Drug Abuse Act 1986 may be considerable and it is therefore a matter which both the owners and the charterers should consider carefully if the trading area includes the United States.

Clause 7 - Charterers' Obligations

Experience shows that the Master is not always kept informed by the charterers about the details of the goods in the containers loaded on board the vessel until just before departure of the vessel. Sub-clause 7(a) *Provision of Details of Containers and Goods* therefore grants the Master the right to demand the necessary information about goods in containers including their weight and stowage positions, at the earliest possible time.

Sub-clause 7(b) *Stevedoring* is taken over from the old Clause 10(d)(i). The sub-clause, which must be read in conjunction with the provisions of Clause 6(a)(ii), provides for the charterers to pay for all stevedoring.

Sub-clause 7(c) *Lashings* is based on the original Clause 10(b) with the addition that lashings supplied by the charterers must be approved by a classification society and be in good working order. The sub-clause provides for the charterers to supply any special lashings, for instance such as would be required for uncontainerised goods. In the event that the charterers have supplied non-standard lashings, or any other gear, equipment or stores, they should be entitled to expect the Master to care for them and redeliver such gear on demand in the same condition as supplied, fair wear and tear excepted.

A provision has been included in sub-clause 7(d) *Condition of Containers* to provide for reefer containers to have passed a "pre-trip inspection". This is intended to enhance the quality of containers presented for carriage, thus limiting the number of situations where the owners would have to undertake overhaul and serious maintenance of low-standard reefer containers.

The wording of sub-clause 7(e) *Stowage in Containers* is based on the BIMCO Containers Clause 2002.

Sub-clause 7(j) *Advances to Master* takes into account that it is not possible in all ports for the charterers' agents to put the Master in funds. Additionally, the last sentence stipulates a 2½ per cent commission payable to the charterers. The old reference "for disbursements" has been deleted as the Master should be entitled to use such funds for whatever purpose he deems necessary.

Sub-clause 7(k) *Contraband* complements Clause 6(f) and sets out in which event the charterers should be responsible when contraband and/or unmanifested drugs or goods have been shipped on board the vessel.

Clause 8 - Hire

As the vessel may be delivered in one time zone and redelivered in another, sub-clause 8(a) *Rate* stipulates that the local times of delivery and redelivery have to be converted to UTC to facilitate the accurate calculation of the total time on hire for hire payment purposes.

In sub-clause 8(b) *Payment* the payment schedule is now "15 days" rather than the original "semi-monthly" simply for accounting purposes.

Sub-clause 8(c) *Default* contains an anti-technicality provision based on provisions found in the recent BPTIME 3 tanker time charter party. The BOXTIME 2004 reflects the normal sequence of events, which is that the owners suspend services before they decide to withdraw the vessel. Secondly, it states that if the owners exercise their right to suspend services this will not be construed as a waiver of their right to subsequently withdraw. This is important since under English law the owners may otherwise have no right to withdraw in respect of a continuing failure to pay hire or subsequent late hire payments.

In sub-clause 8(e) *Redelivery Adjustment* the final sentence provides that any undisputed difference shall be settled within thirty days after redelivery of the vessel acknowledging that a disputed amount will probably never be paid in time anyway.

Clause 9 - Off Hire

Sub-clause 9(a) *Unable to Comply with Instructions* deals with the traditional events leading to off-hire, i.e., defects affecting or preventing the operation of the vessel due to damage, malfunction or lack of maintenance of the vessel or due to deficiency of the Master, officers or crew. However, the provision also specifically addresses the situations where the vessel may have been arrested as a result of a claim by a third party.

In this case the vessel will be off-hire, unless the owners can prove that the charterers or any of their servants were the ultimate cause of the arrest. The philosophy behind this clause is that if an event affects the charterers' full use of the vessel and prevents the owners from complying with the charterers' instructions at all, then the vessel shall be off hire, but in the event it only partially affects the charterers' use of the vessel, then the vessel shall be off hire only to the extent such incidents affect the charterers' use of the vessel.

Sub-clause 9(b) *Deviation* contains the usual provisions in relation to deviation.

It occasionally happens that vessels are requisitioned by governments or governmental authorities not only for the purpose of war but for other purposes as well. In the event that such a situation arises during the charter party period, it has the effect of frustrating the balance of the charter party. Consequently, sub-clause 9(c) *Requisition* gives the charterers the option to cancel the balance period, provided that they exercise such an option within 14 days after being advised of the requisition of the vessel.

The Blocking and Trapping provision originally found in sub-clause (c) has been removed as it could otherwise result in a certain degree of inconsistency vis-à-vis the provisions of Clause 25 (War Risks). However, because the charterers will be held liable for additional premiums only under Clause 25 (War Risks), and not for the basic loss of hire insurance which is only beneficial to the owners, it is of paramount importance that the owners make it a condition

for going into a war risks area that the charterers agree to take out extra insurance.

Clause 10 - Loss of Vessel

This clause contains the usual provisions in respect of termination of hire if the vessel is lost or becomes a constructive total loss.

Clause 11 - Vessel's Gear and Equipment

An increasing number of laws and regulations require vessels to hold up-to-date and valid certificates relating to the vessel's cargo gear and related equipment. The owners are therefore reminded to ensure that the vessel is at all times during the currency of the charter party in possession of valid certificates to comply with such laws and regulations. As the owners have no means of ensuring that each and every local regulation is complied with, sub-clause 11(a) *Regulations* specifies that the vessel's cargo gear and related equipment shall be in compliance with the law and national regulations of the countries to which the vessel trades.

According to sub-clause (b) *Breakdown of Vessel's Gear* the owners must exercise due diligence in maintaining all cargo handling gear in good working order. It is not unusual that, in the course of cargo operations, the vessel's gear may suffer partial breakdown. Whereas the vessel is able to render the services required, albeit in part, a temporary gear deficiency may result in loss of time to the charterers.

It should be noted that in the event of a breakdown, unless such breakdown has been caused by the negligence of the charterers or any of their servants, the charterers have an option either to accept the delay against reduction of hire or to expedite matters by working with shore gear in which case the Vessel remains on hire.

If the charterers decide to continue by working with shore gear, the owners must pay the cost of shore cranes, but only to the extent that such costs do not exceed the amount of hire for that period. If charterers do not make use of such option but rather prefer to utilise the vessel's gear as available, it should be noted that the loss of time to which charterers are entitled to recoup themselves is the actual time lost. In this context, as with other BIMCO approved time charter parties, it is the vessel's impaired state which is the deciding factor when assessing the degree of off-hire.

A number of container terminals operate on a 24 hour shift basis. Consequently, there is a need to ensure that the vessel has sufficient lighting to facilitate 24 hour working and which complies with the regulations of the port. According to sub-clause 11(d) *Lighting*, the owners must provide, at their expense, sufficient lighting to permit 24 hour working.

Clause 12 - Bunker Fuel

Sub-clause 12(a) *Quantity at Delivery/Redelivery* provides that the quantities of fuel at delivery and redelivery should be about the same, subject to the vessel on redelivery having enough fuel to safely reach the nearest port where bunkers of the required type or better are available.

Sub-clause 12(b) *Bunkering prior to Delivery/Redelivery* contains an additional provision allowing the charterers and the owners to bunker prior to delivery and redelivery, respectively. In both cases the bunkering should be done without hindrance to the other party's operation of the vessel.

In view of the problems often associated with bunkering, BOXTIME 2004 provides more extensive guidelines for the bunkering operation in sub-clause 12(d) *Bunkering*.

Furthermore, specific reference has been made to sampling procedures bearing in mind the corresponding provisions of the BIMCO Standard Bunker Contract.

Although the bunker contract is a matter between the time charterers and the fuel suppliers, the vessel's crew and, in particular, the chief engineer have an important role to play. By actively assisting the charterers in their dealings with the suppliers they will act in the best interest of the owners. The Clause attempts to address this issue by requiring the chief engineer to co-operate with the charterers' bunkering agents and fuel suppliers.

Furthermore, sub-clause (d)(iv) stipulates that the owners are entitled to participate in a fuel testing programme and that the cost of the tests is to be split between the parties, with both parties sharing the result.

Sub-clause 12(e) *Liability* is an important provision as it places full liability on the charterers for any loss or damage suffered by the owners caused by the supply of unsuitable fuel. Thus, if the charterers provide bunkers in accordance with the specifications, but nevertheless cause damage to the engines, e.g., due to additives by the bunker supplier, then liability will still rest with the charterers. Furthermore, the owners will not be held liable for any reduction in performance or any other consequences arising as a result thereof. Nevertheless, the burden rests with the owners to prove that unsuitable fuel was the proximate cause of loss or damage; hence the importance of proper sampling procedures.

Finally, the BIMCO Fuel Sulphur Content Clause is incorporated as new sub-clause 12(f). The BIMCO Fuel Sulphur Content Clause is designed to protect the owners under a time charter party against the consequences of the charterers supplying the vessel with fuel oils with higher sulphur content than permitted within the geographical area in which the charterers are trading the vessel. For further information regarding the BIMCO Fuel Sulphur Content Clause, please refer to BIMCO Bulletin No. 5/2004 page 12.

Clause 13 - Master

This is a general clause dealing with the Master and his obligations. It spells out his obligation to maintain, at all times during the charter party, a seaworthy vessel and emphasises his obligation to follow the orders of the charterers in their commercial use of the vessel. However, where the charterers give instructions which may compromise the vessel's safety or protection of the environment, the Master has the right to disregard such instructions. The last paragraph stipulates that the Master must comply with the reporting procedures of any weather routing scheme that the charterers subscribe to.

Clause 14 - Charterers' Requirements

The clause lists a long catalogue of charterers' requirements, most of which are self-explanatory. However, it may be noted that sub-clause 14(b) *Flag, Funnel and Name* no longer contains reference to configuration of the vessel as this is rarely done in practice and, in any case, requires the owners' prior approval.

Additionally, in sub-clause 14(g) *Supercargo, Communication Facilities and Victualling* all three items mentioned refer to one lumpsum as agreed in Box 24.

Sub-clause 14(h) *Representation* covers situations where the Master is obliged to provide articles to officials and other individuals to ensure a smooth operation with a minimum of delay. This is clearly to the charterers' advantage and such representation is to be settled by payment of the lumpsum amount agreed in Box 25. Additionally, the charterers must indemnify the owners against all consequences and/or liabilities arising from such representation.

Subject to the prior consent of the owners, sub-clause 14(i) *Inspections* allows the charterers to perform an inspection of the vessel. It is, however, important to note the limited scope of such an inspection as given by the qualifying word "superficial". Otherwise, the charterers could use this provision to undertake quite substantial inspections.

Clause 15 - Owners' Requirements

The owners must have the right to take the vessel out of service for essential maintenance and repairs. In the event of emergency repairs, these can be done immediately, whereas the charterers must be consulted in respect of less urgent matters. However, whenever the owners take the vessel out of service for repairs or maintenance, this will lead to an off-hire situation; hence the reference in sub-clause 15(a) *Maintenance* to sub-clause 9 (a)(i).

In respect of sub-clause 15(b) *General Average* it is important to note that the BOXTIME 2004 refers exclusively to the York-Antwerp Rules (YAR) 1994 and not the new YAR 2004. The reason is that in BIMCO's opinion the YAR 2004 are less favourable to owners than YAR 1994.

Sub-clause 15(c) *Salvage* addresses the situation which arises if the vessel renders salvage operations to a third party. Such services involve both the owners and the charterers' interests and accordingly the sub-clause provides for an equitable distribution of costs and benefits between the parties.

Sub-clause (d) *Lien* contains the usual provisions regarding lien on cargo except that the owners' lien on cargo extends to the period after the cargo has been discharged.

Clause 16 - Sundry Matters

Sub-clause 16(a) *Watchmen* states that the cost of compulsory watchmen is to be borne by the charterers as this cost relates to the charterers' trading of the vessel.

Due to the heightened awareness of environmental issues, sub-clause 16(b) *Compulsory Garbage Removal* has been inserted. The clause requires the charterers to pay compulsory garbage removal costs unless the owners actually discharge garbage at the particular port.

Sub-clause (c) *Stowaways* is based on the BIMCO Standard Stowaways Clause for Time Charters. Due to the continuing trend of stowaways incidents, which can result in substantial costs to the owners, it is important that the problem of stowaways is adequately dealt with contractually.

The stowaways clause has been drafted on the basic premise that since it is the charterers who are in control of the vessel's employment and that the charterers may be in a position to actively contribute to reducing the risks of stowaways gaining access to the vessel, not all liability should rest with the owners.

Sub-clause 16(f) *Anti-Drug Clause* - The smuggling of narcotic drugs and other illegal substances continues to plague the industry. The sub-clause is based on the BIMCO U.S. Anti Drug Abuse Act 1986 Clause for Time Charters and, like the stowaways clause referred to above, it distributes the responsibilities between the owners and the charterers on the basis that it is the charterers who are in control of the vessel's trading pattern and that they are able to actively contribute to preventing unmanifested narcotic drugs finding their way on board the vessel.

Furthermore, the BIMCO Standard Double Banking Clause has been incorporated as new sub-clause 16(g). This clause entitles the charterers under certain circumstances to order the vessel to remain alongside another vessel for transhipment, loading, discharging and bunkering.

Sub-clause 16(h) *Damage to Vessel/Equipment* set out the various degrees of stevedore damage in relation to their effect on the seaworthiness or trading ability of the vessel and provides appropriate remedies.

In accordance with common practice, sub-clause (h)(i) makes it a condition that in order for the owners to hold the charterers responsible, the Master must have notified the charterers or their agents within 24 hours of such stevedore damage occurring or, if not immediately detected, as soon as possible - but not later than when the damage could have been detected by the exercise of due diligence. However, according to the last paragraph of sub-clause (h)(i), notification is not required in case a lumpsum has been agreed and stated in box 29 in respect of replacement cost for lost or damaged lashing or securing equipment.

It is common knowledge that it is often difficult for the Master to persuade stevedores to acknowledge damage caused by them. However, he must use his best endeavours to obtain their written acknowledgement in such cases.

Finally, in response to the entry into force of the ISPS Code, sub-clause 16(i) incorporates the BIMCO ISPS Clause for Time Charter Parties, which is widely accepted in the industry. For more information on the BIMCO ISPS Clause for Time Charter Parties, please see BIMCO Bulletin No. 6/2003 page 36.

Clause 17 - Bills of Lading, Waybills and Other Contracts of Carriage

This clause is new and is derived from GEN-TIME and the original Clause 14(b). As a free-standing clause it puts obligations on both parties to the contract as well as the Master.

The wording of Clause 17(a)(i) *Signing Contracts of Carriage* has been brought into line with common practice in the container trade. Rather than authorising the charterers in writing to sign bills of lading on the owners' behalf, the charterers are now automatically authorised to do so. In practice, it is the charterers who sign the bills of lading by standing authority of the owners. Consequently, the wording reflects this, coupled with an express indemnity to protect the owners in situations where they sign bills of lading as presented, as was the case in the original BOXTIME.

Whereas sub-clause (a)(i) authorises the charterers to issue bills of lading, waybills, through or multimodal transport documents, sub-clause 17(a)(ii) makes it clear that in the event the owners have authorised the charterers to issue through or multimodal transport bills of lading extending the owners' responsibility for the cargo beyond the period it is on board their vessel, the charterers must indemnify the owners for any loss, damage or expense which

may result.

Sub-clause 17(a)(iii) is meant to protect the owners against any cargo liability in excess of the Hague or Hague-Visby Rules in circumstances where the time charterers, for whatever reason, have voluntarily applied the Hamburg Rules or similar legislation in their contract of carriage with the cargo interests. However, where the Hamburg Rules or similar legislation have compulsory application as a result of the location of the port of shipment or in some jurisdictions because of the port of discharge, the owners will have to absorb the liabilities up to and also in excess of the Hague or Hague-Visby Rules.

As the owners are not the party preparing bills of lading with the owners of the goods, the owners may wish to be assured that the charterers' bills of lading contain the usual protective clauses. Sub-clause 17(a)(iv) therefore lists a number of clauses which must be included in the charterers' bills of lading with their customers.

For the same reasons as mentioned in connection with Clause 15(b) *General Average*, sub-clause 17(a)(iv)(3) refers exclusively to the York-Antwerp Rules 1994.

Clause 18 - Charterers' Responsibilities/Liabilities and Clause 19 - Owners' Responsibilities/Liabilities

Clauses 18 and 19 (Charterers' and Owners' Responsibilities/Liabilities) provide the backbone of BOXTIME 2004 in respect of the distribution of liabilities between the owners and the charterers. The provisions are very comprehensive and take into account in Clause 18 that the charterers in the container trade often take over the handling and conduct of claims.

The intent behind sub-clauses 18(a) *Claims* and 18(b) *Claims Handling* is that the charterers are responsible up front for all claims that may arise from third parties and that they must undertake the handling, defence and settlement of such claims, which is in accordance with trade practice. In other words, the charterers will be ultimately responsible vis-à-vis the owners for all third party claims that the owners are not responsible for in accordance with the provisions of Clause 19 (Owners' Responsibility/Liabilities).

The provisions also have the effect of covering the issue of liability for delivery of cargoes without the presentation of the bill of lading. In the container trade it appears to be common practice for the carriers to deliver containers into a terminal/warehouse that may or may not be controlled by charterers' agents without presentation of the bill of lading. Although the time charterers may act as the carriers under the relevant bills of lading, it is necessary to provide protection in the charter in the form of a right of recourse by the carriers against the time charterers in the event of a claim for misdelivery of goods. It is felt that the broad wording of Clause 18(a) referring to "all third party claims" would offer the level of protection needed by the owners in such cases.

To balance the clause between the parties, an express indemnity, which is fundamental to the charterers, who will be confronted with third party claims "up front", has been incorporated in Clause 18(a) *Claims*. Furthermore, in Clause 18(b) *Claims Handling* wording has been introduced to avoid any concern over the possibility of charterers assuming responsibility over limitation proceedings that could conflict with the provisions of Clause 19(f) *Limitation Proceedings*. This is also to the charterers' benefit since in some countries only the owners are entitled to limit, so the charterers are better off allowing the owners to lead any limitation proceedings.

Finally, Clause 18(g) *Personal Injury* stipulates under which circumstances charterers should indemnify owners with respect to death or personal injury of crew members. A parallel provision for the owners is found in Clause 19(c) *Personal Injury*.

Clause 19(a) *Containers and Goods* provides a conclusive list of losses, damages and expenses for which the owners are liable. Accordingly, sub-clauses (a)(i) and (ii) make the owners liable if they fail to exercise due diligence in providing a seaworthy and cargoworthy vessel, and fail to carry, keep and care for the containers and goods while on board the vessel. The owners are also liable for unreasonable deviation and for supplying defective lashing equipment or improper lashing pattern design. Sub-clause 19(a)(v) takes a balanced approach by placing a due diligence obligation on the owners to ascertain that containers are properly lashed. Finally, irrespective of whether the stevedores are considered to be the charterers' servants, it is ultimately the owners' obligation to make sure that the vessel is seaworthy at the commencement of the voyage.

Sub-clause 19(b) *Charterers' Cargo* is new and covers the situation that the cargo carried by the owners is the property of the charterers. In those circumstances the owners shall be afforded the same protection under the Hague-Visby Rules as if they carried cargo belonging to a third party.

The limitation provisions in sub-clause 19(d)(i) have been updated to reflect the limits in the Hague-Visby Rules.

Sub-clause 19(e) Cargo Claims and Time Bar - The first part of the clause contains a definition of a cargo claim for the purpose of sub-clause 19(e). The definition corresponds to the definition found in the Inter Club Agreement which clarifies that costs as part of a cargo claim is (1) any legal costs or interests claimed by the original claimant making such claim; and (2) all legal, Club correspondents' and experts' costs reasonably incurred in the defence or settlement of the claim made by the original claimant, but not costs incurred in making a claim or in seeking indemnity under the charter party. The second part of the Clause provides for either party to progress any cargo claim against the other within two years from the day when the cargo was or should have been delivered. However, realising that a cargo claim may be brought by a third party under the Hamburg Rules, which provide a time bar of two years, the time bar for claims between the owners and the charterers has been extended to three years where the Hamburg Rules apply compulsorily.

Clause 20 - Refrigerated Goods

This is a new clause which has been incorporated to specifically deal with refrigerated goods. The clause, which is based on former Clause 17(b), also provides for the charterers to furnish the owners with instructions as regards the temperature setting of each reefer container and any cooling/carriage instructions to be maintained during the voyage.

Clause 21 - Exceptions

This is a general exceptions clause referring to responsibility for loss, damage, delay or failure in the performance of the charter party. It prevents the parties from raising any claims for damages against each other if the loss, damage, delay or failure in the performance results from any of the causes listed in the second paragraph. As regards the special owners' exceptions in the fourth paragraph, the clause follows the principles of the Hague-Visby Rules.

There are two important matters to be emphasised in connection with this clause. First of all, the clause deals with all claims other than cargo claims. Cargo claims have been exhaustively dealt with in Clauses 18 and 19 (Charterers' and Owners' Responsibilities/Liabilities). Secondly, the provisions of this clause do not in any way refer to the counting of hire which is affected only by the provisions of Clause 9 (Off-hire).

It is important to make it entirely clear that the Exceptions Clause only relates to claims other than cargo claims. So, BOXTIME 2004 provides for the traditional Hague-Visby defences such as error in navigation or management of the vessel also in respect of claims other than cargo claims.

Clause 22 - Navigation

This clause contains very important provisions in respect of the owners' responsibility for the vessel's navigation and for the due performance of other services such as pilotage and towage.

Clause 23 - Insurances

Only a few amendments of a substantial nature have been made to this clause. In sub-clause 23(a) *Hull and Machinery* special provision has been made for Charterers' Liability to Hull, acknowledging the fact that this does not normally form part of the charterers' P&I cover.

Sub-clause 23(c) *War Risks*, which stems from the original BOXTIME, stipulates that the owners *warrant* that the vessel is insured against war risks, whereas Clause 25(d)(i), which forms part of BIMCO's recently revised Standard War Risks Clause (CONWARTIME 2004), makes it *optional* for the owners to insure against such war risks. To overcome this apparent discrepancy without changing the concept of a standard clause, a preamble has been introduced in sub-clause (c) stipulating that, notwithstanding the provisions of Clause 25(d)(i), the owners shall insure the vessel against war risks and war P&I risks.

Clause 24 - BIMCO General Ice Clause for Time Charter Parties

This clause is the BIMCO General Ice Clause for Time Charter Parties, adopted by the Documentary Committee in November 2004. More information on this clause can be found in BIMCO Bulletin No. 6/2004 page 42.

Clause 25 - War Risks (CONWARTIME 2004)

BIMCO's CONWARTIME 2004, also adopted by the Documentary Committee in November

2004, replaces the original War Clause in BOXTIME. The new clause makes reference to, i.a., acts of terrorist. More information on this clause can be found in BIMCO Bulletin No. 6/2004 page 58.

Clause 26 - Dispute Resolution Clause

This clause, previously the "Law and Arbitration Clause", is the latest edition of BIMCO's standard suite of dispute resolution provisions. In addition to BIMCO's Law and Arbitration Clause 1998, the provision incorporates a new mediation clause. The mediation provision is designed to function in conjunction with the chosen arbitration option, whether that be English law, London arbitration; US law, New York arbitration; or law and arbitration as agreed. Mediation is a technique that is recognised as offering savings in costs and time over traditional methods of dispute resolution for certain types of disputes. BIMCO's mediation provision is only triggered once arbitration proceedings have commenced and then runs in parallel with those proceedings, if the parties so choose. This has been done to ensure that one party cannot invoke mediation as a delaying tactic. It also provides for the parties to mediate on all or just some of the issues being arbitrated on.

For a fuller description of the BIMCO Standard Dispute Resolution Clause, please see BIMCO Bulletin No. 1/2002 page 7.

Clause 27 - Commission

This clause reflects the way in which commission is usually dealt with in practice.

Clause 28 - Notices

This is a standard BIMCO clause dealing with the methods to be used for writing and sending notices.

Part III

The description clause previously found in Part III often did not fit with the relevant vessel's requirements and was invariably replaced by the parties' own form layout. Consequently, Part III now contains a blank space for the parties to fill in as they deem fit.

Withdrawal Notice

Finally, it should be noted that the original BOXTIME will be officially withdrawn on 31 July 2005 following a 6 months' grace period. Thereafter BIMCO's printers will be instructed to remove existing stocks.

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