

GENTIME

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GENTIME General Time Charter Party

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As the acknowledged industry leader in shipping documentation, BIMCO's policy is to try to offer its members at least one modern document covering the traditional contractual disciplines of voyage and time chartering.

In 1994 BIMCO's Executive Committee decided that BIMCO should consider the development of a new time charter party for the dry cargo trade. The Committee felt that the well-known BALTIME 1939 Uniform Time Charter and the LINERTIME Deep Sea Time Charter could no longer be considered up to date charter parties serving the needs of the market. Of equal importance was that BIMCO should be able to offer its members a viable commercial alternative to the New York Produce Exchange (NYPE) Forms.

Although the 1993 edition of the NYPE is considered an improvement over the 1946 version, it is still the latter which dominates the market and it is with this document that any new dry cargo time charter party must compete.

The matter was taken to BIMCO's Documentary Committee which considered the pros and cons of producing a new time charter party to compete with those commonly used in the time chartering market. Whereas the most obvious solution appeared, at first, to be a revision of the existing BALTIME 1939 Charter or the LINERTIME Charter, it was felt that due to the existing structure and inherent balance of responsibilities between the parties in these agreements, this approach might have a negative effect on the end product. It was also felt that the traditional use of the BALTIME 1939 in the short sea trades might be a hindrance in the marketing of a document to also be used in the deep sea trades.

For these reasons it was agreed to embark upon the development of a new time charter party. The decision was not without risk as it was realised that a certain number of basic criteria would have to be fulfilled if the new document were ever to become successful.

First of all, the new charter party would need to strike a fair balance of liabilities between the commercial parties. Secondly, it would have to contain modern clauses, not least in the areas where other standard forms of charter parties may be silent. In other words, the Charter should provide some standardisation in areas typically dealt with by the parties themselves in the form of rider clauses. Thirdly, the charter party should be structured in a logical way, clearly setting out the rights and obligations of the parties, to make the document as user-friendly as possible.

The GENTIME Charter Party is clearly different from existing conventional dry cargo time charter parties and in producing such a manifestly different form, one runs the risk of introducing new terminology in areas which have been well tested by court decisions. An example would be the provisions relating to "off-hire" which have been worded substantially differently from the corresponding provisions of BALTIME 1939 and the NYPE forms.

However, it was felt that if GENTIME was to stand any chance of gaining success as a commercial alternative to the "NYPE" forms, it would need to introduce new terminology in certain areas.

Those familiar with BIMCO's BOXTIME Charter for the container trade will realise that GENTIME bears some resemblance. The fact that time charter parties used in the container trade may be influenced by the operating agreements of the larger container consortia, where the shipowners often find themselves in the role of the time charterers, ensured that the interests of both parties were duly taken into account. It was therefore considered natural to make use of BOXTIME as a balanced model document in the drafting of GENTIME.

The GENTIME Charter Party is designed so that it can be used as a conventional dry cargo charter and also for the transportation of containers. However, those specialised in the container trade may still wish to use BOXTIME as the more apposite document for this trade. As a result of the introduction of GENTIME, the LINERTIME Deep Sea Time Charter will be withdrawn as the two charter parties basically fulfil the same needs.

The development of the GENTIME Charter was entrusted to a Sub-committee composed of shipowners and time charterers' interests, shipbrokers as well as defence associations and P&I clubs. During the drafting stage a legal working group was appointed with the mandate to consider, in particular, the liability provisions of the charter party. The GENTIME General Time Charter Party, as reproduced at the end of these explanatory notes, is the final result of the work of the Sub-committee and the Legal Working Group.

General observations

In line with normal BIMCO practice, GENTIME is laid out in two parts. Part I contains the variable information applicable to the specific charter, while Part II consists of the standard clauses which form the body of the contract and which should, preferably, be left unaltered. It should be emphasised that the standard clauses are a result of carefully balancing the interests of owners and charterers and that any amendments to these clauses are likely to distort this overall balance.

During the development of GENTIME, considerable thought was given to construction of the charter party in a logical sequence to follow, wherever possible, the chronological order of events during the course of a charter.

Part I

GENTIME uses the standard box layout adopted by BIMCO for users to fill in all the variable items to be agreed. Each box contains a brief description of the information required and a reference to the relevant clauses in Part II of the Charter party.

Some of the boxes may call for special observations; however, 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.

Index

An index has been provided as a quick reference guide to the various clauses in the GENTIME Charter.

Appendix A

Appendix A sets out the protective clauses normally required under a time charter party to form part of any contract of carriage issued under the Charter. The idea of having the protective clauses set out in a separate appendix is to clearly distinguish these clauses from the provisions of the main body of the Charter. At the same time, this will enable the users to make use of the Appendix as a stand-alone document for attachment to other charter parties where appropriate.

Part II

Preamble

It should be noted that the vessel details to be entered in Box 5 are limited to the main description of the vessel. The Sub-committee considered creating a more detailed vessel description in the form of an appendix. However, in view of the wide variety of existing charterers' questionnaires requesting extensive vessel details, it was agreed to leave the parties to decide which form of description they may wish to attach to the charter party.

Care should be taken to describe, as accurately as possible, the vessel, her deadweight carrying capacity, speed and consumption. The details should apply to the vessel's capacity at the time of concluding the fixture and attention should be paid to any alterations to the vessel's construction and its general outfit which might have been made after she was delivered from the builders and which might affect the deadweight or speed/consumption, etc. As will be seen from Box 5, the figures required for speed and consumption describe the vessel's performance in good weather with wind speed not exceeding Beaufort Force 4.

Clause 1 - Period and Delivery

Sub-clause (a) merely provides for the period of the charter party or a number of trips, as specified in Box 6. Attention is drawn to the possibility of extending the period of the charter party as well as adding a small margin to the final period, both in charterers' option.

Sub-clauses (b) and (c) provide for the place of delivery of the vessel on hire and the dates

within which delivery must be effected. It should be noted that the times to be inserted in Boxes 9 and 10 are local times and not Universal Time Co-ordinated (UTC)(which is the modern equivalent of Greenwich Mean Time (GMT)).

Sub-clause (d) contains important provisions relating to cancelling. During recent years it has become practice to include in modern charter parties a so-called "interpellation provision", the idea of which is that a vessel at risk of arriving after the cancelling date/time, shall not have to proceed on a long voyage towards the delivery place, not knowing whether or not the charterers will accept the vessel once she has arrived. 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.

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 (d), 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 the 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. However, realising that the right to interpellate could induce some owners not to do their utmost in trying to reach the place of delivery within the time agreed should a more lucrative fixture appear, the right of interpellation applies only once.

Sub-clause (e) - Emphasis should be made that apart from the specified notice periods to be inserted in Box 11, there is an obligation on the part of the owners to keep the charterers closely advised of possible changes in the vessel's expected date/time of delivery.

Sub-clause (f) refers to the vessel's condition upon delivery in respect of cargo-worthiness. It will be noted that the obligation to deliver the vessel in a clean condition ready to receive the cargo is not based on when the vessel is delivered under the charter party but when it arrives at the first port of loading. In all circumstances, however, the standard of cleaning must be consistent with the first cargo to be carried as specified in Box 12.

It should also be noted that the sub-clause provides that if there is a failure by the owners to deliver a clean vessel, the vessel shall be off-hire from the time of rejection until it is deemed ready. Thus, where, for instance, the port of delivery coincides with the first port of loading and the owners deliver the vessel in an unclean state, the vessel will be off-hire for the time lost during the cleaning process. This may be the charterers' only remedy against the owners even in the event the cleaning of the vessel takes place after the cancelling date.

Sub-clause (g) is a general sweeping-up provision to the effect that the charterers' acceptance of the vessel does not prejudice any claims they may otherwise have against the owners. The reverse provision in respect of the owners' acceptance of the vessel for redelivery is found in sub-clause 4(b).

Clause 2 - Trading Areas

Apart from providing for the usual trading limits, sub-clause (b) has been included in the GENTIME Charter according to which the owners must warrant that at the time of delivery the vessel has not traded to any of the countries listed in box 14. The Clause can potentially pose a problem for owners where the vessel has had more than one ownership. However, it was felt essential that the charterers should be sure that the vessel's previous trading will not impose any restriction in their commercial use of the vessel.

Clause 3- Cargo Restrictions and Exclusions

The provisions of this Clause are largely self-explanatory, however, it may be worthwhile emphasising that hazardous cargoes may be carried subject to the owners' prior consent and on the condition that the charterers have carefully observed the limitation in the quantity of hazardous cargo to be carried and that such hazardous cargo has been packed, labelled and documented in accordance with IMO guidelines

Clause 4 - Redelivery

This Clause mirrors a number of the provisions on delivery in Clause 1. It will be noted that sub-clause (a) requires a port, place or range of ports of redelivery to be named.

As opposed to the corresponding provisions of sub-clause 1(e) in respect of delivery, sub-clause(c) only requires one notice of the expected redelivery place and date to be given. It

was felt that the master would and should in any event, keep the owners properly informed of any possible changes in the vessel's expected date/time of redelivery.

Problems occasionally arise in respect of the charterers' orders for the last voyage. An unforeseen overrun before the commencement of the last voyage may result in the charterers not being able to complete the last voyage within the agreed charter period.

The problem is not an easy one to solve since whereas the owners have a vested interest in timely redelivery of the vessel, the time charterers may be in breach of their contractual obligations towards their sub-charterers if the owners refuse to perform the order for the last voyage.

Sub-clause (d) follows recent court decisions in England by providing the owners with a right to refuse to perform the last voyage if it cannot reasonably be expected that it will allow timely redelivery of the vessel. The charterers may, however, in most cases be able to alleviate problems associated with unforeseen overrun before the last voyage by carefully filling in the relevant boxes of Part I in respect of optional extensions to the charter period.

Clause 5 - On/Off hire surveys

This Clause provides that the on-hire survey shall be conducted without loss of time to the charterers, whereas the off-hire survey shall be conducted in the charterers' time. The wording "without loss of time" in lines 109/110 has been used in recognition that the vessel may come on-hire for instance on arrival at the pilot station at the first port of call, whereas the on-hire survey shall not take place until it arrives in the port. It would therefore not be entirely appropriate to stipulate that the on-hire survey shall be conducted in the owners' time if the vessel is rendering the services required at the time, typically loading, as long as the on-hire survey does not hamper the loading operations.

Clause 6 - Bunkers

Sub-clause (a) 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 (b) 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.

Considering the problems associated with bunkering, it was felt appropriate to provide extensive guidelines for the bunkering operation in sub-clause (d).

Furthermore, specific reference has been made to sampling procedures bearing in mind the corresponding provisions of BIMCO's FUELCON Standard Marine Fuels Purchasing Contract.

Although the marine fuel purchasing 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 fact by requiring the chief engineer to co-operate with the charterers' bunkering agents and fuel suppliers.

Sub-clause (e) places full liability on the charterers for any loss or damage to the owners caused by the supply of unsuitable fuel and exonerates the owners 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.

Clause 7 - Vessel's Gear

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 7(a) 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) the owners shall 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, i.e. 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

time 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 to either accept the delay against reduction of hire or to expedite matters by working with shore gear.

If the charterers decide to continue by working with shore gear, the owners shall 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; hence the use of the word "actual" in line 166.

In this context it is submitted that, as with other BIMCO approved or recommended 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. Since the GENTIME Charter may be used in the container trade 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 ports of call. According to sub-clause 7(d), the owners shall provide, free of expense to the charterers, sufficient lighting to permit 24 hour working.

Clause 8 - Hire

As the vessel may be delivered in one time zone and redelivered in another, the local times of delivery and redelivery, respectively, have to be converted to UTC to facilitate the accurate calculation of the total time on hire for hire payment purposes.

Sub-clause (a) specifically refers to the charterers' option in sub-clause 9 (d) to add any off-hire time to the end of the charter period. Especially in long-term charters where different rates apply over time, disputes may arise as regards which rate of hire shall apply for any additions to the charter period. In accordance with common practice it is specified that it is the rate of hire at the original time of redelivery which shall apply.

Sub-clause (b) provides when and where payment of hire shall take place and that payment shall be in advance, in full, and without discount. Furthermore, it is the charterers' obligation to ensure that payments have passed through the banking system and are available to the owners on the due date.

Sub-clause (c) contains very important provisions in relation to the owners' right to withdraw the vessel from the service of the charterers in the event they do not pay on time. The right of withdrawal when the charterers are in default of payment of hire is a traditional safeguard for the owners in the time chartering context.

It has also become common practice to introduce in time charter parties a so-called "Anti-Technicality Clause" or a "Grace Period". This type of clause is meant to avoid the abuse of the owners' right to withdraw where there have been delays of remittance of hire payments through the banking system at no fault of the charterers. In some charter forms, the length of the period of grace has been arbitrarily determined, whereas other charter forms leave it open to the parties to agree on the length of the period of grace normally stipulated as "banking days" and usually combined with notification to the charterers.

This latter choice has been adopted in sub-clause (c) and it is strongly recommended to study carefully the provisions of the sub-clause and to fill in the number of days of grace etc., as agreed, in the correct manner.

On the other hand, any abuse of the period of grace by the charterers' constant late remittance should be safeguarded against by the provisions in lines 195-199 of sub-clause (c).

If the hire happens to be still outstanding on the expiry of the grace period, or any time thereafter, lines 201 onward entitle the owners, without prejudice to the liberty to withdraw, to withhold the performance of any and all of their obligations under the charter. Where the hire has not been received, for instance, just when the vessel is about to load for a new voyage with a charterer who is about to go bankrupt, the owners run the risk of being saddled with the performance of the new voyage without hire being paid and without cover for expenses falling upon the charterers. It is too late to withdraw the vessel if cargo has been loaded and bills of lading have been signed obliging the owners to perform the voyage

according to the bill of lading contract. Such risk is also guarded against by the provisions of sub-clause (c).

As long as the hire remains unpaid after expiration of the grace period, the owners have the right to suspend their obligations under the charter - including the performance of the vessel. Although this provision may be of some comfort to owners facing time charterers who are unable or unwilling to pay, a warning should be given that suspending services of the vessel may be in conflict with the owners' obligations to the bill of lading holder. Consequently, the owners should never invoke this right before consulting their insurance providers.

Sub-clause (d) entitles the charterers to deduct from the hire any expenditure which they may have incurred on behalf of the owners and which is for the owners' account. However, this is on the condition that supporting vouchers are produced. In case the expenditure is made in a different currency than the hire payments they must be converted to the hire currency at the rate applicable when the expenditure was incurred.

Clause 9 - Off-hire

This Clause 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.

Sub-clause (b) contains the usual provisions concerning deviation.

Although fortunately not a frequent occurrence, it was considered useful to include a sub-clause (c) concerning requisitions. In the normal course of events the government will deal directly with the owners in matters of requisition. Any payments by such government are normally made directly to the owners and may be considered a substitute for hire income.

Consequently, it was felt appropriate to provide for the vessel to be off-hire during such events. However, it is obvious that a requisition of any significant duration may frustrate the charterers' commercial adventure involving the vessel and a provision has therefore been added providing the charterers with the option of cancelling the balance of the charter party after an agreed number of days as should appear in Box 27.

For comments on sub-clause (d), reference is made to sub-clause 8 (a)

Clause 10 - Loss of Vessel

This Clause is self-explanatory.

Clause 11 - Owners' Obligations

The preamble of this Clause contains very important provisions in respect of the owners' obligation to deliver a vessel which is in all respects fit for the service it is going to undertake during the charter period. The owners must ensure that at the time of delivery the vessel is in the class as agreed in Box 5 and that it is in a thorough state of hull and machinery. Thereafter, during the currency of the charter there is a due diligence obligation on the part of the owners to make sure that the vessel remains in that class and that the vessel is in a seaworthy condition.

Sub-clause (d) contains a catalogue of provisions setting out the extent to which the owners will have to provide and pay for crew assistance, at the request of the charterers, in connection with the loading and discharging operations, bunkering, and in the use of the vessel's gear, etc., provided port and local regulations permit.

Any vessel employed to trade internationally needs a substantial amount of documentation if it is to operate without hindrance. Sub-clause (e) sets out a non-exclusive list of documentation which the owners must ensure that the vessel is in possession of at the commencement of the charter. Whereas the provision of documentation relating to the vessel is the responsibility of the owners, documentation relating to the cargo is the charterers' responsibility.

Clause 12 - 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.

Clause 13 - Charterers' Obligations

The preamble to this Clause sets out the charterers' prime responsibility which is to keep and care for the cargo at loading and discharging ports, undertake and be responsible for the stevedoring operations and to arrange for transshipment and the delivery of the cargo.

The second paragraph sets out the charterers' obligation to provide the master with full and timely instructions and to provide and pay for the usual catalogue of costs, most of which should be self-explanatory.

Clause 14 - 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 to sub-clause 9 (a)(i).

Sub-clause (b) deals with general average. It is the owners who appoint the average adjuster and decide the currency in which average shall be adjusted. In order to secure contribution by the cargo interests it is considered appropriate to ensure the co-operation of charterers by supplying manifest information and assisting in the collection of bonds.

Sub-clause (c) addresses the situation which arises if the vessel renders salvage operations to a third party. Such services involves 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) 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 15 - Charterers' Requirements

This Clause lists a long catalogue of charterers' requirements, most of which are self-explanatory.

However, it may be noted that sub-clause (h) covers situations where the master is obliged to provide articles to officials and other individuals to ensure a smooth operation with a minimum of delays. This is clearly to the charterers's advantage and such representation is to be settled by payment of the amount agreed in Box 31. Additionally, the charterers must indemnify the owners against all consequences and/or liabilities arising from such representation.

Sub-clause (m) covers hold cleaning by the crew during the period of the charter party. The owners are only obliged to accommodate the charterers' request to clean holds if the crew is of sufficient numbers to be able to undertake this work and where local regulations permit.

A common provision in charter parties is that charterers are allowed to redeliver the vessel with unclean/unswept holds against payment of a lump sum. BIMCO has over the years warned against the pitfalls of agreeing to such a provision and care should therefore be taken when agreeing on the level of lump sum in Box 33

Clause 16 - Sundry Matters

Sub-clause (a) is the BIMCO Standard Stowaways Clause for Time Charters. Due to the increasing number of stowaways incidents, which can result in exorbitant costs to the shipowners, it is important that the problem of stowaways is adequately dealt with in the contractual context.

The stowaways clause has been drafted on the basic premise that since it is the time charterers who are in control of the vessel's employment and that the time 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.

However, in accordance with common practice, sub-clause (b) makes it a condition that in

order for the owners to hold the charterers responsible, the master has to have notified the stevedores or their agents within 24 hours of such stevedore damage 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.

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.

Sub-clause (i), (ii) and (iii) sets 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.

Sub-clause (d) deals with another problem which continues to plague the industry - the smuggling of narcotic drugs and other illegal substances. The sub-clause is based on the BIMCO U.S. Anti Dug Abuse Act 1986 Clause for Time Charterers 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.

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

Within the maritime transport industry there is a general increase in "door-to-door" movements and it not unusual for shipowners to authorise the time charterers to issue under the time charter party contracts of carriage for through or multimodal transports.

Whereas the authorisation of through or multimodal transport contracts of carriage under the time charter party can have certain insurance implications for the shipowners where loss or damage to goods takes place beyond the carriage performed by the shipowners themselves, it was felt that GENTIME as a modern document should reflect the development in through and multimodal transports.

However, as the insurance providers may not have insurance covering through or multimodal transports as part of their standard cover, shipowners are strongly advised to consult their insurance provider whenever they enter into contract terms involving through or multimodal transports.

Whereas sub-clause (a)(i) provides that the owners may authorise the time charterers to issue bills of lading, waybills, through or multimodal transport documents, sub-clause (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 shall indemnify the owners for any loss, damage or expense which may result.

Sub-clause (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 are compulsory applicable 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.

Sub-clause (c) must be viewed against the provisions of sub-clause 18 (a)(iv)(3) setting out the responsibility between the owners and the time charterers in respect of the carriage of deck cargo.

In circumstances where the time charterers have been authorised to issue contracts of carriage under the time charter party such contracts of carriage must be claused "Agreed to be shipped on deck at Charterers', Shippers and Receivers' risk, and responsibility for loss, damage or expense howsoever caused".

This does not apply, however, where the cargo to be carried is stowed in fully closed containers placed onboard the vessel in areas designed for the carriage of containers.

Much time and effort was spent in trying to accommodate the interests of both parties and it was ultimately decided that the only possible alleviation from full charterer's liability could be that fully closed containers in proper container carrying space should be owner's

responsibility.

Because the bulk of responsibility is then thrown upon the time charterers and because the clause required to be stamped on the face of bills of lading covering deck cargo includes the word "charterers", time charterers using GENTIME in unamended form would be wise to consult their P&I insurers regarding the possible need for additional (SOL) insurance, since all P&I cover includes the general proviso that no assured may contract on terms less favourable to him than the Hague or Hague/Visby Rules".

Clause 18 - Responsibilities

This Clause is very central to the smooth operation of the GENTIME Charter and great care has been made by the Sub-committee in consultation with the P & I clubs to provide equitable solutions which strike a fair balance between the owners and the time charterers.

The Sub-committee considered various solutions in respect of the provisions relating to responsibility for the cargo. One of these was the solution applied in the NYPE 93 form which incorporates for the purpose of the charter and any bill of lading issued thereunder a general clause paramount providing for the Hague or Hague-Visby Rules as the general liability regime. Although this seems to be a convenient solution it does present a few problems. First of all, a time charter party is not a contract of carriage in the same way as is a voyage charter or a bill of lading and merely to incorporate the Hague or Hague-Visby rules in a "paramount" manner with only a vague idea of what it applies to and what it does not was an ineffective way of determining responsibilities. Moreover, it would have been of no practical help in allocating responsibility between owners and charterers which most people would agree is one of the most vital requirements of a time charter party.

There was a reluctance to "borrow" the Inter-Club Agreement (ICA) from the NYPE where it has most naturally belonged over many years and it was also felt that merely to incorporate the ICA either in an appendix or by an incorporating clause would be too imitative of the NYPE, whereas GENTIME was to be a fresh, new product suitable for the Millennium and beyond. Thus, Clause 18 was modelled on the ICA but wording has been used which is even more explicit and should have no room for ambiguity, doubt or dispute. Its length is justified wholly by its clarity of expression.

Sub-clause (a)(i) contains a definition of a cargo claim for the purpose of Clause 18 (a). The definition corresponds to the definition found in the ICA 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.

Sub-clause (a)(ii) contains an important provision in respect of indemnity claims which is that in order to seek recovery from the other party, the claims must first have been properly settled or compromised.

Sub-clause (a)(iii) underlines the basic principle that the time charterers must absorb most claims in respect of cargo but the owners shall bear the burden of claims caused by:

- (1) lack of due diligence on the part of the owners before and at the beginning of each voyage to make the vessel seaworthy.
- (2) Failure on the part of the owners properly and carefully to carry, keep and care for the cargo while on board.
- (3) Unreasonable deviation from the voyage described in the contract of carriage unless such deviation is ordered or approved by the time charterers.
- (4) Errors in navigation or the management of the vessel where the contract of carriage governing the relationship between the time charterers and a third party is subject to the mandatory application of the Hamburg Rules.

The rationale behind sub-clause (a)(iii)(4), which apportions claims in respect of error in navigation or management of the vessel to the owners, is that if the charterers have issued a contract of carriage under the charter party and the Hamburg Rules apply as a matter of law, then there will be no defence to a claim for negligent navigation or management of the vessel under the contract of carriage. If the governing time charter party provides for the traditional negligent and management defence, the charterers will be unable to pass on the claim to the owners due to the negligent navigation or management of the vessel. Since the charterers have no navigational control over the vessel, such a solution would seem to be inequitable. However, as is specified in sub-clause (a)(iii)(4) this only applies where the Hamburg Rules

are compulsorily applicable. Where the Hague-Visby Rules or similar legislation applies there should be no problem since the time charterers as the contractual carrier will be able to invoke the traditional defences against a third party in respect or error in navigation and management of the vessel.

Sub-clause (a)(iv) deals with charterers' liabilities in respect of cargo claims. The time charterers must be responsible for attending to the cargo at the loading and the discharging ports and for arranging transshipment and delivery. The charterers are therefore also responsible for what happens to the cargo during the loading and discharging operations which have to be arranged by them and performed by their stevedores. This is made clear in sub-clauses (c)(iv)(1) and (2).

As regards sub-clause (a)(iv)(3), reference is made to the comments made under sub-clause 17 (c).

Sub-clause (a)(v) covers all other cargo claims arising from other causes than those enumerated under sub-clauses (a) (iii) and (iv) apportioning such claims equally between the parties.

Sub-clause (b) merely provides that if the charterers' goods, or any incomplete or inaccurate documentation relating to such goods, results in any fines or costs etc. to the owners, then the charterers must bear such fines and costs.

Whereas sub-clauses 17(c) and 18(a)(iv)(3) deal specifically with loss or damage to deck cargoes, sub-clause (c) deals with loss, damage, expense or delay caused to the vessel as a result of the carriage of deck cargoes. The sub-clause makes it clear that all responsibility for loss, damage, expense or delay to the vessel shall rest with the charterers, unless the owners or any of their servants have acted negligently and the loss or damage, expense or delay resulted from such negligence.

A sub-clause (d) has been included specifically covering claims for death or personal injury as it is well known that substantial claims can arise out of injury to stevedores, labourers, etc.

There are situations where the owners or the time charterers will have to pay claims or fines etc., for which the other party must absorb the ultimate responsibility. Sub-clause (f) makes it entirely clear that in the event the party which has had to pay the claim in the first instance brings forward an indemnity claim against the other party, that other party retains his right to limit his liability to the amount which would have been applicable had the claim been made directly against him. This provision may be of importance where one of the parties has a right to limit his liability but the other party has not.

Sub-clause (g) 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 provides a two years time bar, the time bar for claims between the owners and the time charterers under the charter party has been extended to three years where the Hamburg Rules apply compulsorily.

Clause 19 - Exceptions

This is a general exception 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 lines 645 to 646. As regards the special owners' exceptions in lines 649 to 652, 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 sub-clause 18(a). 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).

Clause 20 - Insurances

Sub-clause (a) provides for the owners to warrant that the vessel is insured for hull and machinery purposes and basic war risks. The warranty given by the owners under this sub-clause covers the trading within normal London Underwriters Institute Warranty Limits (IWL) excluding additional premium/restricted/prohibited areas. If the charterers wish to trade outside the normal IWL limits they must obtain the owners' consent.

Both the owners and the charterers have a vested interest in knowing that the liabilities of

the respective parties are fully insured with a P & I club, or other insurance provider, with calls paid up to date throughout the charter party. This is reflected in the provisions of sub-clause (b).

Clause 21 - War Risks (CONWARTIME 1993)

The multitude of war and warlike situations with which the shipping industry has been confronted in recent years has caused a number of problems which were not covered in the traditional war risk clauses. BIMCO therefore decided in the early nineties, in particular after the Gulf War, to develop a new set of war risks clauses for voyage and time charter parties, respectively.

The CONWARTIME 1993 forms part of the GENTIME charter governing issues relating to war risks as between the owners and the time charterers whereas the VOYWAR 1993 war risks clause forms part of Appendix A to be included in contracts of carriage issued under the time charter.

It is strongly recommended not to make any changes to these clauses as they have been designed to work back-to-back where necessary.

Clause 22 - Law and Arbitration

As GENTIME is a standard charter party intended for worldwide use, the Charter provides the flexibility of offering the parties a choice of law and place of arbitration.

The Clause incorporates the most recently revised BIMCO Standard Law and Arbitration Clause.

For more detailed comments on changes which have been made to this Clause, please refer to *BIMCO Bulletin 4/98*.

In line with the earlier BIMCO Standard Law and Arbitration Clause, when forming part of one of BIMCO's own standard documents, the Clause provides for an optional law system and venue of arbitration by leaving it to the parties to make their own choice in each individual case and to fill in Box 35 in Part I accordingly.

As follows from sub-clause 22(d), if Box 35 is not appropriately filled in, English law and arbitration will automatically apply according to sub-clause 22(a).

Clause 23 - Commission

This Clause contains the usual provisions relating to brokerage. However, since under certain jurisdictions a party cannot exercise rights under a contract to which he is not a party and since the brokers are not parties to the charter party, they may have difficulties in obtaining their commission. Therefore, an additional provision has been added according to which the owners acknowledge their agreement with the brokers to pay commission.

Clause 23 - Notices

This is self-explanatory.

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