

CONGENBILL

GENCON Charter

Uniform General Charter - revised November, 1994

There is little doubt that the Uniform General Charter code name GENCON is the most popular and widely used general purpose voyage charter party on a global basis for all kinds of trades and for numerous types of cargoes.

When reviewing the history of the GENCON it is interesting to record that since this Charter was first issued by BIMCO in 1922 only a few amendments have been made to it, some of which must be categorised as purely technical. In 1974 when the old longform of the Charter was transformed into the well-known box layout only a few adjustments were made to reflect the 1974 amendments to the York-Antwerp Rules whilst the 1976 revision of the Charter was undertaken mainly to include the optional "f.i.o." terms and to incorporate the VOYWAR 1950 War Risks Clause, leaving bulk of the Charter as it was originally drafted way back in 1922.

It ought to be mentioned that the history of the GENCON also records that in the early 1980's BIMCO's Documentary Committee did consider a possible general review of the Charter to bring it more up to date with the needs of modern maritime transport. At that time, however, it proved to be difficult to find a general support for such a review and the matter was therefore deferred.

In 1991 the matter of a possible general review of the GENCON again appeared on the agenda of BIMCO's Documentary Committee and despite the fact that there was still some reservation about a review, there now seemed to be more widespread support for considering the matter.

It was generally accepted that even though the GENCON was still by far the most widely used general purpose voyage charter it was also a continuing source of litigation which could hardly be said to comply fully with the needs of modern chartering practice in all areas. Considering at the same time BIMCO's leading role in the maritime documentary field with its portfolio of many highly sophisticated and specialised documents fulfilling the requirements of all different kinds of trades, it seemed slightly peculiar to maintain a document which despite its extensive use did not seem to live up to industry needs in all respects.

Given the importance of the matter, the Documentary Committee decided that,

before a final decision was made about whether or not the GENCON Charter should be revised, a study group should be appointed with a view to identifying areas in the Charter traditionally the subject of amendments and to come up with a list of recommendations of the areas to which particular attention should be given. The recommendations of the Study Group were that, considering the clear pattern in the amendments typically made to the Charter, in the form of deletions of the printed text and rider clauses being added to the Charter a modest revision should be made in accordance with the following guidelines:

- 1) Update and clarify the Charter wherever needed.
- 2) Consider some **additional** clauses, including a law and arbitration clause and the usual protective clauses.
- 3) Consider **optional** clauses for inclusion wherever appropriate.

BIMCO's Documentary Committee took note of the recommendations made by the Study Group and it was agreed that, a small sub-committee composed of experts with vast experience in general purpose shipping should undertake a modest revision of the Charter in accordance with the recommendations without amending its fundamental character.

The new edition of the GENCON Charter which carries the annotation "As revised 1922, 1976 and 1994" is the final result of the work of the sub-committee.

The revised GENCON Charter was officially adopted by BIMCO's Documentary Committee in November, 1994.

Explanation of changes

PART I Only a few amendments have been made to PART I. Therefore, and in view of the fact that the details to be written into the boxes should be considered against the background of the provisions in the corresponding clauses in PART I it has been considered more practical to make these observations, if any, together with the comments on the standard clauses in PART II, as set out below.

PART II Clause I - Preamble A few technical changes have been made to the first paragraph of the preamble.

For instance, it will be seen that reference is now made to GT/NT instead of the

old GRT/NRT to correspond with the requirement of the International Convention on Tonnage Measurement of Ships, 1969 which became effective for existing vessels as of 18 July, 1994.

It appears that under English law when the charter party contains an ETA or cancelling date, there is a strict obligation on the part of the owners to ensure that the vessel sets out on the ballast voyage in time to reach the loading port within ETA or before the cancelling date.

Whilst the exception clauses in a charter party may protect the owners for delays which occurs after the vessel sets out for the ballast voyage, they may not offer similar protection for delays which may result from the previous voyage(s) and against which the owners may have had no influence whatsoever. Therefore, in order to rectify this position the words "as soon as her prior commitments have been completed" have been incorporated immediately after "vessel" (line 7).

If shipment of deck cargo has been agreed between the owners and the charterers, liability for loss of or damage to such cargo should always rest with the charterers.

However, to emphasize this position it has been deemed appropriate to insert the words "and responsibility" after "Charterers' risk" (lines 10/11)

As will be seen, the reference previously made to "delivery of cargo on being paid freight on delivered or intaken quantity" is now more appropriately covered in Clause 4 (Payment of freight). **Clause 2 - Owners' Responsibility** Great care has been taken not to change the responsibilities of the owners and the charterers set out in this very important clause. It is useful to recall that the task of the sub-committee engaged in the revision of the GENCON Charter was to undertake a modest review of the Charter, adding clarity and certainty to the rights and obligations of the owners and the charterers and not to fundamentally change the basic character of the Charter.

Clearly, changing the responsibilities of owners and charterers as embodied in Clause 2 and which have been tested by a vast number of legal decisions would almost per se change the basic concept of the Charter.

The changes made to Clause 2 were therefore confined to the deletion of the

earlier reference to "the improper or negligent stowage of the goods (unless stowage performed by the shippers/Charterers or their stevedores or servants) or which is a logical consequence of the fact that the revised GENCON now applies f.i.o. terms only (for further comments see below under Clause 5 (Loading/Discharging)).

Clause 3 - DeviationNo change has been made to this Clause.

Clause 4 - Payment of FreightThis Clause has been revised to provide for alternative freight payment methods in line with modern standard documents developed by BIMCO. Whilst it is recognised that freight prepaid seems to be the predominant method of paying freight when fixtures are made on the GENCON Charter the option for the contractual parties to agree on payment of freight on delivery has been maintained.

If freight to be paid on delivery the charterers are given the option of paying the freight on the basis of delivered weight notwithstanding the provisions of sub-clause (a) i.e. that freight shall be calculated and paid on the basis of intaken quantity. Such option is only available, however, if the charterers advise the owners thereof before breaking bulk and the weight/quantity can be ascertained by official weighing machines, joint draft survey or tally.

In addition, the Clause has been clarified to specify when freight shall be deemed earned; prepaid, cargo lost or not lost and when freight is payable.

Clause 5 - Loading/DischargingAs mentioned in the comments relating to Clause 2 (Owners' Responsibility Clause) the printed alternative (a) in the previous edition of the GENCON Charter providing for gross terms has now been deleted making the GENCON apply f.i.o. terms only. This decision has been made on the simple grounds that practically all fixtures made today on the GENCON, be it for short sea or deep sea chartering, are based on f.i.o. terms.

Sub-clause (a) (Cost/Risks), is similar to the previous alternative (b) providing for f.i.o. and free stowed/trimmed provisions. However, as will be seen, this sub-clause now also contains provisions relating to dunnage, previously part of Preamble. Sub-clause (b) (Cargo Handling Gear) has been elaborated to contain more specific provisions relating to the operation of the vessel's cargo handling

gear as this is traditionally an area causing disputes.

Time lost as a result of breakdown of the vessel's cargo handling gear or motive power is for the owners' own account and shall therefore not count as laytime or time on demurrage. An exception to this rule is if the breakdown is caused by negligence of the stevedores who are deemed the servants of the charterers, or if the breakdown is caused by the charterers not following the master's instructions on how to handle such gear.

To avoid ongoing disputes about who should bear loss or damage caused by cranemen or winchmen, it is explicitly stated in the last paragraph that cranemen or winchmen shall be the charterers' responsibility and, as stevedores, be deemed their servants.

Stevedore damage is another area repeatedly generating arguments and disputes and a new sub-clause (c) (Stevedore Damage) has therefore been inserted to deal with the problem. The stevedore damage provisions place upon the master an obligation to endeavour to obtain the stevedores' written acknowledgement of liability once such damage has been discovered. However, the fact that the master may be unsuccessful in getting such acknowledgement from the stevedores does not exonerate the charterers from liability for stevedore damage.

Clause 6 - Laytime Only minor clarifications have been made to sub-clauses (a) (Separate laytime for loading and discharging) and (b) (Total laytime for loading and discharging). For instance, it is now specified that cargo shall be loaded/discharged within the number of days/hours as indicated in Box 16. Previously, reference was made to hours only.

Whilst sub-clauses (a) and (b) remain almost the same, sub-clause (c) (Commencement of laytime (loading and discharging)) has been subject to some amendment. First of all, in order to pre-empt discussions about when laytime starts to count if notice of readiness has been given at noon it is more clearly specified by stating that if notice of readiness is given up to and including 12.00 hours laytime shall commence at 13.00 hours and that if the notice is given after 12.00 hours then laytime shall commence at 06.00 hours the next working day.

Realising that on the date of signing the charter party the name of the shippers may not be known, it has been deemed appropriate to specify that notice of

readiness in the loading port shall be given to the charterers or their agents when the shippers are not named.

Whilst the previous edition of the GENCON charter contained no provision for the party to whom notice of readiness should be given in the discharge port, it is now provided that notice shall be given to the charterers or their agent, if the receivers are not named.

Occasionally a problem arises when the vessel arrives at the loading port and is required to wait at the anchorage because the loading berth is not available. If the vessel tenders notice and it later appears upon arrival at the berth that the vessel is not clean, then the notice may be invalid because the vessel was not ready at the time of tendering its notice of readiness and laytime will not

start to count until the vessel has been passed and a new notice of readiness given.

It is realised that the last sentence of sub-clause (c) in the previous version of the GENCON and reading "Time lost in waiting for berth to count as laytime or time on demurrage" may already cover this unacceptable position. However, for the sake of clarity and in line with the various other standard charter parties issued or recommended by BIMCO, sub-clause (c) now specifically takes care of the problem.

Clause 7 - Demurrage In order to reflect current practice when making fixtures on the GENCON, the reference to ten running days on demurrage to be allowed the charterers in the port of loading and discharging, has been deleted. As will also be seen, rather than being payable day by day, demurrage is now payable upon receipt upon the receipt of the owners' invoice.

However, in the absence of a specific provision allowing the charterers to keep the vessel on demurrage for a limited period of time it is important for the owner to have in the charter party an express right to cancel the charter party in the event of outstanding payments of demurrage, as otherwise they may find themselves in the position where they would have to keep the vessel waiting for cargo loading operations to start for a considerable time without being able to terminate the charter party. This would, in particular, appear to be a problem under English law when the owners are not able to cancel until there is a repudiation of the charter

party.

Another problem which owners should be aware of under English law is that the timely payment of money is not always accepted as an essential part of the contract. Therefore, if demurrage is not paid after proper notices have been given the owners run the risk that they may have no claim for damages. Accordingly, to give the owners a legal remedy when these unfortunate situations occur, it is now expressly provided that if demurrage is not paid on the expiration of the time limit provided, i.e. 96 hours, the owners shall have a right to terminate the charter and claim damages for any loss incurred thereby.

It is to be noted, however, that the right to terminate the charter party applies to the loading port only and, for all practical purposes, depends on no cargoes or packages having been loaded and no bill of lading issued transferring the rights to the cargo to a third party.

Clause 8 - Lien Clause In order to reflect common practice nowadays, the old reference to damages for detention has been deleted. In addition, the Clause has been brought up to date in accordance with the more modern lien clauses making no reference to cesser type provisions (i.e. provisions effectively providing that all responsibility of the charterers ceases on shipment of the cargo).

Clause 9 - Cancelling Clause This Clause (previously Clause 10 of the GENCO Charter) has been modernised with a view to include interpellation provisions suitable for both the deep sea and the short sea trades. The purpose of these so-called interpellation provisions is that the vessel shall not have to proceed on a long ballast voyage towards the loading port not knowing whether or not the charterers will accept the vessel once it has arrived.

The interpellation provisions found in the prior version of the GENCON Charter served little purpose, in particular in the deep sea trade, as the owners could well find themselves in a position whereby they would have to commence and almost complete a long ballast voyage before it would be known whether or not the charterers would cancel the charter.

This new Clause strikes a balance in as much as the owners may avoid setting out on a long ballast voyage to no avail whereas the charterers are at the same time given a reasonable time to declare whether or not they wish to cancel the charter

party.

Clause 10 - Bills of LadingThis Clause (previously Clause 9 in the GENCON Charter) has been subject to some revision. First of all, the Clause now prescribes that the bill of lading to be used is the CONGENBILL Bill of Lading, Edition 1994. (For further reference, please see the comments made under the CONGENBILL Bill of Lading).

Secondly, the clause now provides that the owners' agents can sign bills of lading on the condition that a written authority has been given by the owners for the agent to do so, a copy of which is to be furnished to the charterers.

It will also be noticed that a provision has been included giving the owners an express right of indemnity from the charterers for issuing bills of lading at the charterers' request and as a result of which the owners may assume greater liabilities than under the charter party. It is realised that in some cases the courts would probably deem such right of indemnity to be implied.

However, it appears that in cases where a specific form of bill of lading may be contemplated by the charter party, courts have been inclined to deny the owners such right of indemnity. Given the fact that the GENCON Charter now expressly prescribes the use of the CONGENBILL, edition 1994, and to avoid the situation that the owners will have to absorb liabilities in excess of those contemplated under the Charter Party it has been found advisable to incorporate an express right of indemnity in favour of the Owners.

Clause 11 - Both-to-Blame Collision ClauseThis is a standard clause and although it rarely comes in to operation it forms part of almost any standard charter party issued by BIMCO. Accordingly, it was thought that it should also form part of the new revised GENCON Charter.

Clause 12 - General Average and New Jason ClauseThis is another standard clause which forms part of many standard charter parties. As will be seen, in accordance with other general average clauses, General Average shall be adjusted in London, unless otherwise agreed. Also, reference is now made to the York-Antwerp Rules 1994 which have been recommended for use by the Comité International Maritime as soon as practical after 31 December, 1994.

Clause 13 - Taxes and Dues Clause To reflect common practice when fixing on the GENCON it was decided to incorporate this Clause which is found in many modern standard charter parties. It spells out who is responsible for payment of taxes and dues.

Clause 14 - Agency Except for the deletion of reference to brokers, no amendments have been made to this Clause.

Clause 15 - Brokerage In accordance with other brokerage clauses found in various standard charter parties it has been agreed to include the words "deadfreight and demurrage" after "freight" (Lines 211/212).

Realising that it may, in some instances, be the charterers who are responsible for the non-execution of the charter party, it is now provided that 1/3 rather than the ambiguous "at least" 1/3 commission on the estimated amount of freight shall be paid by the party responsible for the non-execution of the charter. It is deemed reasonable that it is the party who is responsible for the non-execution who also pays the brokerage, although it is realised that it can have the negative effect for the brokers that they may have to await the outcome of a possible dispute between the owners and the charterers regarding who is the responsible party before the commission is furnished.

Clause 16 - General Strike Clause The General Strike Clause which has appeared in the GENCON Charter since 1922 has been the subject of ongoing disputes and a number of decisions, often conflicting ones, have been given on this Clause by arbitrators and courts.

In particular the introductory paragraph of the Clause according to which neither the owners nor the charterers shall be responsible for the consequences of strikes or lock-outs preventing or delaying the fulfilment of any obligations under the charter has time and again given rise to disputes.

Despite the fact that this provision is for the potential benefit of both the owners and the charterers it is wide in its terms and the apparent danger is that any strike which prevents or delays the fulfilment of any obligation under the charter party may fall within the scope of the Clause. For instance strikes which take place inland at the production plants far away from the loading port as well as strikes of the crew, or of pilots or tugmen may be covered by the provisions of the first

paragraph.

It was therefore considered appropriate to confine the application of the entire Clause to those strike situations which take place in the loading or discharging ports actually affecting the loading or discharging operations. Accordingly, the sequence of the paragraphs has been changed by moving the old introductory paragraph to the end of the Clause and by specifying clearly that the strikes concerned are those preventing or delaying the actual loading and discharging of the cargo.

As may be known the Onisilos case changed the general understanding that according to the third paragraph of the original version of the General Strike Clause half demurrage should be payable in respect of the period after the expiration of the laytime when the vessel is waiting for the strike to end, but that thereafter full demurrage should be payable until completion of the discharge.

Accordingly, to avoid any conflicting opinions in the future on this matter, it is now expressly provided in sub-clause (b) of the General Strike Clause that half demurrage shall be payable after the expiration of the time provided for discharging until the termination of the strike or lock-out and that full demurrage shall be payable thereafter until completion of discharging.

Apart from the amendments mentioned above only a few technical changes have been made to this clause.

Clause 17 - War Risks (VOYWAR 1993)As will be seen, the GENCON Charter incorporates the VOYWAR 1993 War Risks Clause for voyage chartering as this Clause has been thoroughly revised to meet present-day requirements for a modern war clause including the possible action or intervention by supranational bodies; besides, given the multitude and characteristics of war or warlike operations now seen, the Definition in the VOYWAR 1993 have been somewhat expanded and clarified.

Clause 18 - General Ice ClauseOnly minor editorial changes have been made to this well-known general ice clause. The somewhat peculiar stipulation in the previous sub-clause (d) that "This Ice Clause shall not apply in the spring" and the words "(except in the Spring)" have been deleted.

Clause 19 - Law and Arbitration Of all the changes usually made to the GENCON Charter in the form of rider clauses, the insertion of a law and arbitration clause is probably the most common one. Realising that practically all standard contracts of carriage for use in the maritime industry have or many years referred to arbitration as a common means of dispute resolution, it is difficult to explain why a law and arbitration clause has never formed part of the GENCON Charter. To rectify this position the newly revised BIMCO Standard Law and Arbitration Clause has been incorporated and it provides for an optional jurisdiction and venue for arbitration by leaving it to the parties to make their own choice in each individual case and to fill in Box 25 accordingly.

As follows from sub-clause 19 (d) and the guide text of Box 25, if the Box is not filled in, sub-clause 19 (a) (i.e. English law and arbitration in London) will automatically apply.

Whilst some completely new clauses have been incorporated into the revised GENCON Charter, only one existing clause has been deleted, i.e. Clause 12 (Indemnity).

CONGENBILL Bill of Lading, Edition 1994 The CONGENBILL Bill of Lading is probably the most widely used bill of lading in general tramp shipping today. The CONGENBILL was, when first issued, mainly intended to be used with the GENCON Charter but could also be used with other charter parties. However, considering the extensive use of the CONGENBILL together with the GENCON Charter it is obviously very important that the two forms are aligned so that all the necessary clauses of the GENCON Charter are suitably incorporated into the Bill of Lading.

Therefore, the main reason for revising the CONGENBILL in conjunction with the GENCON Charter was to ensure, by means of a specific reference in the incorporation clause in the Bill of Lading, that the Standard Law and Arbitration Clause which now forms part of the GENCON also applies for the purpose of the Bill of Lading. Courts in England have held that unless there is a specific reference in a bill of lading to the law and arbitration clause in the governing charter party it may not necessarily be deemed part of the terms and conditions of the bill of lading even though the law and arbitration clause itself stipulates that it shall apply in any bill of lading issued under the charter party. Accordingly, to avoid any uncertainty in this respect the GENCON Charter prescribes the use of

CONGENBILL, Edition 1994. In addition, it will be seen that the revised CONGENBILL makes no reference to the Netherlands Commercial Code, Art. 700 which has been withdrawn.

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