

Code name: **Intankbill 2003**  
**BILL OF LADING**



Shipper:

Notify Party/Address:

Consignee:

Vessel:

Shipper:

|                       |            |
|-----------------------|------------|
| Notify Party/Address: | Consignee: |
|-----------------------|------------|

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Vessel:

Port or Place of Loading:

Port or Place of Discharge:

Shipper's Description of Cargo:

Shipper's Weight:

Shipper's Volume:

Date Shipped on board:

Date Shipped on board:

Issued pursuant and subject to all terms of the CHARTERPARTY

Dated \_\_\_\_\_

Between \_\_\_\_\_

\_\_\_\_\_ (Owner)

and \_\_\_\_\_  
\_\_\_\_\_ (Charterer)

Freight is payable in accordance therewith.

\_\_\_\_\_  
Carrier(Name and Principal Place of Business)

\_\_\_\_\_  
Place and Date of Issue:

\_\_\_\_\_  
Dated :    /    / 200

SHIPPED at the Port of Place of Loading in apparent good order and condition aboard the above Vessel for carriage to the Port or Place of Discharge (or so near thereto as she may safely get) the goods specified above Weight, measure, quality, condition, contents and value unknown.

IN WITNESS whereof the Master or Agent of the Vessel has Signed \_\_\_ original Bills of Lading all of this tenor and date, any of which being accomplished the others shall be void.

\_\_\_\_\_  
Signature \_\_\_\_\_ Carrier  
or, for the Carrier

\_\_\_\_\_  
(Master's name and signature) as Master

\_\_\_\_\_  
(Agents' name and signature) as Agents

## CONDITIONS OF CARRIAGE

### (1) INCORPORATION and PERIOD of RESPONSIBILITY

All terms, conditions, liberties and exceptions of the Charterparty overleaf referred to, including the Arbitration Clause and provisions regarding lien on the cargo, are hereby expressly incorporated. The Carrier shall in no case be responsible for loss of or damage to cargo howsoever arising prior to loading into and after discharge from the Vessel or while the goods are in the charge of another carrier.

### (2) GENERAL CLAUSE PARAMOUNT

- (a) The Rules contained in the International Convention relating to Bills of Lading signed at Brussels on 25 August 1924 (the "Hague Rules") as amended by the Protocol of 23 February 1968 (the "Hague-Visby Rules") and as enacted in the Port or Place of Loading shall apply to this Bill of Lading. Where no such enactment is in force at the Port or Place of Loading, the corresponding legislation at the Port or Place of Discharge shall apply (even if such legislation only relates to outbound shipments). If no such enactment is applicable, the terms of the Hague-Visby Rules shall (subject as is below provided) apply.
- (b) If there is governing legislation which applies the Hague Rules compulsorily to this Bill of Lading to the exclusion of the Hague-Visby Rules, then this Bill of Lading shall have effect subject to the Hague Rules.

- (c) The Protocol signed at Brussels on 21 December 1979 (the "SDR Protocol 1979") shall apply whenever the Hague-Visby Rules apply to this Bill of Lading.

### **(3) GENERAL AVERAGE**

General Average shall be adjusted, stated and settled according to the York-Antwerp Rules, 1994, or any subsequent modifications thereof in London unless another place has been agreed in the Charterparty above described. Cargo's contribution to General Average shall be paid to the Carrier even when such average is the result of a fault, error or neglect of the master, pilot or crew.

### **(4) NEW JASON CLAUSE**

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible, by statute, contract or otherwise, the cargo, Shipper, consignee or owners of the cargo shall contribute with the carrier in General Average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo.

If a saving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said having vessel or vessels belonged to strangers. Such deposit as the Carrier or its agent may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, Shipper, Consignee or owners of the cargo to the Carrier before delivery.

### **(5) BOTH - TO-BLAME COLLISION CLAUSE**

If the Vessel comes into collision with another vessel as the result of the negligence of the other vessel and any act, neglect or default of the master, mariner, pilot or other servants(s) of the Carrier in the navigation or management of the Vessel, the owners of the cargo carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of the said cargo and set off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying Vessel of the Carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

### **(6) HIMALAYA CARGO CLAUSE**

It is hereby expressly agreed that no servant or agent of the Carrier (including every independent contractor from time to time employed by the Carrier) shall in any circumstances whatsoever be under any liability whatsoever to the Shipper, Consignee or owner of the cargo or to any holder of this Bill of Lading for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment, and, but without prejudice to the generality of the foregoing provisions of this Clause, every exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Carrier acting as aforesaid and for the purpose of all the foregoing provisions of this Clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the contract in or evidenced by this Bill of Lading.

The Carrier shall be entitled to be paid by the Shipper, Consignee, owner of the cargo and/or holder of this Bill of Lading (who shall be jointly and severally liable to the Carrier therefore) on demand any sums recovered or recoverable by such Shipper, Consignee, owner of the cargo and/or holder of the Bill of Lading or any other from such servant or agent of the Carrier for any such loss, damage, delay or otherwise.

### **(7) DANISH STRAITS CLAUSE FOR TIME CHARTERS**

Danish Straits Clause for Time Charters: In recognition that the IMO through its Resolution MSC.138(76) adopted on 5 December 2002 recommends the use of pilotage services when vessels transit the Danish Straits INTERTANKO's Documentary Committee publishes the following model charterparty clause: "Where the vessel is to pass through the entrances to the Baltic Sea the vessel shall comply with the recommendations set out in the IMO Resolution MSC.138(76) adopted on 5 December

2002 as amended from time to time including the use of pilots for the passage. Charterers shall reimburse owners for any pilotage expenses incurred by compliance with these recommendations.”

## **(8) CHARTERPARTY RIVER PORTS CLAUSE**

Charterparty river ports clause: Where a fixture might include cargo operations being carried out at a river port, owners may wish to consider the inclusion of the following clause: “If load/discharge port is a river port, laytime, or demurrage if vessel is already on demurrage, shall count from six (6) hours after tendering n.o.r. at river mouth anchorage or pilot boarding grounds or on commencement of river passage, whichever occurs earlier. Laytime or demurrage if vessel is on demurrage shall cease on dropping outward river pilot. All bunkers consumed and extra pilotage expenses for river passage shall be for charterer's account.”

## **(9) TURKISH STRAITS CLAUSE**

Turkish Straits Clause: INTERTANKO's Documentary Committee has prepared a Turkish Straits clause for members' consideration.

Charterparty clauses which address such matters as laycan and vessel's ETA are usually the subject of individual negotiation according to the circumstances of the particular voyage. No one clause can accommodate the differing expectations which will arise in each instance. The Turkish Straits are a case in point, where factors other than weather conditions and the owner's commercial arrangements may operate to delay arrival. There are, of course, different ways in which the risks and costs associated with such delay can be accommodated in the fixture. Currently the allowance in *Worldscale* does not reflect the delays that operators are experiencing when transiting the Turkish Straits. INTERTANKO has raised this issue with the *Worldscale* Associations, who have asked for further evidence of the delays being experienced, accordingly we request our members to provide us with such information.

INTERTANKO's Documentary Committee has prepared a clause which takes account of the above factors to achieve a reasonable commercial solution. This can be viewed on here  
<<http://www.intertanko.com/search/artikkel.asp?id=5449>>. [www.intertanko.com](http://www.intertanko.com)

## **(10) QUALITY MANAGEMENT CLAUSE**

Quality Management Clause “*Owners and charterers each confirm to the other their commitment to the total quality of their performance under this charter and will so act in relation to all aspects of their contractual obligations as to ensure that they each accord to the other the full rights set out in the terms hereof.*”

## **(11) MARITIME SECURITY CLAUSE FOR TIME CHARTERS**

Maritime security clause for time charters Following on from the publication of INTERTANKO's security clause for voyage charterers, the Association's Documentary Committee is now publishing its suggested security clause for time charters. The time charter clause follows the style of the security clause for voyage charters and, as always with INTERTANKO clauses, they are designed to be model clauses and seek to strike a balance between the rights/liabilities of owners and charterers. The clause reads as follows:

### **1. Owner's obligations**

The Owner shall comply with obligations imposed upon it or the vessel under the International Code for the Security of Ships and of Port Facilities (“the ISPS Code”) and any other laws and regulations relating to the security of vessels and ports, as in force and of mandatory application to the vessel at the date of this charter. The ISPS Code and the aforesaid laws and regulations shall hereafter be referred to collectively as “the Relevant Security Regulations”. The Owner shall upon request promptly provide the Charterer with

- (a) a copy of the International Ship Security Certificate issued under the ISPS Code
- (b) the identity and contact details of the Company Security Officer.

### **2. Charterer's obligations**

The Charterer shall promptly provide the following information so that the Owner may comply with any requirements arising in relation to the application of the Relevant Security Regulations or any other applicable security regulations that come into force after the date of this charter ("Other Security Regulations"), including any measures which may be required by any port facility or relevant authority:

- (a) the identity and contact details of all parties to any contracts relating to the Vessel and her employment where such contracts have been entered into by the Charterer, by any sub-charterer, or by any agents appointed by them, or in the name of the Owner at the direction of the Charterer or any sub-charterer,
- (b) the identity and contact details of any personnel (other than those directly employed by the Owner), and employers or principals thereof, on or about the Vessel pursuant to this charterparty or any other contracts referred to in sub-clause (a) above, and
- (c) any other relevant information relating to the Vessel's cargo or its employment requested by the Owner.

### **3. Loss of Time**

Notwithstanding any other provision in the charterparty, hire shall remain payable in respect of any time loss arising in relation to the application of the Relevant Security Regulations or Other Security Regulations, including any measures required by any port facility or relevant authority.

Hire shall not be payable in respect of time lost due to Owner's failure to comply with obligations imposed upon it or the Vessel under the Relevant Security Regulations, unless such failure is attributable to a breach by the Charterer of its obligations under this or any other term of the charterparty.

### **4. Costs, Losses and Liabilities**

Any costs, expenses, losses and liabilities which may be incurred by the Owner in relation to the application of the Relevant Security Regulations or Other Security Regulations, including any measures required by any port facility or relevant authority, shall be for the Charterer's account, unless the costs, expenses, losses or liabilities result from

- (a) the Vessel's non-compliance with any ship security plan required by the Relevant Security Regulations, the costs of compliance with any such plans being for the Owner's account,
- (b) the Owner's failure to comply with obligations imposed upon it or the Vessel under the Relevant Security Regulations, or
- (c) the Owner's breach of this Charter.

### **5. Trading to Non-ISPS Compliant Ports**

In the event of the vessel being ordered to sail to any port facility which is not listed on the ISPS Code Database as having an approved Port Facility Security Plan:

(a) the Owner shall be entitled to implement any security measures it may reasonably deem necessary to protect the Owner's interests, the vessel and its cargo. Any costs, expenses, and delay arising in relation to the implementation of such security measures shall be for the Charterer's account

(b) notwithstanding (a) above, the Charterer shall indemnify the Owner in respect of any losses and liabilities of whatsoever nature arising in relation to the vessel calling at any such a port facility.

Nothing in this sub-paragraph shall prejudice the Owner's position under any terms of the charterparty relating to the employment of the vessel, including those relating to trading limits and the nomination of safe ports and berths.

### **Comments**

It is important to emphasise the following points:

Owners are not just agreeing to comply with the ISPS Code but are also agreeing to comply with any other security laws and regulations applicable at the date of the charter, including regulations in the United States;

1. Charterers' obligation to provide owners with the relevant information to aid compliance is similar to the wording used in many of the security clauses in use in the market, INTERTANKO's own voyage charter security clause

included. Charterers obligations like owners extend beyond ensuring compliance with the ISPS Code and include other security regulations;

2. This clause makes it absolutely clear that hire remains payable unless owners have failed to comply with the security regulations and such default is not due to charterers;
3. Clause 4 is a straightforward provision which apportions liability between the parties for any additional expenses incurred.
4. Clause 5 deals with the situation where the vessel trades to a non-compliant port. Whilst this provision does not give owners the right to refuse to proceed to such a port it would be possible to amend this provision to expressly reserve this right. The clause does, however, provide owners with a mechanism for being reimbursed for any additional security measures put in place when the vessel calls at a non-compliant port.

We commend this clause to the membership.

## (12) ROB CLAUSE

ROB Clause: INTERTANKO has long cautioned against the inclusion of so-called ROB clauses, as they provide charterers with a pre-emptive right to make a deduction from freight (which may be impossible or difficult to challenge subsequently) for cargo loss or retention on board, without requiring proof of any breach by owners. Nevertheless, commercial circumstances are that such a clause will form part of a charterparty.

INTERTANKO's Documentary Committee has prepared a model clause, which is an attempt at striking a balance between charterers' and owners' needs. If nothing else the clause can be used as a benchmark with which other clauses proffered by charterers may be compared.

### Model ROB clause

**“If by reason of the owner's breach of any terms of this charterparty, any liquid cargo, which is reachable and pumpable by the vessel's own pumps (or which would be reachable and pumpable but for the owner's breach of charterparty) remains on board upon completion of discharge, the charterers shall have the right to deduct from freight an amount corresponding to the loss actually suffered by them as a direct result (not in any event to exceed an amount equal to the FOB loading port value of liquid hydrocarbons remaining on board, freight and cargo insurance thereon) provided always that**

*(i) the presence and quantity of ROB shall be determined (by the application of the wedge formula in respect of any tank where the contents do not reach the forward bulkhead) by an independent surveyor jointly appointed and paid for by owners and charterers equally or, if they cannot agree on his identity, by two surveyors one to be appointed and paid for by each party. The two appointed surveyors shall use their best endeavours to make a joint determination, and shall in any event each report to both owners and charterers. If they cannot make a joint determination, an average of their respective determinations shall apply. The survey shall be carried out in accordance with API guidelines, and*

*(ii) the quantity of ROB in respect of which the aforesaid deduction from freight is made shall be determined after deducting whichever is the lesser of*

*(a) the quantity of liquid hydrocarbons present in the nominated cargo tanks immediately before the commencement of loading under this charter, or*

*(b) the quantity of liquid hydrocarbons remaining on board in the nominated cargo tanks on completion of the vessel's previous discharge, and*

*(iii) any deduction from freight pursuant to this clause shall be subject to the rights of and defences available to the owners under the Hague or Hague-Visby Rules, and/ any other provisions governing the rights and responsibilities of the parties hereto in respect of the carriage of cargo hereunder, as incorporated in this charterparty.”*

## (13) BUNKER DEVIATION CLAUSE

Bunker Deviation Clause: Current uncertainty in the oil market and the prospect of war in the Gulf prompts a review of the issue of deviating in order to bunker.

Where a vessel en route either to a load or discharge port decides to deviate to replenish her bunkers this raises a number of issues. Under the charterparty it is important to establish whether the owners are allowed to carry out this deviation and not be in breach of their obligation to proceed to the loading port or to prosecute the loaded voyage with utmost despatch. On a loaded voyage Owners may also be in breach of their obligations to a third party bill of lading holder which generally will be governed by the Hague-Visby Rules if the deviation is not justified or reasonable at law. If a deviation is not justified at law this would put the owners in breach of their P&I Club cover if it deprives owners of the right to rely on defences or rights of limitation. A deviation to take bunkers which is not required for a current loaded voyage is especially difficult to justify.

If the deviation is small and if it is customary in the trade, it will not usually be unlawful, but the scope of what is "customary" has always been very narrowly interpreted at law. There will often be grey areas and if the owners are in doubt, it is best that they consult their Club to ensure that they are held covered. It may be that the Club will require an extra premium depending on how they assess the risk. To strengthen their position owners should consider including in their charterparties, and any bills of lading issued pursuant to them, a Bunker Deviation Clause. One such clause is the P&I Bunker Deviation Clause, 1948 which reads: 'The vessel in addition to all other liberties shall have liberty as part of the contract voyage and at any stage thereof to proceed to any port or ports whatsoever whether such ports are on or off the direct and/or customary route or routes to the ports of loading or discharge named in this charter and there take oil bunkers in any quantity in the discretion of owners even to the full capacity of fuel tanks, deep tanks, and any other compartment in which oil can be carried whether such amount is or is not required for the chartered voyage.'

#### **(14) MAROL ANNEX VI CLAUSE FOR BUNKER SUPPLY CONTRACTS**

1. Notwithstanding any other provision in the bunker supply agreement, the suppliers hereby warrant the following:
  - a. All bunkers supplied shall comply with the quality requirements of MARPOL Annex VI,
  - b. The vessel shall be provided with a delivery note in accordance with and containing the minimum information required by MARPOL Annex VI,
  - c. The vessel will be provided with a representative sample of the bunkers oil delivered in accordance with MARPOL Annex VI and the guidelines set out in MEPC96(47).

Both owners and time charterers depend on suppliers in order to comply with Annex VI. A Clause has therefore been provided for incorporation in bunker purchase contracts to ensure that the suppliers provide bunkers which meet the quality requirements set out Annex VI, follow the correct sampling procedures and supply a bunker delivery note in the correct form. This clause can be used by owners or time charterers.

In devising these clauses INTERTANKO has tried to take a balanced and practical approach which it hopes will be useful for owners and charterers alike.

#### **(15) BUNKER EMISSION CLAUSE FOR TIME CHARTERS**

1. Owners warrant that the vessel shall comply with the emission control and other requirements of Regulations 14 and 18 of MARPOL Annex VI and any other laws or regulations relating to bunker specification and bunkering procedures applicable in any areas to which the vessel is ordered.
2. Charterers warrant that they will supply bunkers:
  - a. of sufficient quantity and quality to enable the vessel to meet the emission control and other requirements of Regulations 14 and 18 of MARPOL Annex VI and any other laws or regulations relating to bunker specification and bunkering procedures applicable in any areas to which the vessel is ordered, and
  - b. in accordance with the specifications in the latest version of ISO 8217 as at the time of supply and any other specifications contained elsewhere in this charterparty.
3. Charterers further warrant that all bunker suppliers shall comply with the requirements of MARPOL Annex VI and MEPC96(47) in respect of sampling and the provision of a bunker delivery notes and, where bunkers are supplied in a state where MARPOL Annex VI is in force, that suppliers shall be registered in accordance therewith.

This clause confirms that owners will meet the emission limits in MARPOL ANNEX VI and any similar laws or regulations. It also places an obligation on charterers to ensure that their suppliers provide bunkers which enable owners to comply with the emission controls. The suppliers must also meet the requirements laid down in Annex VI in relation to sampling and bunker delivery notes. Suppliers in states where Annex VI is in force must also be registered.

Many owners participate in fuel testing programmes and those owners who do so may wish to assume this obligation formally in the charterparty by adding a provision in the bunker clause that Owners further warrant that they shall throughout the currency of the charterparty participate in a fuel testing programme.

## **(16) DANISH STRAITS CLAUSE FOR VOYAGE CHARTERS**

Danish Straits Clause for Voyage Charters : In recognition that the IMO through its Resolution MSC.138(76) adopted on 5 December 2002 recommends the use of pilotage services when vessels transit the Danish Straits INTERTANKO's Documentary Committee publishes the following model charterparty clause:

*"Where the vessel is to pass through the entrances to the Baltic Sea, the vessel shall comply with the recommendations set out in the IMO Resolution MSC.138(76) adopted on 5 December 2002 as amended from time to time including the use of pilots for the passage. Charterers shall reimburse owners for any pilotage expenses incurred by compliance with these recommendations on any ballast passage to a port of loading and/or on the laden passage unless such expenses have already been taken into account in the freight payable in accordance with the terms and conditions of Worldscale."*

## **(17) PORT COSTS - WORLDSCALE CLAUSE**

Port Costs - Worldscale Clause: There are occasions where a vessel will be fixed on Worldscale terms and conditions yet no account has been taken of a particular port cost in the flat rate. In such a situation a provision is necessary in the charterparty to compensate owners for this expense. Accordingly, INTERTANKO's Documentary Committee now publishes the following provision:

*"Notwithstanding any other provision in the charterparty in circumstances where the Worldscale Associations have not taken into account any port charges in a particular flat rate, charterers agree to reimburse owners against presentation of vouchers for such charges and payment thereof to be made with freight."*

## **(18) MSDS CLAUSE**

MSDS Clause: The IMO through its resolution MSC 150 (77) is urging the use of Material Safety Data Sheets (MSDS) for MARPOL Annex 1 cargoes. INTERTANKO strongly supports this. INTERTANKO's Documentary Committee is now publishing a straightforward provision that requires charterers to provide the master with an MSDS for cargo to be loaded. The clause reads: *"Charterers shall, before the commencement of loading any cargo listed in MARPOL Annex 1, provide the master with a Material Safety Data Sheet (MSDS) which shall contain safety, handling and environmental information in accordance with the requirements and recommendations of IMO Resolution MSC 150 (77)"*

## **(19) MARITIME SECURITY - VOYAGE CHARTERS**

Maritime security: INTERTANKO Maritime Security Clause for Voyage Charters (published 26.3.04)

### **1. Owner's obligations**

The Owner shall comply with obligations imposed upon it or the vessel under the International Code for the Security of Ships and of Port Facilities ("the ISPS Code") and any other laws and regulations relating to the security of the vessel and port, as in force and of mandatory application to the vessel and/or port at the date of this charter., The ISPS Code and the aforesaid laws and regulations shall hereafter be referred to collectively as "the Relevant Security Regulations". The Owner shall upon request promptly provide the Charterer with

- (a) a copy of the International Ship Security Certificate issued under the ISPS Code
- (b) the details of the Company Security Officer.

### **2. Charterer's obligations**

The Charterer shall promptly provide the following information so that the Owner may comply with any requirements arising in relation to the application of the Relevant Security Regulations or any other applicable security regulations that come into force after the date of this charter ("Other Security Regulations"), including any measures which may be required by any port facility or relevant authority:

- (a) the identity and contact details of all parties to any contracts relating to the Vessel and her employment where such contracts have been entered into by the Charterer, by any sub-charterer, or by any agents appointed by them, or in the name of the Owner at the direction of the Charterer or any sub-charterer,
- (b) the identity and contact details of any personnel (other than those directly employed by the Owner), and employers or principals thereof, on or about the Vessel pursuant to this charterparty or any other contracts referred to in sub-clause (a) above, and
- (c) any other relevant information relating to the Vessel's cargo or its employment requested by the Owner.

### **3. Delay**

Any delay whatsoever arising in relation to the application of the Relevant Security Regulations or other Security Regulations, including any measures required by any port facility or relevant authority, shall

- (a) if the vessel is on laytime or on demurrage, count as laytime or time on demurrage as the case may be; and
- (b) in any other case, be compensated for by the Charterer at the demurrage rate, save that time lost due to Owner's failure to comply with obligations imposed upon it or the Vessel under the Relevant Security Regulations shall be for Owner's account.

The Owner shall be entitled to tender a valid notice of readiness notwithstanding the fact that the port facility or any relevant authority has not issued clearance in respect of security matters affecting or relating to the vessel and cargo, provided the vessel is in all other respects an arrived ship under the charterparty.

### **4. Costs, Losses and Liabilities**

Any costs, expenses, losses and liabilities which may be incurred by the Owner in relation to the application of the Relevant Security Regulations or other Security Regulations, including any measures required by any port facility or relevant authority, shall be for the Charterer's account, unless the costs, expenses, losses or liabilities result from

- (a) the Vessel's non-compliance with any ship security plan required by the Relevant Security Regulations, the costs of compliance with any such plans being for the Owner's account,
- (b) the Owner's failure to comply with obligations imposed upon it or the Vessel under the Relevant Security Regulations, or
- (c) the Owner's breach of this Charter.

### **5. Alternative ports**

If, due to the application of the Relevant Security Regulations or other Security Regulations, including any measures required by any port facility or any relevant authority, the Vessel is prevented for more than 5 (five) days from entering, or loading or discharging cargo at any of the nominated or agreed ports under the charterparty, the Owner may request the Charterer to nominate an alternative safe port or ports. If the Charterer fails to nominate such a port or ports within 48 hours of receiving Owner's request, the Owner may discharge the cargo at any port of its choice or, if there is no cargo on board, terminate the charterparty with immediate effect.

The Charterer shall reimburse the Owner at the demurrage rate for any additional steaming time or delay which may result therefrom and shall bear all related additional costs and expenses including but not limited to bunkers and port costs.

Such discharging shall be deemed to be due fulfilment of the contract or contracts of affreightment and owners shall be entitled to freight as if discharging had been effected as the port or ports originally nominated or to which the vessel may have been properly ordered under the provisions of this charter or bills of lading issued pursuant to this charter.

**Comments on INTERTANKO's clause:**

Some of the key features of the INTERTANKO Maritime Security Clause for voyage charters are as follows.

- Covers ISPS Code and other laws and regulations relating to the security of the vessel and or the port in force at the date of the charter
- Covers charterers' obligations as regards information that owners may be required to supply to the relevant security authorities
- Allocates the risk of delay due to any measures required by any port facility or authority
- Allocates the risk of delay where a vessel has arrived but is not given security clearance
- The cost of compliance with any security plan is to be for owners' account
- The cost of any other measures imposed by relevant security authorities shall be for charterers' account
- The owners bear the costs and losses resulting from any failure or breach on their part
- If the port the vessel was originally bound for cannot be entered the clause deals with the issue of nomination of a substitute port and the allocation of liability for the additional expenses thereby incurred

It is important to note that the clause is not a substitute for a war risk clause. Advice on such clauses is available on our website.

The clause deals with the information that owners may have to provide security authorities with and requires charterers to provide such information. The information required is comprehensive specifically because the ISPS Code is fairly vague in this respect, and it remains to be seen how the contracting states will interpret the relevant provisions of the Code. The wording of the clause reflects the issues and types of information national and international authorities have been focusing on with regard to maritime security and security in general.

Subclause 5 dealing with a substitute port has been included in order to avoid, or at least limit, the difficulties faced by the parties in the event of access being denied to a contractual port. There will invariably remain, however, a number of problems arising in such circumstances, and the Committee recognises that whilst the provision tendered is helpful, the parties should not seek to exercise their rights thereunder without first consulting with their P&I Club or seeking independent legal advice. The Committee also recognises that some charterers, and even some owners, may be uncomfortable with the inclusion of such a provision. It should be noted that the overall balance of the clause will not be substantially affected by the removal of Subclause 5; this provision may therefore be treated as optional.

## (20) OPEN SEA BERTH CLAUSE

Novorossiysk/ tanker berths - call for their recognition as open sea berths. There are certain ports in Europe where it has been accepted by charterers for many years that the berths there are open sea berths due to their exposed position, and weather delays to a greater or lesser extent are almost inevitable.

Examples of such ports include: Ravenna, Falconara, Fiumicino, Ancona, Gaeta, and Santa Panaghia Bay. The tanker berths at Novorossiysk are no exception and should be treated in the same way as other open sea berths. For these weather ports, charterparties usually contain a weather clause which allocates to charterers the risk of delay due to weather.

An example of a weather clause is:

*"If discharge Ravenna/ Falconara/ Fiumicino/ Ancona/ Gaeta/ Novorossiysk/Santa Panaghia Bay/Portugal/ Spanish Atlantic any delays due to bad weather to count in full as laytime or demurrage if on demurrage and any unberthing/ reberthing time and expenses to be for charterers' account.*

## (21) AGENCY CLAUSE

Agency Clause: For some time now INTERTANKO's Documentary Committee has been considering the issue of charterers seeking to nominate the port agent which a vessel operator is required to appoint. Given that a port agent is first and foremost the vessel's agent and their allegiance should be to their principal it has long been a potential source of concern that charterers should wish to choose an owner's port agent. From an operator's perspective they would prefer to choose their agent themselves, failing which the agent could be one that is acceptable to both parties. It is only where charterers will accept neither of these alternatives that an owner is faced with accepting the charterer's choice of agent.

A port agent's duties are well known and it is readily recognised that the agent plays a key role in ensuring the smooth operation of a vessel's port stay. Owners have on occasions been faced with the situation that the agent nominated by their charterers becomes insolvent and the port disbursements advanced for the port call are effectively lost. In such a situation an owner has to appoint a different agent and in effect pay the port disbursements a second time. It is easy to see that such a situation will be frustrating for an owner that has suffered a loss due to an agent which was not of their choice. Owners' natural

reaction to this is that if charterers wish to nominate an agent then they should accept some degree of responsibility for any liability incurred as a result of their nomination.

A further matter of concern to owners is the tendency for charterers to delay in nominating the agent. This can give rise to real practical difficulties, for instance it may be difficult to arrange the requisite transfer of the advance for port disbursements in time. It may be that owners wish to effect a crew change or get spares delivered to a vessel. When it comes to an owner's post fixture claims such as demurrage and shifting costs, unless the requisite documents are received by owners in time they may run the risk of missing a time limit imposed by charterers for the submission of claims. It is therefore critical to the owners that their agent will act diligently to process the relevant documents needed by owners.

An agent is able to bind their principal for matters within their actual and apparent (ostensible) authority. It is this latter aspect of an agent's authority which makes the choice of agent such an important one. An agent has the authority for acts which a third party would expect such an agent to have. It is only where the third party has actual knowledge that an agent does not have authority to do something that the principal would not be bound by the agent's acts in contravention of their principal's instructions. For matters such as preparing bills of lading it is essential to owners that their instructions are followed to the letter.

When the Documentary Committee approached the matter of drafting a clause the guiding principles were that the clause should be fair and balanced and also practical in that it could be taken up by the market. Furthermore it was agreed that from an owner's perspective the primary objective was for owners to be able to have their own choice of agent. The clause was only to apply if charterers had reserved for themselves the option of making the nomination of the port agent. After long discussion and much careful deliberation the following clause is put to the Association's members for their consideration:

*"Where charterers under this charterparty have the right to nominate the vessel's agents at any port and they wish to exercise such right, they shall do so at the same time as the nomination of such port and they shall exercise due diligence to ensure that such agents are reliable, competent, competitive in price and service and (where possible) have ISO 9002 (or substantially equivalent) certification. If charterers fail to nominate the agent at the time that the port is nominated then owners may reject any subsequent nomination of agents by charterers. The appointment of such agents is subject always to owners' right to appoint protective agents in any port if they so wish."*

It will be seen that this clause places on charterers a time restriction within which the nomination must be made. Unless charterers nominate the agent when the port is nominated owners may reject charterers' nomination of the agent. Charterers are obliged to exercise due diligence when choosing the agent to ensure that they are reliable, competent, competitive in price and service and where possible have ISO 9002 or an equivalent certification. It is felt that if charterers were operating either their own or chartered in tonnage then they would ensure that any agent fulfilled these criteria. Therefore the Association feels that this requirement is balanced. The clause also expressly reserves owners' right to appoint a protecting agent. The reason this was done was because there are jurisdictions which do not recognise this right unless it has been spelt out in the charter.

We would welcome comments and also in due course feedback as to member' success in being able to agree this clause.

## **(22) Pumping Clause**

Pumping Clause: The Association's Documentary Committee has agreed upon a new pumping clause that it now commends to the membership. A detailed explanation and worked example of the clause are provided.

Probably the source of the most disputes on demurrage claims is the pumping warranty. Disputes arise due to the often imprecise wording of clauses and the difficulties of calculating loss where there has been a breach of the warranty. This has been a subject which INTERTANKO's Documentary Committee has considered many times. We have published practical guidelines for masters detailing how to effectively record discrepancies during discharge and we have published guidance on what we feel the essential elements of such a warranty should be to ensure that the provision is balanced. However, the Association's Documentary Committee has felt it appropriate to take a fresh look at the problem and come up with a model clause that is balanced and, above all, practical to apply. We are now in a position to publish the clause, which reads:

"The vessel shall have cargo pumps which, when the vessel is laden with a homogeneous cargo, are capable of:

- a) Bulk discharge within 24 hours of the full quantity of cargo loaded, excluding time spent in stripping operations plus any further time allowed for COW, or
- b) Maintaining an average manifold pressure, except during stripping or COW, of 100 PSI,

Provided that in relation to a) and b) above:

i) reception facilities, and any limitations imposed by the charterers or any third party permit, and

ii) the cargo at the discharge temperature does not have:

- 1) A kinematic viscosity exceeding 250 centistokes, or
- 2) A volatility which adversely affects the required net positive suction head of the vessel's cargo pumps, or
- 3) A density exceeding 1000 kg/m<sup>3</sup>

The vessel shall maintain an hourly record of the individual manifold pressures together with the volume discharged. If the above conditions have all been satisfied and neither of the above warranties in a) or b) have been met, used laytime or time on demurrage shall be reduced by deducting any excess hour (excluding those allowed for COW and/or stripping) during which the pressure measured at the manifolds is below 100 PSI, and the volume discharged is below 1/24<sup>th</sup> of the vessel's cargo."

The clause includes the now familiar alternative warranties of the vessel either carrying out the bulk discharge within 24 hours or maintaining an average manifold pressure of 100 PSI. Where the clause starts to depart from many current clauses in use is the provisos to these warranties. The familiar proviso of limitations imposed by charterers or third parties or reception facilities is retained but with the addition of the following:

"the cargo at the discharge temperature does not have:

A kinematic viscosity exceeding 250 centistokes, or

1. A volatility which adversely affects the required net positive suction head of the vessel's cargo pumps, or
1. A density exceeding 1000 kg/m<sup>3</sup>"

It is important that certain parameters are set concerning the physical characteristics of the cargo for outside these it would not be practical or reasonable to expect owners to comply with either of the warranties.

The clause specifies that the vessel shall maintain an hourly record of the individual manifold pressures and the volume discharged. It is by this record that the performance of the vessel will be judged. Clearly it is important that an accurate record is kept of the pumping performance of the vessel.

The innovative aspect of the clause is the provision which specifies what time charterers may deduct from any used laytime or time on demurrage in the event that the vessel has not complied with either of the warranties. Provided that the conditions of the clause have been met and neither of the warranties have been met then charterers may deduct any excess hour where the pressure measured at the manifold is below 100 PSI and the volume discharged is below 1/24<sup>th</sup> of the vessel's cargo.

The aim of this provision is to ensure that the vessel is not penalised where pressure drops but the rate of flow increases. This is important as it emphasises that back pressure is simply resistance to flow. For instance, if there is a change of the shore tank it is quite likely that the pressure recorded at the vessel's manifold will fall due to resistance to the flow of the cargo reducing.

Whilst some clauses simply provide that in the event of breach all time in excess of 24 hours shall not count as laytime or time on demurrage, this is somewhat of a blunt instrument and may unfairly penalise the vessel. The general position under common law systems is that in the event of a breach of contract the innocent party should be compensated by damages and put in the same position as if the vessel had performed in accordance with the warranty. In the case of a pumping warranty this would entail calculating how long the vessel would have taken to discharge if the vessel had maintained the required pressure at the manifold.

To illustrate the application of our new clause we have prepared an example, which can be viewed [http://www.compodeal.no/extranet/intertanko/wn\\_week25.doc](http://www.compodeal.no/extranet/intertanko/wn_week25.doc).

It is important to emphasise that this is a model clause; it may be used in its entirety or it can be compared with other clauses and elements of it taken to ensure that whatever clause is agreed between owners and charterers is more balanced.

We commend this clause to the membership. Any queries may be directed to:

## (23) DEMURRAGE PAYMENT CLAUSE

Demurrage Payment Clause INTERTANKO's Documentary Committee has prepared the following model demurrage claims clause which is self explanatory.

"1. The charterers shall promptly notify the owners of any objections to any demurrage claim under this charterparty. Unless the owners have received such notification within [30] days after the charterers' receipt of the claim, the charterers shall be deemed to have waived objection to the claim which shall be deemed *accepted by the charterer as presented*.

2. *The charterers shall pay any undisputed demurrage without delay, but in any event not later than [45] days after the charterers' receipt of the demurrage claim.*

3. *The owners shall have the right to present a separate demurrage claim for the loading port(s) if demurrage is incurred there.*

4. *Payment of demurrage shall be made by the charterers without any set off or deduction for any counterclaim, including but not limited to any cargo claim, provided reasonable security for any documented counterclaims has been provided by the owners. An appropriate undertaking from a P&I club in the International Group shall be regarded as reasonable security in this respect.*

5. *The charterers shall pay interest on all demurrage due and unpaid at LIBOR plus 2% calculated from the [45<sup>th</sup>] day after the charterers' receipt of a properly documented demurrage claim until payment is made."*

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