

# **The knock for knock regulation in the WINDTIME**

The reasoning behind the incorporation of the regulation and legal implications or other effects of the amendments made in the knock for knock clauses, compared with the SUPPLYTIME



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# 1 Introduction

## 1.1 Topic

The offshore shipping industry and the operations performed therein are characterized by high technical complexity. At an offshore project, the parties involved in the operations work in an environment where there is high risk of causing damages, because high property values are situated in a limited area where many contractors and sub-contractors work at the same time.<sup>1</sup> Considering the nature and size of offshore projects, the threat that damages will occur is present at all times and the parties involved are therefore exposed to substantial risks for damage, not only caused due to their own actions but also as a result of actions by others operating at the same project. The extent of the damages and losses that may arise due to an incident at an offshore project can reach immeasurable magnitude, both in terms of lives and pure economical losses, not to mention pollution damage. Consequently, the offshore shipping industry being a risky venture with a significant risk for damages, the allocation of liabilities between the parties to a contract is a fundamental keystone in contracts used for offshore operations.

Marine transportation is a critical phase of any offshore development project and for this reason, vessel and other transport units are contracted out on charters to perform such services. In offshore charter parties<sup>2</sup>, the parties to the contract allocate the risks through clauses regulating the liabilities and indemnities. The most frequently used regime in the offshore shipping industry, which is especially developed to fit the circumstances at offshore projects and regulates the liabilities connected to the risks in offshore operations, is the so-called knock for knock regime. The knock for knock regime is at simplest summarized as a mutual hold harmless regime where “each party agrees to take full responsibility for all bodily injury or property damage claims made by its own employees, regardless of which party may actually be responsible for the

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<sup>1</sup> Wilhelmssen p.96

<sup>2</sup> The parties to the charter party are defined as “Owner” and “Charterer”

injury”.<sup>3</sup> This responsibility is without recourse as the parties waive their right to claim damages from the other party.<sup>4</sup>

The contractual freedom, allowing the contracting parties to agree about limiting their liabilities, does however not allow them to regulate the tort position of an injured third party who is not party to the knock for knock agreement, as tort law cannot be departed from by stipulated rules in contract to which the injured third party is not a party.<sup>5</sup> But, the knock for knock may however be extended to also include other parties for whom the contracting parties have taken on responsibility, within the respective risk zone. This results in elimination of third parties and the foreseeability of liability for risks at an offshore project will become more foreseeable, where the parties then are able to finance these risks with insurance to receive proper cover in case of any damages. For the proper functioning of the knock for knock regime, an essential feature is therefore to secure that the liability risk of each party is financed by adequate insurance, since each party has to rely on their own insurance contract<sup>6</sup> for compensation of damages, losses or personnel injuries.<sup>7</sup> Furthermore, since the contracting parties waive their right to claim damages from the other party this also needs to be regulated in the relationship between their respective Insurers, through waiver of subrogation clauses.

The knock for knock regime has evolved within the offshore petroleum industry, but has now also been incorporated in the first standard charter party developed especially for the offshore wind industry, the WINDTIME<sup>8</sup>. The offshore wind industry is a new market where the offshore shipping industry and the land based wind industry meet. The phenomenon has been described as “shipping meets construction”.<sup>9</sup> When these two different markets meet in a new area of trade, there have however been some issues in relation to the liability and indemnity regime in the contracts used at the offshore wind farm project, because the offshore shipping companies and the companies coming from the land based wind industry have different experiences and approaches of how liability is usually regulated in contracts. In the offshore shipping industry this is

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<sup>3</sup> Evans and Butler p.226

<sup>4</sup> Wilhelmsen p.83

<sup>5</sup> Ibid. p.83

<sup>6</sup> The parties to the insurance contracts are referred to as the “Insurer” and the “Assured”

<sup>7</sup> Rainey p.266

<sup>8</sup> WINDTIME, a Standard Offshore Wind Farm Personnel Transfer and Support Vessel Charter Party

<sup>9</sup> Rosenberg and Sandgren p.140

usually regulated by the knock for knock principles in contrast to the land based wind industry, traditionally fault-based indemnities are normally used.

The time charter party WINDTIME is especially developed by BIMCO<sup>10</sup> for personnel transfer vessels and support vessels performing services in the offshore wind industry. Up until the release of the WINDTIME in July 2013, there existed no other standard charter parties purposely developed for these types of services within this area of trade, and the standard offshore charter party SUPPLYTIME<sup>11</sup> was then used for chartering in of vessels to perform these services. During the period when the WINDTIME was developed, there were some parties with an interest in the final product who believed that this contract would have a different approach in terms of liability and indemnity regime applied, compared with the frequently used knock for knock regulation within the offshore petroleum industry, which is also found in the SUPPLYTIME. However, when the WINDTIME was released in the 22<sup>nd</sup> of July 2013, this speculation did not comply with the final product, because the WINDTIME, just like the SUPPLYTIME and other standard offshore charter parties provided by BIMCO used in the offshore industry, contains a type of the knock for knock regime. Compared with the SUPPLYTIME there were nevertheless some amendments made in the knock for knock clauses.

The principle of the knock for knock regime has been much written about and treated from a Norwegian legal perspective in several papers before.<sup>12</sup> The main focus and purpose of this thesis will however be to by a functional analysis in two steps examine:

- I. whether the reasoning and market conditions for an offshore petroleum charter party containing a knock for knock regulation where financing of risk is made

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<sup>10</sup> See Larsen p.89, the Baltic and International Maritime Council (BIMCO), has for more than 100 years developed standard contracts for the shipping industry. See also Michelet p.2, about BIMCO's important role in developing time charter parties.

<sup>11</sup> Time Charter Party for Offshore Service Vessels, 2005 form. First version of Supplytime was published in 1975, followed in 1989 by SUPPLYTIME 89 and in 2005 by the SUPPLYTIME 2005, which is the SUPPLYTIME referred to in this thesis.

<sup>12</sup> Hans-Jacob Bull, *Tredjemannsdekninger i forsikringsforhold*, Oslo 1988, Del IV (Bull), Knut Kaasen, *Petroleumskontrakter: med kommentar til NF 05 og NTK 05*, 2006, (Kaasen (2006)), Trine-Lise Wilhelmsen, *Liability and insurance clauses in contracts for vessel services in the Norwegian offshore sector – the knock for knock principle*, Marlus no. 417, Oslo 2012 (Wilhelmsen), and Monica Zak, *Ansvarsregulering i borekontrakter – Gyldighetssensur i norsk, engelsk og amerikansk rett*, in: Marlus no. 415, Oslo 2012 (Zak).

by insurances, also is suitable to apply for a charter party within the offshore wind farm industry, and

- II. whether the amendments made in the clauses of the knock for knock regulation of the WINDTIME, compared with the SUPPLYTIME, have any legal implications and other effects, or any impact on the insurance cover for the vessel, seen from a Norwegian legal perspective.

The SUPPLYTIME will primarily be used for comparison when analysing the new clauses in the WINDTIME. The main motive for using the SUPPLYTIME is because this contract was developed for the offshore petroleum industry, but has now also been used as base when developing the WINDTIME.

## 1.2 Outline

In Chapter 2, the development of the two markets and the development of the time charter parties for support vessels within each market will be introduced, followed by an introduction of the legal sources in chapter 3. Thereinafter, to give context to the specific characteristics of the liability and indemnity clauses frequently used in offshore charter parties, the function of the knock for knock regime, some important features of the regime and its relation to insurance cover will be further introduced in chapter 4.

For the purpose of analysing the incorporation of the knock for knock regulation in the WINDTIME and if it is suitable to apply for this trade, chapter 5 will first provide information about the development and structure of how the knock for knock is incorporated within the offshore petroleum industry, to then be able to discuss the reasoning behind the knock for knock regime in the first standard offshore charter party developed for the offshore wind industry.

Further on, in chapter 6 there will be an analysis of the validity of the amended clauses in the knock for knock regulation of the WINDTIME, to see if they have any legal implications or other effects, compared with the SUPPLYTIME. Then, the analyse whether these amendments have any impact on the insurance cover for the vessel operating under a WINDTIME, will be treated in chapter 7. Finally, in chapter 8 there

will be a summary and some concluding remarks in relation to issues and problems emphasized in this thesis.

## **2 The offshore shipping industry**

### **2.1 Introduction**

Within the shipping industry, there is a wide range of different markets. The general expression of “shipping contracts” subsequently comprises a diversity of different contractual provisions, depending on the trade they intend to be used within.<sup>13</sup> In a specific market of the shipping industry, such as within the offshore shipping segment, the charter parties may therefore have different contents, depending on the circumstances of the trade as well as the services to be performed at the offshore project.

Since the purpose of this thesis is to analyse the knock for knock regulation of a standard charter party developed for the offshore wind farm industry, by using the provisions of a traditional offshore petroleum charter party as basis for comparison, it is necessary to provide some factual backgrounds of the two separate trades within the offshore shipping industry, and also about the development of the standards charter parties within each market; the SUPPLYTIME developed for the offshore petroleum industry and the WINDTIME, developed for the offshore wind farm industry.

### **2.2 The offshore petroleum industry**

The offshore petroleum industry, i.e. drilling in the subsoil of the seas to explore oil and gas,<sup>14</sup> has been performed for more than hundred years and has always had character of being a risky and hazardous business. In the search after and for production of oil and gas at sea, vessels, other movable and floating structures and units play a central role within the industry. However, the character of these units are very unlike from the ship we know from the traditional shipping industry, both in appearance and not at least functionally, because in reality they participate in an industry undertaking.<sup>15</sup> To this

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<sup>13</sup> Gorton p.67

<sup>14</sup> Norwegian Petroleum Act §1- 6

<sup>15</sup> Askheim, Bull and Lange p.1



background, the contracts used within this industry therefore have developed a different legal character compared with similar activities on land or in shallow waters near the coast,<sup>16</sup> the so-called knock for knock regime. This regime plays a central role in the offshore petroleum contracts and is generally accepted for all the vessels operating at an offshore petroleum project.

After the World War II, the operations of the offshore petroleum industry moved further off shore to locations on deep oceans' depths,<sup>17</sup> which led to even more dangerous and unsafe environment for operations.<sup>18</sup> At the early stage of the offshore petroleum industry, the contracts used for chartering in supply vessels was either self assembled in-house contracts or standard charter parties intended for use in the traditional shipping industry. But during the years, as the industry developed, became more sophisticated and moved further off shore, the range of the required services to be provided by vessels at an offshore field grew. It was however not until the beginning of the 1970's, when there was a large expansion of exploration and production of oil offshore, that the history of offshore petroleum standard charter parties first started, because with a greater demand of offshore supply vessels the need for suitable contracts to be able to support these increased activities grew simultaneously.

Conclusively, the vessels have become more specialised in specific areas of the offshore petroleum industry and this has resulted in a need of contracts purposely developed to use within different areas of service and for different categories of units. The Supplytime form from 2005 is the latest revision of the Supplytime form, which was first launched by BIMCO in 1975, due to a demand from the industry where new services require new contracts.<sup>19</sup> This standard charter party provides a form for chartering in various vessels, such as tugs and offshore service vessels for the disposal to a Charterer, to perform different services at the project.

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<sup>16</sup> Askheim, Bull and Lange p.1, Kaasen (2006) p.739 and Wilhelmsen p.96

<sup>17</sup> Lazardis p.1-2

<sup>18</sup> Wilhelmsen p.96

<sup>19</sup> Rainey p.225

### 2.3 The offshore wind industry

The historical development of the offshore wind market in Europe goes back to 1991, when the first offshore wind farm was installed off the Danish coast.<sup>20</sup> Since then, the European offshore wind market has expanded in the European waters. The European Wind Energy Association (“EWEA”) presented in a report over 2012, that there were 55 wind farms around in European waters by the end of 2012.<sup>21</sup>

The growth of sea-based offshore wind farms is partly related to political and local opposition against building new land-based wind farms, and the interest of moving this source of energy further away from the civilisation to another area has been supported. The ocean has been found as a suitable area for exploiting wind energy and the continued growth of the offshore wind industry is a fact.<sup>22</sup> For development and installation of offshore wind farms at sea, vessels and other movable and floating units play a central role because also in this industry. The vessels specialized to perform the constant need of transports of personnel and equipment to and from the project site and also within the offshore wind farm, are usually small high-speed mono-hull or catamaran vessels, developed purposely to provide fast and secure crew transfers and support services, with capacity to carry up to 12 passengers. These vessels are different from many of the other vessels performing in the offshore petroleum industry, because the locations of the offshore petroleum projects often are situated in areas with more heavy seas and adverse weather conditions and therefore the vessels performing in this trade are bigger, different in construction in order to be able to carry more heavy equipment and operate in heavy seas.

From the initial stage of the offshore wind farm industry, the SUPPLYTIME has been frequently used for contracting support vessels and crew transfer vessels to provide services in the offshore wind industry, because it was until recently the only suitable standard charter party for the services requested at the wind farm projects. However, the SUPPLYTIME is a charter party applicable to several different operations in the offshore industry and the tasks that may be performed under this charter party differ both in types of vessel to be used but also in respect of services to be performed, from

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<sup>20</sup> EWEA (2011) p.11

<sup>21</sup> EWEA (2013) p.11

<sup>22</sup> Mortensen p.7

easy supply services to more heavy work. One effect of SUPPLYTIME being such a wide-ranging applicable contract is that it has not always been used for situations it was intentionally intended to cater.<sup>23</sup> This happened within the offshore wind industry, where the market participants finally requested a more suitable contract, aimed to correspond to the specific operations and conditions of this industry. With an increasing demand from the participants within the offshore wind industry, of a tailor made standard charter party for vessels performing crew transfers and other support activities at the wind farm, BIMCO found it necessary to respond to this this request. The result was launched under the name WINDTIME, and this offshore standard charter party is a spin-off from the SUPPLYTIME.

Thus, offshore wind being an industry where two different markets meet in a new area of trade, where one of the participants already has experience, knowledge and established contracts for ship supply services that have been used for decades, e.g. the SUPPLYTIME, and the other party coming from the onshore industry with the knowledge about the technology in relation to wind farms but no suitable contracts for marine transportation, has resulted in a need for new types of contracts to be used for the operations within this specific market.<sup>24</sup>

### **3 Legal Sources**

#### **3.1 Time charter parties**

In Norway, the most relevant legal source, containing rules to ships and ship management, contracts of carriage, questions of liability and marine accidents, is the Norwegian Maritime Code (“NMC”)<sup>25</sup>. The applicability of the NMC in relation to time charter parties will however be discussed below, seen in the light of the general rule about freedom of contract.

The standard charter parties, which will be examined in this paper, have been provided by BIMCO. In relation to these standard charter parties, there are Explanatory Notes

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<sup>23</sup> Rainey p.226

<sup>24</sup> Rosenberg and Sandgren p.140

<sup>25</sup> The Norwegian Maritime Code (unofficial student edition), 24 June 1994 no. 39 with later amendments up to and including Act 26 March 2010 no. 10, Sjørettsfondet, 2010

created from the committee who developed the standard charter party, to give an understanding of what the creators of the provision have intended to achieve, which might be helpful to use when analysing the charter parties, and the relevance of these will also be introduced.

### 3.1.1 Norwegian Maritime Code (“NMC”)

There is a separation made in the Norwegian legislation between the common types of contracts used for contracts of carriage at sea, divided into three different types of contracts and regulated in the NMC chapter 14 as; voyage chartering, quantity contracts and time chartering. This thesis will focus on the time charter party WINDTIME, which is a contract where an Owner of a vessel makes it available to the Charterer for a specified period and the remuneration is calculated per unit of time.<sup>26</sup>

The starting point in Norwegian law is freedom of contract and according to this rule, the parties to the contract are free to agree about the contents in their agreement and thereby also create clauses where liability and indemnity is regulated and apportioned between them. The provisions of chapter 14 of the NMC will then only apply “in so far as anything to the contrary follows from the contract, practice established between the parties, or custom of the trade or other usage which must be considered binding upon the parties”.<sup>27</sup>

Conclusively, as the contracting parties of the WINDTIME are free to regulate the relationship between them, the statutory provisions in the NMC may be avoided, only considered supplementary and useful if the contract stays silent.<sup>28</sup> Therefore, the NMC will not be applicable in the analysis of this thesis, because the parties to contract have exercised their freedom of contract.

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<sup>26</sup> Falkanger, Bull and Brautaset p.393

<sup>27</sup> NMC section 322

<sup>28</sup> Falkanger p.290

### 3.1.2 BIMCO standard charter parties

A standard contract is an agreement designed to use for several different transactions within a specific market.<sup>29</sup> The standard charter parties<sup>30</sup>, used for the analysis of this thesis are developed by BIMCO. Standard charter parties are intended for international use and do always have the tacit choice of English law. The parties are however free to agree otherwise and in this thesis, issues will be contemplated from a Norwegian legal perspective.

One may distinguish different types of contracts, within the definition of standard charter parties, depending on how they were developed. One alternative is when the contract form is prepared by the part who intends to use the contract or by representatives from the market who have the same interest in the contract, and the contract therefore tends to be un-balanced in favour of that party.<sup>31</sup> The other type of a standard contract form is a product issued by a designated committee consisting of representatives from different parties who all have an interest in the final product, and these standard charter parties are called agreed documents<sup>32</sup> and considered as agreed and balanced.<sup>33</sup>

For this thesis, agreed standard charter parties will be examined and following contract forms will be of relevance:

- I. WINDTIME, the new standard charter party developed for the offshore wind farm industry drafted with significant input from industry stakeholders including operators, service providers, shipbrokers, insurance and legal representatives. This contract is developed to suit the type of vessels providing services at offshore wind farms. The WINDTIME is based on the SUPPLYTIME form and has then adopted the knock for knock regulation.

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<sup>29</sup> Falkanger p.289

<sup>30</sup> The term "standard charter parties" is used to refer to contracts provided by BIMCO, and developed through a process of negotiations between parties engaged in the industry.

<sup>31</sup> Falkanger p.289, e.g. Shelltime, Texacotime or Gencon and Baltime.

<sup>32</sup> Ibid. p.290, e.g. Scancon.

<sup>33</sup> The meaning of agreed standard charter party however needs to be separated from the contractual negotiations and agreement that the parties of the contract finally reach. This thesis will though only focus on the clause in the standard charter party forms.

- II. SUPPLYTIME, a standard offshore contract frequently used both of Owners and Charterers for their commercial agreements. The SUPPLYTIME has evolved from its original version produced in 1975. One of the major changes to the Supplytime form was made in the revision of the second edition of the form, the SUPPLYTIME 89, when the mutual risk allocation regime knock for knock was adopted. Before this 89-revision, the liabilities in the charter party was influenced by traditional shipping charter parties, where the risks were more strictly divided between the Owner and Charterer.<sup>34</sup>
- III. Other standard charter parties developed by BIMCO to cater specialized requirements within the offshore industry will also be mentioned, such as the TOWCON<sup>35</sup> and the TOWHIRE<sup>36</sup>.

### 3.1.3 BIMCO's commentaries

In case of disputes, the general rule in Norway is that statutes are the primary source of interpretation in relation to mandatory legislation. However, as stated above, the NMC is not mandatory in relation to time charter parties due to the freedom of contract.

Another source for interpretation, which is common practice to use in Norwegian practice when seeking a solution of a dispute, are preparatory works and commentaries. The question might however be whether the commentaries are relevant for the interpretation of the contract and to answer that, the following factors has to be reconsidered; is the contract agreed, what did the parties themselves intend in relation to the relevance of the comments and whether the commentary is published or not.

Preparatory works in relation to agreed documents are considered important for the interpretation.<sup>37</sup> The members of the committee, developing the charter party form, come from different countries that have different approaches when interpreting a

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<sup>34</sup> Rainey p.226

<sup>35</sup> TOWCON, International Ocean Towage Agreement (Lump Sum), 2008 form

<sup>36</sup> TOWHIRE, International Ocean Towage Agreement (Daily Hire), 2008 form

<sup>37</sup> Falkanger p.296

contract,<sup>38</sup> and the wording in standard charter parties is therefore often a result of a compromise. For the interpretation of WINDTIME there are Explanatory Notes provided by BIMCO and the committee who developed the charter party. According to BIMCO, these Explanatory Notes are “intended to provide some of the reasoning behind the provisions”.<sup>39</sup>

On the other hand, the opinion of using commentaries to one-sided, unbalanced, standard charter parties is dispersed and has been criticised by Brækhus, based on the grounds that these are developed by a group with common interests and that the balance of the contract therefore may be questioned and the commentaries cannot then be prioritized before as to what the contracting parties had intended to achieve.<sup>40</sup> Falkanger has also reaffirmed this opinion.<sup>41</sup> According to Falkanger, the principle of using commentaries to standard contracts is questioned due to the lack of established procedures for the development of the standard charter parties and the concept of preparatory works therefore tends to give an indistinct meaning.<sup>42</sup>

The general basis is always that the wording of the contract is the most important legal source and will be of highest priority when analysing the contracts in this thesis.<sup>43</sup> However, since both WINDTIME and SUPPLYTIME are agreed documents supplemented with published commentaries, where the interests of both parties to the contract are considered and balanced, the Explanatory Notes will be used for interpretation and be referred to when necessary for the analysis of the background and the intentions behind a specific clause.

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<sup>38</sup> Michelet p.10 and Falkanger, Bull and Brautaset p.31, further explain that there different approaches of how to interpret a contract, e.g. where in the English system the ”contract” principle means that only what is written into the contract are of relevance and there should be no external factors into consideration when interpreting the contract, in contrast to the Norwegian system where supplementary law is taken into account and considered important for interpretation of a contract.

<sup>39</sup> Explanatory Notes WINDTIME p.2

<sup>40</sup> Brækhus p.246

<sup>41</sup> Falkanger p.298

<sup>42</sup> Ibid. p.300

<sup>43</sup> Falkanger, Bull and Brautaset p.29

## 3.2 Marine insurance

The main purpose of the knock for knock provision in a contract is to benefit from the insurance cover effected by the respective contracting parties. For the analysis of the amendments made in the knock for knock clauses of the WINDTIME and whether these have any impact on the insurance cover, an overview of relevant insurance law will be made.

The Norwegian background law, regulating insurance contracts, is the Insurance Contract Act (“ICA”)<sup>44</sup>. The relevance and the right to depart from the ICA will be discussed, as the departure from this concerns specifically marine insurances.

“Marine insurance” is not one specific type of insurances but the term refers to several types of cover, separated dependent on the different economic interests they intend to cover.<sup>45</sup> In relation to knock for knock agreements, the hull insurance is of primarily importance, while the protection and indemnity (hereinafter “P&I”) insurance will be of interest in relation to personnel injuries within in the knock for knock arrangement.

The discussion in relation to the marine insurances will in this thesis be based on the Norwegian conditions, found in the Nordic Marine Insurance Plan of 2013 (“NP”), the commentaries to the NP and the rules provided by the Norwegian Protection and Indemnity (hereinafter “P&I”) Insurance clubs, Gard and Skuld.

### 3.2.1 The Insurance Contract Act (“ICA”)

The starting point in the ICA is that the provisions of part “A” are mandatory for the benefit of persons having a right against the insurance company, unless else provided for in the act.<sup>46</sup> The ICA does however contain some exceptions from this rule in respect of enforceability related to commercial activities for ships and offshore units, and thereby marine insurance contracts.<sup>47</sup> Therefore in relation to marine insurance contracts, the parties to the charter party have full contractual freedom in relation to the contents of the marine insurance contracts as the ICA in this aspect may be departed

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<sup>44</sup> Act no 69 of June 1989 relating to insurance contracts

<sup>45</sup> Syvertsen p.103

<sup>46</sup> ICA section 1-3 first subparagraph

<sup>47</sup> ICA section 1-3 first section, letter (c) and (e)



from. However, the ICA may nonetheless have some importance in relation to marine insurance since it provides declaratory background legislation.<sup>48</sup>

### 3.2.2 The Nordic Marine Insurance Plan (“NP”)

Hull insurance is a property damage insurance, which in Norway is mostly regulated by the rules found in the Nordic Marine Insurance Plan (“NP”)<sup>49</sup>. The NP has jointly been drafted by insurers, assureds and other parties with an interest in the plan and is described as agreed standardised conditions, with similar character as private legislation.<sup>50</sup>

### 3.2.3 Commentary to the NP

Together with the NP comes a comprehensive commentary (hereinafter “Commentary to NP”). As the NP is considered similar to private legislation, the character of the Commentary to NP is comparable to preparatory works.<sup>51</sup> Given status as preparatory work, the weight of the Commentary to NP of significant importance for the interpretation of the clauses in the NP even though there is no explicit reference made to the Commentary to NP in the NP itself.<sup>52</sup> The importance and weight of the commentaries is explained by Falkanger as a consequence of them being part of the established procedure when drafting the NP.<sup>53</sup> This opinion of Falkanger is also supported by Norwegian case law, where the court has stated that the clauses of the NP should be read in conjunction with the Commentary to the NP.<sup>54</sup>

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<sup>48</sup> Commentary to NP clause 1-4

<sup>49</sup> The Nordic Marine Insurance Plan of 2013

<sup>50</sup> There are three parties when concluding a marine insurance contract, Insurer, person effecting the insurance and Assured, see NP clause 1-1. Often the person effecting the insurance and the Assured are the same person. However, since the Assured is the party who has right to compensation under an insurance contract, the Assured is the party referred to in this thesis.

<sup>51</sup> Falkanger, Bull and Brautaset p.504

<sup>52</sup> Ibid. p.505

<sup>53</sup> Falkanger p.292

<sup>54</sup> ND 1998.216 NSC OCEAN BLESSING and ND 2000.442 NA SITAKATHRINE

### 3.2.4 P&I insurance

The P&I insurance cover is the Owner's insurance towards third party liabilities, arising in connection with the vessel operations. In the Norwegian insurance market there are two mutual insurance associations<sup>55</sup> providing P&I cover to an international market, named Gard and Skuld, both of them members of the International Group of P&I Clubs ("IG").<sup>56</sup> Between the thirteen members of the IG, the liability cover is not standardized in regards to the conditions and terms in each club's insurance contracts, but the resemblance of the cover is nevertheless significant.<sup>57</sup>

### 3.3 Contract law

Analysing the knock for knock clauses from a Norwegian perspective, the validity of clauses will be based on general contract law, where there are two mandatory restrictions applicable to contracts, the NL 5-1-2<sup>58</sup> and § 36 of the Norwegian Contract Act.<sup>59</sup>

#### 3.3.1 NL 5-1-2

The NL 5-1-2 regulates the contractual relationship in the context that it prohibits agreements that are against law and morality.

#### 3.3.2 Norwegian Contract Act § 36

The Norwegian Contract Act § 36, focus on the content of the agreement between contracting parties and whether the agreement is unfair or unreasonable for one of the parties. An agreement may be wholly or partially set aside by Norwegian courts, in

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<sup>55</sup> Mutual insurance association is an insurance company entirely owned by its policyholders, or so-called members.

<sup>56</sup> Falkanger, Bull and Brautaset p.557, the IG consists of thirteen non-profit making independent mutual insurance associations. The group members provide liability cover, which is co-ordinated in the group and there is an agreement between the clubs in the IG to mutually reinsure one another, the so-called Pooling Agreement.

<sup>57</sup> Ibid. p.558

<sup>58</sup> Kong Christian Den Femtis Norske Lov av 15. april 1687

<sup>59</sup> Norwegian Contract Act (Lov 31. mai 1918 nr 4 om avslutning av avtaler, om fuldmagt og om ugyldige viljeserklæringer (avtaleloven))

extraordinary circumstances, if the conditions of the contract are deemed to be unreasonable, unfair or contrary to good business practice.

### **3.4 Case law**

Case law, i.e. court judgements and arbitration awards, will be used to illuminate some specific problems in relation to the topics analysed. As the WINDTIME is a new contract, there is however no relevant case law in relation to this specific contract.

### **3.5 Legal literature**

Legal literature, mainly from Norway and England, is necessary for the analysis of this thesis, as both the Norwegian and the English literature provides comprehensive readings about the knock for knock concept and insurance coverage.

## **4 The knock for knock regime**

### **4.1 Introduction**

There are different systems for apportionment of liability in contracts. The basis in Norwegian law is that liability is based on negligence. However, within the offshore shipping industry, characterized of being of being a high-risk area, this system has been found unsuitable.

The development of a more suitable liability regime, to better adapt to the market conditions at offshore shipping projects has therefore led to the creation of a liability and indemnity regime called knock for knock. The purpose of the knock for knock provisions is to fairly and logically allocate the risks between the parties of the contract in a manner that creates a clear, unqualified and enforceable risk allocation arrangement. The knock for knock regime is designed so that each party is responsible for injury or damage occurring to its own personnel and property, but may also regulate damage to third parties, by division into different “risk zones” and the concept of “group”.

For the contracting parties to be able to carry losses falling on them under the knock for knock regime, the regulation of liability is normally supplemented by a regulation of insurance, with the purpose of securing that the liability risk of each party is financed by insurance.<sup>60</sup>

## 4.2 Legislation and terminology

Liability in tort is a general principle, where the party who causes damage to someone will be held liable for the financial losses connected to his fault, under the preconditions that there is basis for liability and a casual connection between the negligence of the party causing the damage, and the financial loss suffered by the injured party.<sup>61</sup> The rules regulating tort are not reflected in any general Norwegian legislation, as it is mostly developed and stated in court practice.<sup>62</sup> The main rule in Norway is however that liability is based on negligence, and a person will be held liable for damage to another person if the conditions mentioned above are fulfilled.<sup>63</sup>

Liability is when one is being bound or obliged to do, pay, or make good something, which can also be described as indemnification. Legal liability is when a party has obligations to indemnify a party according to stipulated contractual terms or due to liability in tort. Limiting liability under a contract is however possible according to the freedom of contract. The parties to a contract are then allowed to establish their own rules of how liability and indemnity shall be regulated in the relationship between them. This can be achieved for example through mutual hold harmless clauses, which means that the parties agree not to implement any legal consequences and not hold the other party responsible for loss, liability, or damage.<sup>64</sup> The contracting parties may however not invoke the contractual freedom and limit liability towards an injured third party, since third party victims are not parties to the contract, it is therefore general tort law that will regulate such losses and these rules cannot be departed from.<sup>65</sup>

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<sup>60</sup> Wilhelmsen p.93

<sup>61</sup> Ness p.7, Wilhelmsen p.84 and Zak p.41

<sup>62</sup> Wilhelmsen p.84

<sup>63</sup> Ibid. p.84

<sup>64</sup> Black's Law Dictionary

<sup>65</sup> Wilhelmsen p.83

### 4.3 The function of the knock for knock regime

The main function and principle of the knock for knock regulation is the allocation of risks, which is achieved through a combination of exclusion clauses and indemnity clauses, whereby each party to a contract assumes responsibility for loss of or damage to its own property, or death of or injury to their own personnel, regardless of fault. The parties agree to hold each other harmless when they suffer losses, by other means “the damage should stay where it occurs”<sup>66</sup> irrespective whether it was caused by fault on the part of the other party.<sup>67</sup> The knock for knock regime thereby provides an efficient allocation of risks and financing of the risk for damages by establishing a systematic liability and insurance system throughout all the contracts involved in a particular offshore project, resulting in that all risk of damage has to be financed by insurance effected by the contractual party sustaining the damage.<sup>68</sup> The knock for knock is therefore, at least on paper, a balanced regime.<sup>69</sup>

The knock for knock regime is intended to provide a clear structure, where risk for liability within a project is allocated in advance and through this system time will be saved for the parties under a contract in connection with casualties. As the offshore shipping industry is a costly and complex industry where high investments are made, it creates an environment where time is money and downtime in production at an offshore project can be devastating to many of the parties involved in the work at the site, due to the financial risks they are exposed to. Through the knock for knock regulation the parties to the contract are however able to avoid complicated examinations of what the cause of the loss was and the difficult assessments regarding fault conditions. The knock for knock regime has the advantage of contractual certainty and clear technical settlement advantages, thereby reducing the scope for dispute between parties, which is of great benefit in the context of an ongoing project that might otherwise be disrupted by expensive and time-consuming litigation. The knock for knock regulation does then not risk causing interruptions at projects, in the same extent as might occur when using fault-based indemnities, where claims settlements then are more likely to cause delays

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<sup>66</sup> Wilhelmssen p.83

<sup>67</sup> Ibid. p.88

<sup>68</sup> Ibid. p.83

<sup>69</sup> Askheim, Bull and Lange p.37

in regards to time needed for the resolution of the claim itself, when investigating the claim to establish cause and attributing the fault.

The basic premise behind the knock-for-knock system is that all losses and costs arising from damage shall be covered by the property insurance or liability insurance of the party suffering damages. Therefore the knock for knock regime forces the parties to the contract, to take out appropriate insurance coverage for their respective risks and liabilities they might get exposed to, and it is thus not contracting parties that will bear the losses occurring within their risk zone, but the insurance companies.<sup>70</sup> Furthermore it is also of great importance that the relationship between the Insurers of the contracting parties is regulated. For proper function of the regime, the Insurers of the Owner and Charterer have to agree to waive their rights to claim each other in case of losses suffered by their respective Assured, through so-called waiver of subrogation clauses. Through this system, overlapping insurances are avoided. Overlapping insurance, or so-called double insurance, is when the same subject matter is insured more than once, by different insurance policies, which contributes to high insurance premiums added to the operation costs and consequently generates more costly operations.<sup>71</sup> Double insurances are however avoided when implementing knock for knock clauses in a contract, which in turn reduces overall project costs.

When claims are channelled only to the Insurer of the party who suffers any loss, the knock for knock regulation also eliminates the option of bringing claims for damages to the other contracting party and as cross-claims are avoided, the regime simultaneously reduce the scope of legal acts.

#### 4.4 The “risk zones” and concept of “groups”

By agreeing on a knock for knock regulation, the contracting parties respectively limit their liability for damage caused to the other party, and thus also waive their right to claim damages from the other party. Through indemnity and subrogation clauses, the knock for knock principle may nevertheless be extended to also apply to other

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<sup>70</sup> Zak p.41

<sup>71</sup> Egbochue p.10

personnel, sub-contractors and other cooperative parties who are employed by the contractual parties.<sup>72</sup>

At offshore petroleum projects the Operator and the Contractor are the highest parties in the hierarchy. At an offshore project one can therefore through the apportionment of liability between these parties, distinguish three different “risk zones”. These risk zones are 1) the personnel and property of the Operator, 2) the personnel and property of the Contractor (often also the “Charterer” under a charter party) and 3) the personnel and property of a third party.<sup>73</sup> Within the Operator’s or the Contractor’s zone, the knock for knock provision will prevail, as for liability towards a third party who is outside the knock for knock regime tort law will govern the responsibility. Through this system of risk zones, a model referred to as the concept of “group” is created. The function of this group concept is that the parties to the contract also assume liability for some enumerated third parties who are defined as part of their group, and thereby creates a bigger family of parties included in the knock for knock regime.<sup>74</sup> Thus the contracting parties do not only assume liability for losses or injuries to their own property or employees, but they also accept to extend their responsibility for liabilities incurred by parties within their own group.<sup>75</sup>

The contract formed between the Operator and Contractor at the offshore petroleum project is, in relation to their contractual relationship with other sub-contractors at the project, described as a contractual pyramid, where within the Operator’s and Contractor’s respective group and risk zone, each single contract often echoes the contractual conditions, clauses and allocation of liability in their agreement, aiming for a proper function where knock for knock regime is consistently implemented throughout the whole pyramid.<sup>76</sup> The aim with the concept of group is then that the contracting parties, Operator and Contractor, seeks “back to back” indemnities from those other members of its group to ensure that the principles where all losses should be

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<sup>72</sup> Wilhelmssen p.84

<sup>73</sup> Lazardis p.51

<sup>74</sup> See Bull p.347. The extent of risk zones differs between contracts and depends on the third parties included in the liability and indemnity provision. The zones, of third parties included, are by Bull characterizes either as “narrow family” or “extended family” and what definition of the group to be used depend on the parties included under the Owner’s/Charterer’s liability.

<sup>75</sup> Wilhelmssen p.89

<sup>76</sup> Syvertsen p.106-107

absorbed their own losses throughout the whole pyramid.<sup>77</sup> Hereby, through the concept of group the number of third parties at an offshore project will be reduced as most parties at the site will be part of a group, and consequently also mirror the contractual conditions stipulated between the Operator and Contractor. A consistent implementation of the knock for knock principle throughout the whole contractual pyramid at offshore projects provides for a clear assessment of risk and reduces lawsuits between the parties and also avoids that risks are covered by more than one insurance, so that increased costs may be avoided. In the modern offshore shipping industry and in the light of how operations are performed at an offshore project, the concept of group therefore has a very important purpose, as it is common practice that a Contractor charter in vessels able to provide services, not only for him, but as a resource also engaged for, or with, other parties within the extended entity referred to as the “group”.<sup>78</sup> This concept of defining risk zones and groups is therefore also then of great importance to be reflected in relation to vessels performing support services under charter parties at the offshore project. In the WINDTIME, which is based on the system developed within the offshore petroleum industry, the contractual conditions therefore reflect how liabilities are apportioned between the Operator and Contractor in an offshore petroleum project and also this contract includes the same concept of group.

The provisions of a charter party, primary applies to the parties of the contract. In the WINDTIME, the contracting parties are defined as “Owner”<sup>79</sup> and “Charterer”<sup>80</sup> and parties who are not party to the contract are defined as “third parties”. If these third parties however are in another contractual relationship at the offshore project, either with the Owner or the Charterer, the knock for knock may then also apply to them. In the WINDTIME the Owner’s group and Charterer’s group include a reduced number of third parties to be bound by the provisions stipulated in the knock for knock clauses and these parties are defined as follows:

“Charterers’ Group” shall mean: the Charterers, and their contractors, sub-contractors, co-venturers and customers (having a contractual relationship with the Charterers,

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<sup>77</sup> Wilhelmssen p.90

<sup>78</sup> Rainey p.260-261

<sup>79</sup> WINDTIME Part II Definitions, the “Owner”. To be stated in Box 2 of the WINDTIME

<sup>80</sup> WINDTIME Part II Definitions, the “Charterer”. To be stated in Box 3 of the WINDTIME



always with respect to the job or project on which the Vessel is employed), and Employees of any of the foregoing.

“Owners’ Group” shall mean: the Owners, and their contractors and sub-contractors, and Employees of any of the foregoing.<sup>81</sup>

Furthermore, the knock for knock regime works together with the “Himalaya Clause”, a concept commonly used as standard provision in BIMCO contracts. By virtue of the Himalaya clause, the same exemptions provided to the Owner and Charterer in the contract to also apply to the enumerated parties, constituting the so-called group. Through this concept, also the companies and persons employed to assist in the operations will get covered and shielded from being exposed to great liabilities and expenses that may occur in offshore operations,<sup>82</sup> as they obtain the same rights as the Owner and Charterer. In the WINDTIME, “[a]ll exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Charter Party or by any applicable statute, rule or regulation” protecting the Owner or Charterer is extended and also afforded to the all the parties enumerated in sub-clauses (i) and (ii).<sup>83</sup>

#### 4.5 Marine insurance cover in relation to the knock for knock regulation

As mentioned in chapter 4.3, the insurance cover of each party is closely connected to the function of the knock for knock regime and in the WINDTIME, the duty of the Owner to take out proper insurance cover and the types of coverage and policy limits who are mandatory him, are specified in Annex “B”.

With the allocation of liabilities and indemnities in the knock for knock regulation, it is required that each party finance the risk for damage they might suffer in the offshore activities through marine insurances. The basic principle is then that each party’s insurances should only be called upon to cover the losses in respect to its own property and personnel and as losses are channelled directly to the Insurer of the injured party instead of losses triggering both the hull insurance of the injured party and the liability

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<sup>81</sup> WINDTIME Part II Definitions

<sup>82</sup> WINDTIME clause 16(e)

<sup>83</sup> WINDTIME clause 16(e)

insurance of the wrongdoing party. This is regulated through clauses stipulating that neither the parties to the contract, nor their respective Insurer, shall claim against the other party or their Insurer, as a result of their acceptance of waiver of rights, except for in very limited circumstances. Through the knock for knock regime, the use of hull insurance thereby increases, as the use of liability insurance for third party claims decrease.

#### 4.5.1 Hull insurance

The hull insurance is the main insurance for ship-owners and it is foremost a property damage cover. The objects insured are most importantly the ship and her machinery, but also equipment, spare parts and bunker on-board the vessel, which are connected with the operation of the ship.<sup>84</sup> The hull insurance is the primary cover for losses suffered by the Owner under a knock for knock agreement and therefore provides an essential feature for the proper functioning of the knock for knock liability regime.<sup>85</sup>

For the knock for knock regulation to give effect to the allocation of risks between the Charterer and Owner, it is a prerequisite that their respective hull Insurer waives their right to be subrogated the Assured's claim against the counterpart of the charter party or his group for loss, damage, injury or death in a recourse proceeding.<sup>86</sup> This protection against subrogation is also referred to as "waiver of subrogation"<sup>87</sup> and through this arrangement it is ensured that each party is responsible for loss incurred to its own property, as the Insurers enables the contracting parties to fully utilise their Assured's parties respective insurance covers.<sup>88</sup>

Also through a co-insurance under each other's insurance policies, the contracting parties may simplify and provide comfort for the process of claims, since the purpose of the basic rule of co-insurance is to protect all other Assureds in cases where the fault or negligence is committed by an Assured, who does not have overall decision making

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<sup>84</sup> NP clause 10-1

<sup>85</sup> Rainey p.266

<sup>86</sup> Wilhelmsen p.94 and NP Clause 5-14

<sup>87</sup> WINDTIME clause 19(a)(ii)

<sup>88</sup> Syvertsen p.142-143

authority in relation to the operation of the insured ship.<sup>89</sup> However, a party who wants to have an “indirect liability protection” under the Owners hull insurance has to make a request to be named as co-insured and named under the insurance policy.<sup>90</sup> Moreover, co-insurance and waiver of subrogation is given only insofar it relates to the liabilities of the Owner under the contract.<sup>91</sup>

#### 4.5.2 P&I insurance

The P&I insurance is the general cover for third party liabilities. However, in a project where the parties have agreed on a knock for knock regime, the P&I cover has no function in relation to third parties who are included in the knock for knock arrangement through the concept of group, as they will seek indemnity from their own hull or P&I Insurer for losses and damages in relation to property and personnel. Within the knock for knock regime, the P&I insurance will then only be called upon in relation to personnel injuries and death of someone for whom the Assured is responsible.

## **5 Reasoning behind the knock for knock regulation in the WINDTIME**

### 5.1 Background

Within the offshore petroleum industry, which has a longer history than the offshore wind industry, the knock for knock regime plays a central role. In the offshore wind industry on the other hand, the reasoning behind the knock for knock provisions of the WINDTIME was disputed as not being the most appropriate liability regime for this trade. But nevertheless, the knock for knock regime was incorporated in the WINDTIME.

For the purpose to analyse the reasoning, suitability and presumption of financing a complete insurance cover for the vessel operating within the offshore wind farm industry under the WINDTIME, when applying the knock for knock regulation, there

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<sup>89</sup> NP clause 3-36 – 3-38, rules regarding identification.

<sup>90</sup> Wilhelmssen p.95 and NP clause 8-1

<sup>91</sup> WINDTIME clause 19(a)(ii)

will first be an introduction behind the development and structure of the regime within the offshore petroleum market, to then be used as basis of comparison and discussion.

## 5.2 Development of the knock for knock in the offshore petroleum sector

The extraordinary market conditions of the offshore industry are reflected in the offshore petroleum contracts through the knock for knock regime. This regime is developed to meet the specific character and risks involved in offshore operations, thereby departing from the liability fault-based indemnity regime used in other maritime contracts for traditional shipping services.<sup>92</sup> The emergence of the knock for knock has correspondingly been described by Lord Bingham in the Piper Alpha Judgement as a “market practice that has developed to take account of the peculiar features of offshore operations”.<sup>93</sup>

The principle of the knock for knock regime was firstly introduced in the 1980’s, in the standard charter party forms for the offshore petroleum industry. Since then, the regime has been reproduced in various formulations and revisions in most of the offshore charter parties by BIMCO, with the aim to cater special services within the offshore industry and to mirror the function of the knock for knock regime established in the offshore petroleum contracts between the Operator and Contractor of the project, e.g. the SUPPLYTIME, the TOWCON and the TOWHIRE.<sup>94</sup>

Today, the knock for knock regime plays a central role in the offshore petroleum industry for all the vessels operating at an offshore project. The knock for knock arrangement is generally accepted throughout all the contracts in these projects, as it represent a well-established and efficient model of allocating liability in construction contracts and oilfield service agreements. This consistent implementation throughout all the contracts involved in a particular offshore project is an important feature to secure the proper function of the regime.<sup>95</sup>

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<sup>92</sup> Bull p.338

<sup>93</sup> Piper Alpha Judgement [2002] point 7

<sup>94</sup> Bull p.338

<sup>95</sup> Wilhelmssen p.83

### 5.2.1 Project structure at offshore petroleum projects

Described in the previous chapter, the highest parties in the hierarchy at an offshore project, being the Operator and Contractor, create together with their sub-contractors contractual pyramids. The knock for knock regime therefore needs to be consistently implemented throughout the whole pyramids to ensure proper function,<sup>96</sup> meaning that each single contract echoes the contractual conditions found in the contract between the Operator and Contractor and consequently also in the charter parties for vessels contracted in to perform support services.

Commonly used contracts between the Operator and Contractor at an offshore petroleum project site, governed by Norwegian law, are the Norwegian Fabrication Contract 2007 (“NF 07”) and the Norwegian Total Contract 2007 (“NTK 07”). These construction contracts contain knock for knock clauses and to ensure that other sub-contracts used within the project also seek to allocate liabilities on a knock for knock basis, and for this purpose they contain a duty on the Contractor to ensure that the other companies’ in his group waive their rights equivalent as in their liability and indemnity regime, through a so called “back to back” regulation.<sup>97</sup> This may be achieved by using contracts that incorporate the same regime, e.g. the SUPPLYTIME, TOWCON and TOWHIRE.

### 5.3 Development of the knock for knock in the offshore wind farm industry

Marine transportation is a critical phase for any offshore development project, and thus also within the offshore wind industry. A natural consequence when locating wind farms offshore, is then the subsequent need for vessels are able and specialized to perform different activities at the offshore wind farm. With a dynamic environment where risks for damages are substantial, characterizing the operations at an offshore wind farm, the contracting parties must carefully consider any clauses in which these risks are allocated.

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<sup>96</sup> Syvertsen p.106-107, Wilhelmsen p.90

<sup>97</sup> Wilhelmsen p.90

As the offshore wind farm industry is a new area of trade, the development of using the knock for knock regulation in the contracts of this industry is currently under the development.

### 5.3.1 Issues when “shipping meets construction”

The project structure at an offshore wind farm is similar to the one in the offshore petroleum industry, where it has created a contractual pyramid, with the Operator of the wind farm and the Contractor, being the highest contractual parties in the chain of contracts throughout the project.

The different types of companies operating in the offshore wind industry can be divided into different groups depending on their role within the offshore wind supply chain. The main categories of companies participating in the development and of an offshore wind project come from the land based wind industry and are manufacturers of wind turbines, electrical equipment suppliers, marine contractors, cable installers and the EPCI<sup>98</sup> contractors.<sup>99</sup> All these companies have lots of equipment and personnel employed to work at the project and they are therefore in great need of support and crew transfer vessels to move the personnel and supplies to and from the project and between the wind turbines.

Contrary to the offshore petroleum industry, companies involved in the constructions of offshore wind farms often have experience from land based wind farm industry, where the contracts are based on another type of liability arrangement. A standard form conditions of contract for the worldwide construction industry for use in the onshore construction industry, provided by The International Federation of Consulting Engineers, is the so-called FIDIC contracts. These standard contracts contain the fault-based liability system.<sup>100</sup>

On the other side, many of the biggest companies owning and operating crew transfer vessels and support vessels for the offshore wind industry are big and well-established

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<sup>98</sup> EPCI, abbreviation for Engineering, Procurement, Construction and Installation, which is large construction firms or joint ventures between parties from one or more of the mentioned categories taking responsibility for a broader scope of work.

<sup>99</sup> EWEA (2011) p.36

<sup>100</sup> Rosenberg and Sandgren p.145 and Sandroos Advokatfirma p.3

shipping companies with many years of experience from the offshore petroleum industry, who have started up new divisions within this segment to meet new client requirements.<sup>101</sup> Because these shipping companies have a background in offshore petroleum industry where the principles and benefits of knock for knock regime are well established and traditionally used, it was for them also the natural liability and indemnity regime to apply also in this segment of offshore shipping.

When then shipping meets construction, the players from each market therefore have experience of using different liability regimes and the liability regime in an offshore wind transportation arrangement may due to this fusion, differ in containing either a knock for knock regime, a traditional regime where liability is based on fault or a combination of these two regimes.<sup>102</sup> This inconsistency, is a result of the knock for knock principle being unfamiliar for the market participants coming from the land based wind industry, and it has therefore not been embraced across the board of all participants within the offshore wind industry as achieved within the offshore petroleum industry.<sup>103</sup> A mixing of different liability and indemnity regimes may however lead to problems, as some of these regimes do not co-exist well and therefore will create issues when mixing contracts.

For illustration, the fabrication contract between the Operator and Contractor of the wind farm is based on FIDIC containing a fault-based liability regime, while the sub-contracts that the Contractor use to charter in vessels to assist in the development, installations and supply services often contains a knock-for-knock provision, e.g. the SUPPLYTIME or the WINDTIME. If then the vessel used for supply services at the offshore wind farm project accidentally damages property belonging to the Operator, the party with whom the Owner of the vessel is not in a contractual relationship with, the Charterer of the vessel may ultimately be left to compensate the Operator for losses occurred due to the fault of the ship-owner. The underlying reason for this is because the agreement between the Contractor/Charterer and the Owner of the vessel containing

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<sup>101</sup> Well-established shipping companies, e.g. Fred Olsen started a Windcarrier division in 2008 <http://www.windcarrier.com>, P&O Maritime entered the European Offshore Wind Market in 2011 <http://www.pomaritime.com/OffshoreRenewables.asp>, and Holyhead Towing got involved in the offshore wind through their subsidiary Turbine Transfers <http://www.turbinetransfers.co.uk>

<sup>102</sup> Sandroos Advokatfirma p.2

<sup>103</sup> Ibid. p.2

a knock for knock regulation, the Charterer has agreed to hold the Owner harmless for any losses to his own property but also for losses to property of parties within his group. However, in the relationship between the Contractor/Charterer and the Operator there is no such knock for knock agreement, but since the Operator is considered within the Contractor's risk zone or "group" of parties, for whom the Charterer have taken on responsible for under the knock for knock provision agreement with the Owner of the vessel, the Charterer will be liable towards the injured Operator in tort.

### 5.3.2 Lack of general overriding agreements at offshore wind farm projects

Within the offshore wind farm industry, there are no general overriding agreements among all parties on and around the project, compared with the offshore petroleum sector where this is achieved through the knock for knock system, and therefore there are in the offshore wind farm industry freak risks that needs to be insured, such as the interests of third parties.

There were no standard forms designed specifically for the offshore wind farm industry, until the WINDTIME was launched, and within the offshore wind industry there are now further moves afoot to develop suitable forms.<sup>104</sup> However, there are issues in relation to the incorporation of the knock for knock system in new standard contracts for the offshore wind industry, and as de la Haye and Kidd acknowledges:

“[...] it is early days, and experience shows that development and acceptance by an industry of such standard forms takes some years. [...] In the meantime, utility companies and contractors will have to continue negotiating their own bespoke wordings or other standard forms. They will have to ensure that all risk and liability provisions are included in sufficient detail, and that the respective obligations of the parties are clearly and thoroughly expressed.”<sup>105</sup>

When there is a lack of overriding agreements at an offshore wind farm project, the effect provided through the concept of group, described above in section 4.4, is lost. The “back to back” regulation can only be achieved if all contracts throughout the

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<sup>104</sup> de la Haye and Kidd p.17

<sup>105</sup> Ibid. p.17



contractual pyramid and thereby securing a consistent approach to liability.<sup>106</sup> In a scenario where matching waiver provisions are not included throughout the contractual pyramid, a contractual party who has not agreed to the knock for knock provision may refuse to accept responsibility for damage to property and personnel may instead make a claim against the injurer. When then the indemnification does not go both ways, as compared with how this is achieved in a balanced knock for knock system, where the same liability and indemnity provisions are reflected in all the contracts within a project, the system will easily be disrupted and can result in chains of subrogated claims.<sup>107</sup>

### 5.3.3 Knock for knock – A suitable regulation for the offshore wind farm industry?

During the development of the WINDTIME, there was a prospect that the knock for knock regime, which is the traditionally and commonly used regime for offshore contracts, might be replaced by a traditional liability regime where the parties agree on the rights and obligations in the charter party or that liability is based on tort and substituted with insurance agreements to cover excluded risks.<sup>108</sup> This issue was brought up in an article by BIMCO issued during the development process:

The principles and benefits of knock for knock regimes are well known in the offshore sector and well used in the oil and gas industries. SUPPLYTIME 2005 is based on knock for knock principles but some members of the sub-committee have questioned whether this is the most effective insurance and liability mechanism for this particular trade.<sup>109</sup>

When the WINDTIME form was presented, it did nevertheless contain the knock for knock regulation, even though it had been questioned as inappropriate within this specific trade.

The knock for knock clauses in the WINDTIME are related to, and based on clause 14 of the SUPPLYTIME, which is acknowledged as being at the very core of the

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<sup>106</sup> Wilhelmssen p.90

<sup>107</sup> Ibid. p.90

<sup>108</sup> Cain and Faryadi

<sup>109</sup> BIMCO News Articles

SUPPLYTIME,<sup>110</sup> but when the draft of the WINDTIME was published, it was once again referred to the debate around the incorporation of the knock for knock clauses in the WINDTIME, where these were:

[...] viewed by many as inappropriate in the WINDTIME context, and several commentators had suggested they should be replaced by a traditional liability scheme, backed-up by suitable insurance arrangements.<sup>111</sup>

What does then the “traditional liability scheme” constitute and how would an incorporation of such a scheme affect the offshore wind industry?

The common liability scheme used within the traditional shipping industry from a is that liability for damages is based on tort and therefore triggered by negligence and the party causing the damage is liable to compensate the injured party for their losses.<sup>112</sup> In order to recover from damages caused to the Owner’s own property due to negligence, the hull insurance will cover such costs, while the damages to any contracting party or third parties will be covered partially by the Owner’s hull insurance and by the Owner’s P&I Insurer.<sup>113</sup>

If applying a traditional liability scheme in an offshore contract, there will however be enormous risks that need to be insured, such as the interests of third parties. As the extent of losses in case of an incident can reach enormous magnitude, it is therefore difficult to foresee the risks and then also very expensive to assume cover for offshore activities. For illustration, a recent example of an incident that caused a lot of damage is the Deepwater Horizon disaster in 2010. Deepwater Horizon oilrig was drilling in the Gulf of Mexico. Due to an incident the rig exploded and resulted in eleven lost lives and total loss of the rig itself. Following the explosion of the well, where Deepwater Horizon was drilling, huge amounts of oil was pouring out and into the ocean bed for eighty-seven days and caused the largest offshore oil spill in history of United States.<sup>114</sup> The parties working on the offshore petroleum project when Deepwater Horizon exploded operated under offshore contracts containing knock for knock provisions. If

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<sup>110</sup> Explanatory Notes SUPPLYTIME to clause 14

<sup>111</sup> Offshore Energy Bulletin p.6

<sup>112</sup> Falkanger, Bull and Brautaset p.168

<sup>113</sup> NP clause 13-1 provides the Assured with partial cover for collision liability

<sup>114</sup> Broder

on the other hand, a traditional liability scheme would have been applied in this case, one can just imagine the extent of liabilities the party causing the damage would have had to carry.

Many of the risks at an offshore wind farm project are equivalent to the risks in the offshore petroleum industry; the complexity of the project and high property values situated in a limited area where many contractors and sub-contractors work at the same time. Conclusively, the same arguments that favors of knock for knock in the offshore petroleum sector applies equally to other offshore industries, here included also offshore wind farm installation and operation.<sup>115</sup> Therefore the incorporation of the knock for knock regime in offshore wind contracts is of high importance, in order to create a system where foreseeable risks are allocated in a structured and clear manner, corresponding to one used within offshore petroleum industry. Additionally, as wind farms are now also being built further out at sea, using larger turbines located at greater depths than ever before, one can then distinguish a similar development as within the offshore petroleum industry,<sup>116</sup> which therefore also will require a clear structure to allocate risk for liability for all parties in the same project.<sup>117</sup>

Experience to date has also proven that if risks and liabilities are identified early on, clearly defined and allocated to the party best placed to bear them, costs will be reduced for all parties, to the benefit of the wider industry,<sup>118</sup> and this may be accomplished through the knock for knock regulation. However, in relation to the function of the knock for knock regime where the fundamental principles that the parties are able to foresee the risks exposed to and finance these risks by insurances, it is of great importance that the same allocation of risks and indemnities are echoed throughout all the contracts at an offshore project. Such general overriding agreements do not yet exist in the offshore wind farm industry, where there is still a lack of conformity throughout the whole contract pyramid, and issues when mixing different liability regimes will be present until a consistent implementation throughout the entire offshore market is reached. Therefore, also the presumption of financing a complete insurance cover for the vessel operating under the WINDTIME will be difficult to assess, until consistent

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<sup>115</sup> Skuld Magazine, Knock-for-knock indemnities in the offshore wind sector, p.14

<sup>116</sup> Skuld Magazine, Skuld and the offshore wind sector, p. 7

<sup>117</sup> Wilhelmssen p.90

<sup>118</sup> de la Haye and Kidd p.17

implementation is reached, as there will not until then be a back for back regulation and the Owner might therefore receive claims from third parties who have not accepted the knock for knock regulation.

## 6 The knock for knock clauses in the WINDTIME

### 6.1 Introduction of the clauses in the WINDTIME - Equivalent to the SUPPLYTIME

According to the knock for knock provision, both under the WINDTIME and the SUPPLYTIME, the Charterer and Owner have agreed to hold each other harmless for incidents arising out of, or in any way connected with the performance of the charter party in the following events:

[...] the Charterers shall not be responsible for loss of or damage to the property of any member of the Owners' Group, including the Vessel, or for personal injury or death of any member of the Owners' Group [...]<sup>119</sup>

[...] the Owners shall not be responsible for loss of, damage to, or any liability arising out of anything towed by the Vessel, any cargo laden upon or carried by the Vessel or her tow, the property of any member of the Charterers' Group, whether owned or chartered, including their Offshore Units, or for personal injury or death of any member of the Charterers' Group or of anyone on board anything towed by the Vessel [...]<sup>120</sup>

The Owners and Charterers shall through this provision indemnify, protect, defend and hold harmless the other party from:

[...] any and against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of or in connection with such loss, damage, [liability]<sup>121</sup>, personal injury or death [...]<sup>122</sup>

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<sup>119</sup> WINDTIME clause 16(a)(i) and SUPPLYTIME clause 14(a)(i)

<sup>120</sup> WINDTIME clause 16(a)(ii) and SUPPLYTIME clause 14(a)(ii)

<sup>121</sup> The word "liability" appears in line 458 but not in line 444 of the WINDTIME clause 16(a). This is because the indemnity in sub-clause (ii) includes any liability arising out of anything being towed by the vessel, any cargo laden upon or carried by the vessel or her tow. The wording originates from Supplytime 89 and reappears in the latest revised form.

<sup>122</sup> WINDTIME clause 16(a)(i)(ii) and SUPPLYTIME clause 14(a)(i)(ii)

In relation to liabilities and indemnities, the sub-section regulating in the Himalaya Clause, which is designed to afford the various parties enumerated in the clause the same protection afforded to the Owners and the Charterers, is alike in the WINDTIME and the SUPPLYTIME.<sup>123</sup>

## 6.2 Amendments to the clauses in the WINDTIME - Different from the SUPPLYTIME

The BIMCO committee developing the knock for knock regime to the WINDTIME, emanated from the provisions in the SUPPLYTIME and consequently, the clauses mostly correspond with each other. Some amendments are however made in the knock for knock clauses of the WINDTIME, such as a disclaimer from liability in case of gross negligence and an exclusion from the knock for knock regulation for acts caused by intent / recklessly. The validity of these clauses will be examined and discussed whether they provide any legal implications or other effects, compared with the corresponding clauses in the knock for knock regulation in the SUPPLYTIME.

## 6.3 Disclaimer from liability in case of gross negligence

The knock for knock provision in the WINDTIME stipulates that the parties agree not to hold the other party liable, even when loss, damage, injury or death was caused “wholly or partially by the act, neglect, gross neglect or default”.<sup>124</sup> In the corresponding knock for knock provision of the SUPPLYTIME, it is no reference made to “gross negligence”, but only to “negligence”<sup>125</sup>.

### 6.3.1 Definition of gross negligence

What constitutes ordinary “negligence” is what falls below the standard of the normal degree of care, competence and skill that is expected from a reasonable person engaged

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<sup>123</sup> WINDTIME clause 16(e)(i)(ii)(iii) and SUPPLYTIME clause 14(e)(i)(ii)(iii)

<sup>124</sup> WINDTIME clause 16(a)(i)(ii)

<sup>125</sup> SUPPLYTIME lines 637 and 660

in the particular activity or function.<sup>126</sup> The borderline between what constitutes ordinary negligence and gross negligence is not easy to define. The term of “gross negligence” however intends to represent something more than the failure to exercise proper skill and care, where the conduct is strongly blameworthy and relate to something more severe than the ordinary negligence.<sup>127</sup> Norwegian Courts have defined gross negligence in the following cases: ND 1971.350 NH KARI-BJØRN, ND 1976.132 Gulating TUVA, and ND 1977.138 OSLO.

However, as the ascertain meaning of gross neglect might be hard to define, it might therefore be complicated and time consuming when resolving a case where loss is caused by an act which is difficult to define in relation to neglect or gross neglect.<sup>128</sup>

### 6.3.2 Validity of the clause

The NL 5-1-2, which considers the morality of a contract in general and prohibits agreements that are against law and morality, may effect the disclaimer of liability in case of gross negligence since it might be considered to be against morality. The Norwegian Supreme Court have several times stated that indemnity clauses disclaiming liability where one party was at fault, such as gross negligence or intent, shall not be valid as being contrary to NL 5-1-2.<sup>129</sup> Based on these judgments, it is however claimed in legal theory that limitation from liability for the company’s own gross negligence is nevertheless invalid as an absolute rule,<sup>130</sup> and that the knock for knock principle cannot be applied in cases where damage is caused by gross negligence by persons acting on behalf of the Owner or Charterer.<sup>131</sup> Furthermore, it is by Kaasen also held that in relation to the knock for knock principle in offshore petroleum contracts and acts of gross negligence that, the exclusion of liability must be maintained since it concerns an agreed document containing a liability and indemnity scheme where mutual liability is

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<sup>126</sup> Falkanger, Bull and Brautaset p.168

<sup>127</sup> Ibid. p.174

<sup>128</sup> See Bjerketveit p.34. Norway has accepted a legal definition of “gross negligence” compared with the English law the difference between “negligence” and “gross negligence” is not a difference in kind. This does however not mean that the term gross negligence does not have any effect in English law since if parties have chosen to use these words; they must be given some meaning.

<sup>129</sup> E.g. Rt 1916 p.717 and Rt 1926 p.712

<sup>130</sup> Hagstrøm p.464 and 475

<sup>131</sup> Wilhelmsen p.103

relatively balanced between the parties, where both parties have taken out comprehensive insurance cover to confer with the stipulated knock for knock regime, and is therefore is not against morality in contrast to NL 5-1-2.<sup>132</sup>

Additionally in Norwegian legislation, the Norwegian Contract Act § 36 focus on the content of the agreement between contracting parties and whether the agreement is unfair or unreasonable for one of the parties, which might lead to that the agreement is set aside wholly or partially. For the decision whether an agreement can be fully or partially set aside or changed, one must take into account the content of the agreement, the parties' positions and conditions when signing the agreement, but also conditions and circumstances occurring afterwards has to be taken into account.<sup>133</sup> It is thus the total effects of the contract that has to be considered. The validity of the clause in the hold harmless agreement, where including disclaimer from liability also when caused through gross negligence, also then has to be assessed under § 36 of the Norwegian Contract Act.

The general view in Norwegian law is that limitation of liability is accepted for the acts of omissions of gross negligence or deliberate acts, committed by the ordinary employees, but not for those of the leadership of the company,<sup>134</sup> illustrated in ND 1991.180 EIDSIVATING, where gross neglect by the master did not classify the contract unreasonable under the Norwegian Contract Act § 36. Thereby, while under Norwegian legislation it is allowed to disclaim liability for employees' negligence, gross negligence and intent, the Owner/Charterer cannot disclaim responsibility for the own company's deliberate acts. It is therefore important to define whose gross negligence the contract regulate. Also mentioned by Wilhelmsen, whether freedom from liability can be upheld even in cases of gross negligence can only be achieved if following requirements are fulfilled:

The contract should be agreed to secure involvement and acceptance by both parties, the freedom of liability should be tied to a systematic insurance regulation to secure that all potential victims are compensated, the liability and insurance system should reflect a

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<sup>132</sup> Kaasen (2005) p.249

<sup>133</sup> Norwegian Contract Act § 36 second paragraph

<sup>134</sup> Wilhelmsen p.102

thorough analyses of what combination of liability insurance and casualty insurance is most convenient for the parties, and the system should reduce transactions costs.<sup>135</sup>

Over the latest 15 years, there are very few cases of this kind, where agreements have been set aside being contrary to § 36 of the Norwegian Contract Act, and the courts have seem to changed their attitude in favor of the predictability at the cost of fairness.<sup>136</sup> Nonetheless, even if the above-mentioned conditions are fulfilled, the acceptance from the court is still uncertain and cannot be taken for granted.<sup>137</sup>

Additionally, the validity of the knock for knock clauses under NL 5-1-2 and the Norwegian Contract Act § 36 cannot be isolated from the relation to their insurance policies of contracting parties under the WINDTIME. As long as the injured party's insurance actually covers his losses, it will be difficult to characterize the agreement as "unreasonable" to any of the contracting parties as the knock for knock clause upheld in full. The agreement being characterized as unfair or unreasonable will only last if either party for any reason cannot channel his loss to an insurance company. Then, if assuming that the system agreed between them is maintained, it is thus the Insurers who initially will be left with the bill.<sup>138</sup>

### 6.3.3 Legal implications and other effects of the amendment

How will then the amendment of the wording "gross negligence" in the disclaimer for liability effect the knock for knock regulation in the WINDTIME, where the parties agree to hold each other harmless if damage is caused due to the other part's gross negligence, compared with the SUPPLYTIME where this is not written down?

The knock for knock clauses of the SUPPLYTIME, contain disclaimers for liability in relation to fault, but without defining the degree of fault. However, the amendment made in the WINDTIME does not lead to any difference in relation to legal implications because the general interpretation of fault also includes gross negligence. When the SUPPLYTIME however stays silent in this aspect, a judge may though say

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<sup>135</sup> Wilhelmssen p.110

<sup>136</sup> Ibid. p.106-107

<sup>137</sup> Bjerketveit p.126, Wilhelmssen p.110 and Zak p.60

<sup>138</sup> Zak p.61



that it is difficult to presume that the parties intended to include stricter degrees of fault. In Norwegian legislation this is not an issue, but other legislations might think this way.<sup>139</sup> If then there is a dispute where to decide the degree of fault, it might lead to costly and time-consuming litigations, which undermines the primary concept of the regime.

Thus, when the contract expressly spell out to include “gross negligence” in the knock for knock clauses of the WINDTIME, compared with the SUPPLYTIME, it shows that the committee developing the contract has really thought through the relationship of these different degrees of fault and made the contract more clear in this regard. The conclusion of the amendment is therefore that the benefits and effect of the knock for knock in the WINDTIME is strengthened as it results in more certainty and might also result in less costs, by avoiding costly and time consuming litigation costs. However, from a Norwegian perspective, the validity of the clause will be the same as under the SUPPLYTIME.

The amendment of “gross negligence” in the knock for knock regime is likewise, according to BIMCO, made to clarify what is expressly included, as the difficulty of defining what exactly gross negligence constitutes will be removed since the definition differs between jurisdictions and is a matter of degree.<sup>140</sup>

Nevertheless, even though knock for Norwegian courts generally accept knock clauses. There are however some limits in relation to gross negligence, where the indemnification for gross negligence is not absolute because it is not certain that the validity of the clause will be accepted by the Norwegian courts in cases of damages due to the company’s own gross negligence as contrary to § 36 of the Norwegian Contract Act or against morality as contrary to NL 5-1-2. The wrongdoing party then risk not getting indemnified for losses anyway. On the other hand, as the clauses are balanced and the indemnification goes both ways, and seen in the light of how the Norwegian courts have ruled in these types of disputes lately, it is not very likely that the content of the agreement between contracting parties will be found as unreasonable.

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<sup>139</sup> Zak p.117-118

<sup>140</sup> Explanatory Notes WINDTIME to clause 16

## 6.4 Exclusion from knock for knock regulation for acts caused by intent/ recklessly

In the WINDTIME there has been a complete amendment, compared with the SUPPLYTIME, of an exclusion from the knock for knock principle. This exclusion is recognized in the last lines of the WINDTIME clause 16(a) in both sub-clause (i) and (ii), where it is laid down that the knock for knock regime is not applicable if the Charterers' Group's or the Owners' Group's causes loss, damage, injury or death, as a result of the Charterers' Group's or the Owners' Group's "act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, injury or death would probably result".

### 6.4.1 Definition of intent / recklessness

There are two different degrees of fault defined in the amended clause of the WINDTIME, "intention" and "recklessness". Intentional wrongdoing is in every legal system the gravest degree of fault and the person liable to damages as a result of an intentional act cannot escape the legal consequences of this intentional wrongdoing.<sup>141</sup> Intent is not illegal per se, as it can be intentional but without containing fraudulent intent. The reckless conduct is connected to the behaviour of a person with knowledge that damage would probably occur, not to the intentional acts or omission to cause damage.<sup>142</sup> The concept of recklessness in combination with knowledge is then different and more blameworthy than what constitutes gross negligence.

The definition of what constitutes intent has been written about in the Commentary to the NP. According to the Commentary to the NP and clause 3-32 regulating casualties caused intentionally by the Assured / Owner, "[i]ntent will be present when the assured deliberately brings about the casualty so as to receive indemnity under the insurance policy, i.e. fraudulent intent, and when the assured realises that his conduct will, on a balance of probabilities, bring about the casualty" and also when the assured "foresaw the occurrence of the casualty as a possible consequence of his conduct and accepted the risk of that consequence".

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<sup>141</sup> Damar p.84

<sup>142</sup> Ibid. p.84

The case where the Assured understands that his conducts will “on a balance of probabilities” bring about the casualty, this probably caused intent is very similar to the concept of “wilful misconduct”, as it in both concepts there are different degrees of probability. What constitutes wilful misconduct is though hard to define because its meaning largely depends on the context in which it appears, but in general it can be described as an act, which is “an act intentionally done, or a deliberate omission [...] with knowledge that the performance or omission will probably result in injury, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences”.<sup>143</sup> In other words, the wilful misconduct shows a certain degree of ruthlessness or recklessness, which entails a considerable risk for damage, but the precise differentiation between what constitutes gross negligence and wilful misconduct may though be difficult to establish.<sup>144</sup>

#### 6.4.2 Validity of the clause

The general rule in Norwegian legislation is that when there has been intent, it shall not be possible to be excluded from liability and the provisions of the knock for knock regime are inapplicable, which subsequently leads to that the contracting parties are then able to bring claims towards each other.

Based on NL 5-1-2 and the Norwegian Contract Act § 36, it is assumed that a contractual party cannot avoid liability for damages caused deliberately.<sup>145</sup> But, as described above, the general view in Norwegian legislation is however that limitation of liability is accepted for the acts of omissions of gross negligence or deliberate acts, committed by the ordinary employees, but not for those of the leadership of the company. This principle is illustrated in the ND 1988.263 NA MØRLAND 7, where damages caused under a charter party containing a knock for knock clause was considered as caused with intent by the Charterer himself, and thereby the knock for knock agreement was exempted.

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<sup>143</sup> Gard Rules P&I Rule 72

<sup>144</sup> Williams p.8

<sup>145</sup> Wilhelmsen p.102

### 6.4.3 Legal implications and other effects of the amendment

BIMCO states that this amendment made in the WINDTIME shall reflect the fact that due to public policy and general law in some jurisdictions it may not be possible to rely on the knock for knock provisions if there has been wilful misconduct.<sup>146</sup> The issue in relation the concept of the different levels of fault, lies behind this clause, as intent and wilful misconduct are two separate concepts, where the gravest part of wilful misconduct under civil law is when damage is caused with intent.<sup>147</sup> Through the amendment where the knock for knock provision is excluded for acts caused by intent / recklessness in the WINDTIME, it may however resolve the problem related to the use of the expression “wilful misconduct” in some legislations,<sup>148</sup> and thereby the difficulty to decide the degree of fault and whether the liability regime in the knock for knock provision should be excluded, as the definition of what constitutes wilful misconduct is in many cases a matter of degree and judgment, and the state of mind of the individuals concerned will also be contemplated in the consideration, which somewhat decreases the clarity and benefit of the knock for knock regime since the allocation of liability may be determined on subjective grounds.<sup>149</sup>

The clauses of the WINDTIME provides for a clear wording of that it shall not be possible to be excluded from liability when incurred by intent by the Owner or Charterer. However, the amendment does not affect the rule for the intent / recklessness of the Owner or Charterer under Norwegian legislation whether written down or not, as it is contrary to § 36 in the Norwegian Contract Act that liability cannot be able to be excluded when incurred by their own intent. There are therefore no legal implications related to the amended clause in the WINDTIME.

When the SUPPLYTIME contains no similar exception as explicitly expressed under the WINDTIME, the parties may try to invoke knock for knock also for the intent / recklessness, and then the other party may protest and prevail in a case because such a disclaimer is invalid in many legal systems. Consequently, the WINDTIME therefore only except what in most systems exempted anyway, and thereby excluding the difficult

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<sup>146</sup> Explanatory Notes WINDTIME to clause 16

<sup>147</sup> Damar p.275

<sup>148</sup> cf. English law use the concept “wilful misconduct”

<sup>149</sup> Jennings p.3

questions of doubt if the court accepts a disclaimer for wilful misconduct by the company itself. The regulation in WINDTIME explicitly spelling out what is included or excluded in the knock for knock, cf. gross negligence included but intent / recklessness excluded, assumptions of what the contract means are avoided as the legal position is clearly stated.

With the express exception in the WINDTIME, the parties understand the system's limitations and avoid to invoke knock for knock, because when a contract stays silent in this regard, it may result in more litigation and that the party acting with wilful misconduct may be attracted of bringing claims within the exception to avoid liability. As the SUPPLYTIME do not contains any similar exception, the parties may invoke knock for knock also for the intent / recklessness, and then the other party may protest and prevail in a case because such a disclaimer is invalid in many legal systems. But with a spelled out exception in the WINDTIME, the parties understand the system's limitations and avoid invoking knock for knock, which result in less unnecessary trials and avoidance of time-consuming and costly disputes thanks to the clear division of liabilities. The knock for knock provision in the WINDTIME then becomes stronger and provides more certainty, which result in less and unnecessary litigations.

## **7 Amended knock for knock clauses in the WINDTIME – Impact on insurance cover**

### **7.1 Introduction**

The main principle in the knock for knock regime is that each party take out sufficient insurance cover for liabilities that may arise within their defined risk zones and that each party's insurance cover should only be called upon to cover the losses in respect to his own property and personnel. Through this concept, losses are channelled directly to the hull Insurer of the injured party instead of that the loss should trigger both the hull insurance of the injured party and the liability insurance of the wrongdoing party.

As mapped out in the previous chapter, the amendments made in the knock for knock clauses of the WINDTIME, compared with the SUPPLYTIME, will be analysed to see whether they have any affect on the insurance cover.

## 7.2 Gross negligence amendment

Under the knock for knock provision in the WINDTIME and a scenario where a Party “A” causes damage to a party “B” as a result of an act of gross neglect; “A” will not be liable to indemnify “B”, following by the basic principle of knock for knock system where each party’s hull insurance should only be called upon to cover the losses in respect to his own property and personnel. Therefore party “B” will get his losses covered under his hull insurance. To avoid cross-claims between the parties insurance companies, a waiver of subrogation then regulates the relationship between the tortfeasor and the injured party’s insurance company.

How do then the amendment in the WINDTIME affect the insurance contract, where it is provided for that the knock for knock provision includes a disclaimer of liability even if loss, damage, injury or death is caused by the other party’s “gross neglect” as opposed to the wording of the SUPPLYTIME only mentioning “neglect”?

When the other party causes damage through gross negligence, and the innocent party suffers damages, the question is what kind of protection the wrongdoing party has against receive recourse from the injured party’s insurance company. The knock for knock clauses are combined with waiver of subrogation clauses and co-insurance policies, and similarly to the indemnity clauses, the waiver of subrogation is not tied to the degree of fault.<sup>150</sup> The position of the co-insured will however be that he as co-insured will obtain an indirect liability cover for ordinary negligence, but in case of gross negligence it may result in a reduction of compensation.<sup>151</sup>

While the agreement between the contracting parties under the WINDTIME follow under the mandatory rules of the NL 5-1-2 and the Norwegian Contract Act § 36, it must also be presumed that the insurance clauses also follow these mandatory regimes. Therefore the validity of the clause when gross negligence is included in the knock for knock provisions under the charter party is not certain to be accepted by the Norwegian Courts if the indemnity clause is deemed invalid according to the NL 5-1-2, or unfair, being contrary to § 36 of the Norwegian Contract Act. If however the waiver of subrogation or co-insured’s protection is upheld, the position of the party claiming to be

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<sup>150</sup> Wilhelmsen p.110

<sup>151</sup> Ibid. p.110 cf. NP 3-33

indemnified will differ according to whether the injured party makes the claim against the injurer, or prefers to claim coverage from his Insurer.<sup>152</sup> The scenario in the first case will be that the injurer must compensate the injured party, whereas in the second case, the party claiming to be indemnified will be free from liability since his Insurer will compensate the injured party. Such an arbitrary will result in inconsistency, thus being contrary to considerations of fairness and the consequence must therefore be that the mandatory rules apply similarly to the waiver of subrogation clauses and the co-insured's indirect liability protection.<sup>153</sup> A waiver of subrogation is then not absolute since the validity of the gross negligence clause can be rejected. This scenario would be the same, both under the WINDTIME and the SUPPLYTIME.

By including the disclaimer of liability in case of gross negligence in the knock for knock provision of the WINDTIME, the result will be the same as under the SUPPLYTIME, since if the indemnity clause applies regardless of fault, but not for intent / recklessness, then it is common to interpret fault to also include gross negligence. Nevertheless, the amendment of the explicit wording "gross negligence" provides a clearer clause and thereby creates lesser ground for litigation.

### 7.3 Intent / recklessness amendment

The traditional principle in Norwegian insurance law is that the Insurer shall not be liable if the Assured has intentionally brought about the event insured against. This is stipulated in the NP Clause 3-32, which corresponds to the ICA<sup>154</sup>. However, the ICA has relaxed the principle by somewhat allowing for partial liability for the Insurer if the Assured's conduct has been intentional but without fraudulent intent.<sup>155</sup> This section of the ICA reflects a wish to protect the person effecting the insurance but is not applicable to marine insurance, whereas in marine insurance the question if Assured acted intentionally must primarily be considered in the same manner as in criminal law.<sup>156</sup>

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<sup>152</sup> Wilhelmssen p.110

<sup>153</sup> Ibid. p.110-111

<sup>154</sup> ICA Section 4-9

<sup>155</sup> ICA Section 4-9 first paragraph, second sentence

<sup>156</sup> Commentary to NP clause 3-32

When the knock for knock regime requires that the parties have insurance cover to cover for respective losses, the risk for damages caused by intent might not then be covered neither under the hull insurance nor the P&I insurance.<sup>157</sup> For any liabilities caused by an Assured's intent, the Assured will be liable for losses for which prima facie he is uninsured.

This rule will however apply regardless of any knock for knock principle. Compared with the SUPPLYTIME where this exclusion is not spelled out, the outcome of a case where intent has been involved, will be the same even though it is not explicitly stated in the contract, since general law provides that a party shall not be able to reject a claim due to his own act or omission, committed with the intent to cause same or recklessly and with knowledge that such loss, damage, injury or death would probably result.

## **8 Summary**

Developed to fit the complexity of the offshore industry, the knock for knock regime is today a well-established concept and feature in contracts regulating offshore activities. Within the offshore industry there are however different segments of trade and the knock for knock regime might not be the generic solution best applicable for all of the segments just because the market is "offshore". This issue was highlighted in relation to the development of the first standard contract customized charter party for the offshore wind industry, where some parties questioned if the incorporation of the knock for knock regulation was the most effective insurance and liability mechanism for this particular trade, even though the WINDTIME is a charter party for activities offshore and the knock for knock regime is most commonly used for offshore contracts.

The offshore wind and offshore petroleum markets are different from each other in several aspects. First, the area of operation differs both in what is included in the basic definition of the industries, where in the petroleum industry projects comprise drilling in the subsoil of the seas to explore oil and gas, in contrast to the wind farm industry where the project is to install a wind farm. Also the location of where the projects are situated slightly differ, where offshore petroleum projects are further off shore than the

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<sup>157</sup> See NP clause 3-32, Gard Rules P&I Rule 15 and 40, and Skuld Rules P&I, Rule 30.1.8



wind farms, and this is also reflected in the type of vessels operating. However, the development of the offshore wind industry is now also moving further out off shore, which will create even a more hazardous environment in a similar way as experienced within the offshore petroleum industry.

An important requirement when operating in the offshore industry is that risks and liabilities are coordinated and allocated from the beginning of a project. But as the market participants in the offshore wind industry come from different backgrounds, there is a lack of general overriding agreements among all parties on, and around an offshore wind farm project, compared with the offshore petroleum sector where the same is achieved in through the knock for knock system. When there is no such agreement in a high-risk industry, there are freak risks that need to be insured such as the interests of third parties.

Even though there might be differences between the two trades which the WINDTIME and the SUPPLYTIME are intended to be used in, many of the risks represented in both trades are nevertheless the same; such as the characteristics of an offshore project, being technical complex with high property values are situated in a limited area operated by many parties at the same time. As the liability and insurance system should reflect the most suitable regime for a specific market, the knock for knock arrangement was hence found suitable to incorporate in the first standard offshore charter party developed specifically for the offshore wind industry. The knock for knock regulation has not yet been generally accepted throughout all contracts in offshore wind projects, which though is a prerequisite for the proper function of the regime. But with the aim to also within the offshore wind industry create a structure similar to the bespoke and established knock for knock regime within the offshore petroleum industry, the incorporation of this regulation in the WINDTIME was found necessary. However, until a complete implementation is accomplished throughout the all contracts at an offshore wind farm project, the presumption of financing a complete insurance cover for the vessel operating under the WINDTIME will be difficult to assess, which is one of the main functions of the knock for knock regime.

The knock for knock clauses of the WINDTIME have been based on the ones in the SUPPLYTIME, but there are however some amendments made in the clauses of the

WINDTIME, compared with the SUPPLYTIME. The amendments include a precise wording, regulating the position the contracting parties when damage is caused as a result of gross negligence and intent / recklessness and through these amendments, where it is clearly stated in the knock for knock regulation of the WINDTIME that a party causing damages brought on by gross negligence shall be held harmless but if damage is caused by intent / recklessness he shall not be able to rely on the knock for knock provision.

However, these amendments do not effect the legal implication of the clauses in the WINDTIME compared with the SUPPLYTIME, from a Norwegian legal perspective. The WINDTIME then only put down in writing the rules that govern in most legal systems anyway. What differs between the clauses under the WINDTIME and the SUPPLYTIME is though the clarity of the contracts. The parties to the WINDTIME are provided with more straightforward and clear provisions, where allocation of liability is further expressed in the contract. This leads to lesser loopholes for the parties to “assume” what the contract implies and to try to exclude themselves from liability under the knock for knock clauses, and thereby unnecessary time-consuming and costly disputes may be avoided. However, even though the clauses provide the parties of the WINDTIME with a stronger knock for knock agreement, by including the explicit wording, the validity of the clauses is still not absolute as they risk getting caught under the NL 5-1-2 and § 36 of the Norwegian Contract Act just as much as the SUPPLYTIME would have done.

Important for the function of regime is furthermore that the knock for knock agreement is harmonized with the terms and conditions of any applicable insurance policy. The amendments in the clauses of the WINDTIME do not have any other impact on the insurance cover, compared to the SUPPLYTIME even though it is not here explicitly written down.

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<b>NL 5-1-2</b>	Kong Christian Den Femtis Norske Lov av 15. april 1687
<b>NMC</b>	The Norwegian Maritime Code (unofficial student edition), 24 June 1994 no. 39 with later amendments up to and including Act 26 March 2010 no. 10, Sjørettsfondet, 2010
<b>Norwegian Contract Act</b>	§ 36, in: Lov 31. mai 1918 nr 4 om avslutning av avtaler, om fuldmagt og om ugyldige viljeserklæringer (avtaleloven))
<b>Norwegian Petroleum Act</b>	Norwegian Petroleum Act, in: Petroleum Law – Selected Documents, Sjørettsfondet 2013

#### CONTRACTS

<b>NF 07</b>	The Norwegian Fabrication Contract 2007
<b>NTK 07</b>	The Norwegian Total Contract 2007
<b>SUPPLYTIME</b>	Time Charter Party for Offshore Service Vessels, 2005 form
<b>TOWCON</b>	International Ocean Towage Agreement (Lump Sum), 2008 form
<b>TOWHIRE</b>	International Ocean Towage Agreement (Daily Hire), 2008 form
<b>WINDTIME</b>	Standard Offshore Wind Farm Personnel Transfer and Support Vessel Charter Party, 2013 form

#### OTHER REGULATIONS

<b>Gard Rules P&amp;I</b>	P&I and Defence cover for ships and other floating structures, 2013
<b>NP</b>	The Nordic Marine Insurance Plan of 2013
<b>Skuld Rules P&amp;I</b>	Statues and Rules, 2013

## PREPARATORY WORKS, COMMENTARIES AND EXPLANATORY NOTES

**Explanatory notes  
SUPPLYTIME** BIMCO. *SUPPLYTIME Time Charter Party for Offshore Service Vessels with Explanatory Notes.*

**Explanatory notes  
WINDTIME** BIMCO. *WINDTIME Standard Offshore Wind Farm Personnel Transfer and Support Vessel Charter Party with Explanatory Notes.*

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**Rt 1926** page 712

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## List of Annexes

Annex 1	WINDTIME
Annex 2	SUPPLYTIME

 <b>BIMCO</b> <a href="http://www.bimco.org">www.bimco.org</a>		<b>PART I</b>		<h1 style="margin: 0;">WINDTIME</h1> <p style="margin: 0;"><b>Standard Offshore Wind Farm Personnel Transfer and Support Vessel Charter Party</b></p> <p style="margin: 0; font-size: small;">Copyright, published by BIMCO, Copenhagen</p>	
1. Place and Date of Contract:					
2. Owners/Place of business (full style address, e-mail and fax)					
3. Charterers/Place of business (full style address, e-mail and fax)					
4. Vessel's name and IMO number (if applicable) (ANNEX A)					
5. Date of delivery (Cl. 2(a))			6. Cancelling date (Cl. 2(a), (c) and (f))		
7. Port or Place of delivery (Cl. 2(a))					
8. Port or place redelivery/notice of redelivery (Cl. 3(a))					
(i) Port or place of redelivery					
(ii) Number of days' notice of redelivery					
9. Period of hire (Cl. 1(a) and 16(c))		10. Extension of period of hire (optional) (Cl. 1(b))		11. Automatic extension period to complete immediate services (state maximum period) (Cl. 1(c))	
		(i) Period of extension			
		(ii) Advance notice for declaration of option (days)			
12. Mobilisation charge (Cl. 2(b))			13. Demobilisation charge (state lump sum) (Cl. 3(b) and Cl. 31(a))		
(i) Lump sum					
(ii) When due					
14. Liquidated damages for delay (if applicable, state daily amount and also maximum number of days or amount to apply) (Cl. 2(f))			15. Late delivery (state option (d), (e) or (f) from Clause 2 (Delivery))		
16. Offshore Accommodation and Meals (state whether provided and paid for by Owners or Charterers) (Cl. 8(e))			17. In-water survey (Cl. 6(b)) (state if independent surveyor to be jointly appointed)		
18. Area of operation (Cl. 7(a))			19. Employment of vessel restricted to (state nature of services(s)) (Cl. 7(a))		
20. Specialist Operations (Cl. 7(a))			21. Bunkers (State fuel specifications and grades for fuel supplied by Charterers) (Cl. 12(b))		
(i) State if vessel may be used for ROV operations					
(ii) State if vessel may be employed as a diving platform					

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<b>22. Charter hire</b> (state rate and currency) <a href="#">(Cl. 2(f), 8(a)(ii), 14(a), (d) and e)</a>		<b>23. Extension hire</b> (if agreed, state rate) <a href="#">(Cl. 14(b))</a>	
(i) Working Day rate			
(ii) Excess hourly rate			
(iii) 24 hour rate			
<b>24. Working Day</b> (state actual times and number of hours per day e.g., Mon-Sun, 7am to 7pm) (also state incl/excl public holidays)		<b>25. Notice period for change of Working Day</b> (if left blank, fourteen (14) days shall apply) <a href="#">(Cl. 8(a)(iii))</a>	
<b>26. Invoicing for hire and other payments</b> <a href="#">(Cl. 14(d))</a>			
(i) State whether to be issued in advance or arrears			
(ii) State by whom to be issued if other than the party stated in <a href="#">Box 2</a>			
(iii) State to whom to be issued if addressee other than stated in <a href="#">Box 3</a>			
<b>27. Payments</b> (state mode and place of payment; also state beneficiary and bank account) <a href="#">(Cl. 14(e))</a>			
<b>28. Payment of hire, bunker invoices and disbursements for Charterers' account</b> (state maximum number of days) <a href="#">(Cl. 14(e))</a>			
<b>29. Interest rate payable</b> <a href="#">(Cl. 14(e))</a>		<b>30. Maximum audit period</b> <a href="#">(Cl. 14(g))</a>	
<b>31. Limitation of liability</b> (state percentage of total sum of hire) <a href="#">(Cl. 16(c))</a>		<b>32. Sublet</b> (state amount of daily increment of charter hire) <a href="#">(Cl. 22(a))</a>	
(i) Owners' limitation			
(ii) Charterers' limitation			
<b>33. War Cancellation</b> (indicate countries agreed) <a href="#">(Cl. 25)</a>		<b>34. Early termination of charter</b> (state amount of hire payable) <a href="#">(Cl. 31(a))</a>	
		(i) State "yes", if applicable	
		(ii) If "yes", state amount of hire payable	
<b>35. Number of days' notice of early termination</b> <a href="#">(Cl. 31(a))</a>		<b>36. Breakdown</b> (state period) <a href="#">(Cl. 31(d))</a>	
		(i) Single consecutive	
		(ii) Combined	
<b>37. Communication with Owners</b> (state full contact details for communicating with the Owners) <a href="#">(Cl. 35)</a>		<b>38. Communication with Charterers</b> (state full contact details for communicating with the Charterers) <a href="#">(Cl. 35)</a>	
<b>39. Dispute resolution</b> (state <a href="#">(a)</a> , <a href="#">(b)</a> , <a href="#">(c)</a> or <a href="#">(d)</a> of <a href="#">Cl. 34</a> , as agreed; if <a href="#">(c)</a> agreed also state whether Singapore or English law to apply; if <a href="#">(d)</a> agreed also state place of arbitration) <a href="#">(Cl. 34)</a>			
<b>40. Numbers of additional clauses covering special provisions, if agreed.</b>			

It is mutually agreed that this Contract shall be performed subject to the conditions contained in the Charter consisting of PART I, including additional clauses, if any agreed and stated in [Box 40](#), and PART II as well as ANNEX "A" (Vessel Specification) and ANNEX "B" (Insurance) as annexed to this Charter. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II and ANNEX "A" and ANNEX "B" to the extent of such conflict but no further.

<b>Signature (Owners)</b>	<b>Signature (Charterers)</b>
---------------------------	-------------------------------

**ANNEX "A" (Vessel Specification)****BIMCO Standard Offshore Wind Farm Personnel Transfer and Support Vessel Charter Party****Code Name: WINDTIME****VESSEL SPECIFICATION****1. General**

- (a) Owner: Name:  
Address:
- (b) Vessel's Name:  
Builder:
- (c) Year built:
- (d) Type:
- (e) Classification and Society:
- (f) Flag:
- (g) IMO number (if applicable):
- (h) Date of next scheduled drydocking:

**2. Performance**

- (a) Calculated Bollard Push (kN):
- (b) Speed/Consumption (Approx. Hourly Fuel Consumption) (in good weather)
- (i) Max Speed:, Knots (app.);, Litres/Hour:
- (ii) Service Speed with max. passengers and half fuel load:, Knots (app.);, Litres/Hour:
- (iii) Standby (main engines secured):, Knots (app.);, Litres/Hour:
- (c) Type and Grade of Fuel Used:

**3. Dimensions and Capacities**

- (a) L.O.A. (m):  
Breadth (m):  
Depth (m):  
Max Draught (m):
- (b) Deadweight (metric tons):
- (c) Cargo Deck Area (m<sup>2</sup>):  
Forward: Aft:
- (d) Capacity (metric tons):  
Forward: Aft:
- (e) Length (m) x Breadth (m):
- (f) Load Bearing Capacity (tonnes per m<sup>2</sup>):
- (g) Maximum number of passengers:

**4. Machinery**

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- (a) BHP Main Engines:
- (b) Engine Builder:
- (c) Number of Engines and Type:
- (d) Generators:
- (e) Stabilisers/Interceptors/Ride Control Systems:
- (f) Bow Thruster(s):
- (g) Stern Thruster(s):
- (h) Propellers/Rudders/Jets:

### 5. Radio and Navigation Equipment

- (a) Communications Equipment
  - MF/HF Radio: GMDSS VHF:
  - Satcom: Cell phone:
  - Wireless Broadband:
- (b) Electronic Navigation Equipment
  - ECDIS:
  - Speed log:
  - Anemometer:
- (c) Gyro or Satellite compass:
- (d) Radar:
- (e) Autopilot:
- (f) Depth Sounder:
- (g) Additional electronic safety equipment
  - Recording Camera(s): SAR Finder:
  - EPIRB: Class A AIS:
  - SART:

### 6. Additional Equipment

- (a) Joystick:
- (b) Access System:
- (c) Fuel Supply pump and delivery hose, litres/hour at metres head:
- (d) Pressure washer for cleaning boat landings:
- (e) Crane (SWL at max radius):
- (f) Other:

**INSURANCE**

Insurance policies (as applicable) to be procured and maintained by the Owners under [Clause 19](#) (Insurance):

- (1) Marine Hull Insurance  
Hull and Machinery Insurance shall be provided with limits equal to those normally carried by the Owners for the Vessel.
- (2) Protection and Indemnity (Marine Liability Insurance)  
Protection and Indemnity (P&I) or Marine Liability Insurance with coverage equivalent to the cover provided by members of the International Group Protection and Indemnity Associations with a limit of cover no less than USD for any one event. The cover shall include liability for collision and damage to fixed and floating objects to the extent not covered by the insurance in (1) above.
- (3) General Third Party Liability Insurance  
To the extent not covered by the insurance in (2) above, coverage shall be for:  
Bodily Injury per person  
Property Damage per occurrence.
- (4) Workmen's Compensation and Employer's liability Insurance for Employees  
To the extent not covered in the insurance in (2) above, covering Owners' employees and other persons for whom Owners are liable as employer pursuant to applicable law for statutory benefits as set out and required by local law in area of operation or area in which the Owners may become legally obliged to pay benefits.
- (5) Such other insurances as may be agreed.

1 **Definitions**

2 **“Banking Day”** shall mean a day on which banks are open in the places stated in [Box 2](#) and [Box 3](#) and,  
3 where a remittance is in US dollars, in New York.

4 **“Charterers”** shall mean the party stated in [Box 3](#).

5 **“Charterers’ Group”** shall mean: the Charterers, and their contractors, sub-contractors, co-venturers and  
6 customers (having a contractual relationship with the Charterers, always with respect to the job or project on  
7 which the Vessel is employed), and Employees of any of the foregoing.

8 **“Employees”** shall mean employees, directors, officers, servants, agents or invitees.

9 **“Offshore Unit”** shall mean any installation, structure, mobile unit and/or vessel used in offshore wind farm  
10 construction, cable-laying, repair, maintenance, power generation or distribution.

11 **“Owners”** shall mean the party stated in [Box 2](#).

12 **“Owners’ Group”** shall mean: the Owners, and their contractors and sub-contractors, and Employees of  
13 any of the foregoing.

14 **“Vessel”** shall mean the vessel named in [Box 4](#) and with particulars stated in ANNEX “A”

15 **“Day”** means a clear working day (Saturdays, Sundays and local public holidays excluded) at the recipients’  
16 place of business stated in [Boxes 2](#) or [3](#), as applicable.

17 **“Working Day”** means a working day of the number of hours specified in [Box 24](#).

18 **“Working Hours”** means the number of hours stated in [Box 24](#), as may be amended in accordance with  
19 [Clause 8\(a\)\(iii\)](#).

20 **1. Charter Period**

21 **(a)** The Owners let and the Charterers hire the Vessel for the period as stated in [Box 9](#) from the time  
22 the Vessel is delivered to the Charterers (the “Charter Period”).

23 **(b)** Subject to [Clause 14\(b\)](#), the Charterers have the option to extend the Charter Period in direct  
24 continuation for the period stated in [Box 10\(i\)](#), but such an option must be declared in  
25 accordance with [Box 10\(ii\)](#).

26 **(c)** The Charter Period shall automatically be extended for the time required to complete the  
27 immediate task being performed, such time not to exceed the period stated in [Box 11](#).

28 **2. Delivery**

29 **(a) Delivery**  
30 Subject to [Clause 2\(c\)](#) the Vessel shall be delivered by the Owners at any time between the  
31 date stated in [Box 5](#) and the date stated in [Box 6](#) at the port or place stated in [Box 7](#) where the  
32 Vessel can safely lie always afloat. The Owners shall exercise reasonable endeavours to keep  
33 the Charterers informed of the Vessel’s estimated time of arrival at the port or place of delivery  
34 stated in [Box 7](#).

35 **(b) Mobilisation**  
36 The Charterers shall pay a lump sum mobilisation charge as stated in [Box 12](#) without discount.

37 **(c) Cancelling**  
38 If the Vessel is not delivered by midnight local time on the cancelling date stated in [Box 6](#), the  
39 Charterers shall be entitled to cancel this Charter Party. However, if the Owners know or ought  
40 reasonably to know that they will be unable to deliver the Vessel by the cancelling date, they  
41 shall give notice in writing to the Charterers thereof as soon as reasonably practicable stating in  
42 such notice the date by which they will be able to deliver the Vessel. The Charterers may within

43 three (3) days of receipt of such notice give notice in writing to the Owners cancelling this  
44 Charter Party. If the Charterers do not give such notice, then the later date specified in the  
45 Owners' notice shall be substituted for the cancelling date for all the purposes of this Charter  
46 Party.

47 \*(d) In the event the Charterers cancel the Charter Party, it shall terminate on terms that neither  
48 party shall be liable to the other for any losses incurred by reason of the non-delivery of the  
49 Vessel or the cancellation of the Charter Party.

50 \*(e) In the event the Charterers cancel the Charter Party or accept late delivery, it shall be without  
51 prejudice to any other rights either party may have.

52 \*(f) The Owners shall pay liquidated damages per day or pro rata for part of a day as stated in [Box](#)  
53 [14](#) (if [Box 14](#) is left blank a rate equal to the Charter hire rate stated in [Box 22](#) shall apply) from  
54 midnight local time on the original cancelling date stated in [Box 6](#), (irrespective of any  
55 substitution to that cancelling date in accordance with [Sub-clause 2\(c\)](#)) until such time as: (i) the  
56 Owners have delivered the Vessel or (ii) the Owners have delivered a substitute vessel  
57 pursuant to [Clause 23](#) (Substitute Vessel) or (iii) the Charterers have cancelled this Charter  
58 Party in accordance with [Sub-clause 2\(c\)](#). The Owners' responsibility to pay liquidated damages  
59 under this Clause shall be subject to the maximum limitation stated in [Box 14](#). Without prejudice  
60 to the Charterers' right to cancel this Charter Party in accordance with [Clause 2\(c\)](#), the Owners'  
61 liability to pay liquidated damages under this Clause shall be the Charterers' sole and exclusive  
62 remedy for late delivery of the Vessel.

63 \*[Sub-clauses \(d\), \(e\) and \(f\)](#) are options. Indicate in [Box 15](#) which option to apply. If [Box 15](#) is not  
64 appropriately filled in, [Sub-clause \(f\)](#) of this Clause shall apply.

65 **3. Redelivery**

66 **(a) Redelivery**

67 The Vessel shall be redelivered on the expiration or earlier termination of this Charter Party free  
68 of cargo at the port or place as stated in [Box 8\(i\)](#) or such other port or place as may be mutually  
69 agreed. The Charterers shall give not less than the number of days' notice in writing of their  
70 intention to redeliver the Vessel, as stated in [Box 8\(ii\)](#).

71 **(b) Demobilisation**

72 The Charterers shall pay a lump sum demobilisation charge without discount in the amount as  
73 stated in [Box 13](#) which amount shall be paid on the expiration or on earlier termination of this  
74 Charter Party by the Charterers pursuant to [Clause 31\(a\)](#) or by the Owners pursuant to [Clause](#)  
75 [31\(c\)](#).

76 **4. Condition of Vessel**

77 **(a)** The Owners undertake that at the date of delivery under this Charter Party the Vessel shall be of  
78 the description and Class (or in the event the Vessel is not Classed, the Vessel shall be  
79 approved by the relevant regulatory authority) as specified in ANNEX "[A](#)", attached hereto, and  
80 in a thoroughly efficient state of hull and machinery.

81 **(b)** The Owners shall exercise due diligence to maintain the Vessel as specified in ANNEX "[A](#)" and  
82 in such Class and in every way fit for the service stated in [Clause 7](#) (Employment and Area of  
83 Operation) throughout the period of this Charter Party.

84 **5. Structural Alterations and Additional Equipment**

85 The Charterers shall, at their expense, have the option of making structural alterations to the Vessel  
86 or installing additional equipment, subject to Class approval if applicable, with the written consent of  
87 the Owners, which shall not be unreasonably withheld. Unless otherwise agreed, the Vessel is to be  
88 redelivered reinstated, at the Charterers' expense, to her original condition. The Vessel is to remain  
89 on hire during any period of these alterations or reinstatement. The Charterers shall at all times be  
90 responsible for repair and maintenance of any such alteration or additional equipment. However, the



91 Owners may, upon giving notice, undertake any such repair and maintenance at the Charterers'  
92 expense, when necessary for the safe and efficient performance of the Vessel.

93 **6. Vessel Audit and Survey**

94 (a) Prior to delivery the Owners shall provide the Charterers with such information and  
95 documentation as the Charterers may reasonably require to conduct a health, safety, quality  
96 and environmental (HSQE) vessel audit, upon reasonable notice.

97 Provided that it can be accomplished at ports of call, without hindrance to the working or  
98 operation of or delay to the Vessel, and subject to prior consent, which shall not be  
99 unreasonably withheld, the Owners shall provide full access to the Vessel prior to delivery for  
100 the Charterers or their appointed auditor to carry out a HSQE vessel audit and any reasonable  
101 actions required to be carried out by the Owners shall be implemented within a reasonable time.  
102 The Owners and the crew shall assist the Charterers with the audit. The parties shall bear their  
103 own expenses for such surveys.

104 (b) The Owners and the Charterers shall jointly conduct an in-water survey (or if stated in [Box 17](#)  
105 appoint an independent surveyor to conduct such survey) for the purpose of determining and  
106 agreeing in writing, the condition of the Vessel, any equipment specified in ANNEX "A", and the  
107 quality and quantity of fuel, lubricants and water at the time of delivery and redelivery  
108 hereunder. The Owners and the Charterers shall jointly share the time and expense of such  
109 surveys.

110 **7. Employment and Area of Operation**

111 (a) The Vessel shall be employed in lawful activities in accordance with the law of the place of the  
112 Vessel's flag and/or registration and of the place of operation. Such activities shall be restricted  
113 to the service(s) as stated in [Box 19](#), and to voyages between any good and safe port or place  
114 and any place or Offshore Unit where the Vessel can safely lie always afloat within the Area of  
115 Operation as stated in [Box 18](#) which shall always be within International Navigation Limits and  
116 which shall in no circumstances be exceeded without prior agreement and adjustment of the  
117 Hire and in accordance with such other terms as appropriate to be agreed; provided always that  
118 the Charterers do not warrant the safety of any such port or place or Offshore Unit but shall  
119 exercise due diligence in issuing their orders to the Vessel as if the Vessel were their own  
120 property and having regard to her capabilities and the nature of her employment. Unless  
121 otherwise stated in [Box 20](#), the Vessel shall not be employed as a diving and/or ROV platform.

122 (b) Relevant permission and licences from responsible authorities for the Vessel to enter, work in  
123 and leave the Area of Operation shall be obtained and paid for by the Charterers and the  
124 Owners shall assist, if necessary, in every way possible to secure such permission and  
125 licences.

126 (c) The Vessel's Space

127 The whole reach and burden and decks of the Vessel shall throughout the Charter Period be at  
128 the Charterers' disposal reserving proper and sufficient space for the Vessel's Master, officers,  
129 crew, tackle, apparel, furniture, provisions and stores. The Charterers shall be entitled to carry:

130 (i) Persons other than crew members, provided such persons are not paying fares.

131 (ii) Lawful cargo whether carried on or under deck.

132 (iii) Explosives and dangerous cargo whether in bulk or packaged, provided proper notification has  
133 been given by the Charterers and the appropriate Flag State approval has been obtained by the  
134 Owners and such cargo is marked and packed in accordance with the national regulations of  
135 the Vessel and/or the International Maritime Dangerous Goods Code and/or other pertinent  
136 regulations. Failing such proper notification, marking or packing the Charterers shall indemnify  
137 the Owners in respect of any loss, damage or liability whatsoever and howsoever arising  
138 therefrom. The Charterers accept responsibility for any additional expenses (including

139 reinstatement expenses) incurred by the Owners in relation to the carriage of explosives and  
140 dangerous cargo.

141 (iv) Toxic or noxious substances, subject to [Clause 16\(f\)](#), proper notification and any pertinent  
142 regulations.

143 **8. Master and Crew**

144 (a) Working Hours

145 (i) Working Day - The Master shall carry out his duties promptly and the Vessel shall render all  
146 reasonable services within her capabilities during the Working Day at such times and on such  
147 schedules as the Charterers may reasonably require without any obligations of the Charterers  
148 to pay to the Owners or the Master, officers or crew of the Vessel any excess or overtime  
149 payments.

150 (ii) Excess Working Hours - Should the Charterers require the Vessel to work in excess of the  
151 agreed Working Day in any one day they shall, as soon as practicable, notify the Owners,  
152 provided that such excess shall not result in the crew working hours exceeding those permitted  
153 by applicable laws and regulations. If the Charterers' use of the Vessel exceeds the Working  
154 day they shall pay the Owners for each extra hour at the Excess hourly rate stated in [Box 22](#).  
155 Crew working hours for a Working Day shall include time taken to refuel and ready the Vessel at  
156 the beginning of the Working Day as well as shutting the Vessel down and ensuring that it is  
157 safe to be left unattended at the end of the Working Day.

158 (iii) Change in Working Hours - Should the Charterers require the Vessel to increase the Working  
159 Day to a twenty-four (24) hour working day, they shall give the Owners the number of days'  
160 notice stated in [Box 25](#).

161 (b) Cargo Documents

162 (i) No Bills of Lading shall be issued for shipments under this Charter Party.

163 (ii) The Master shall sign cargo documents as directed by the Charterers in the form of receipts that  
164 are non-negotiable documents and which are clearly marked as such.

165 (iii) The Charterers shall indemnify the Owners against all liabilities that may arise from the signing  
166 of such cargo documents in accordance with the directions of the Charterers to the extent that  
167 the terms of such cargo documents impose more onerous liabilities than those assumed by the  
168 Owners under the terms of this Charter Party.

169 (c) Crew Tasks

170 The Vessel's crew if required by Charterers will connect and disconnect electric cables, fuel,  
171 water and pneumatic hoses when placed on board the Vessel in port as well as alongside the  
172 Offshore Units; will operate the equipment on board the Vessel for loading and unloading  
173 cargoes; and will hook and unhook cargo on board the Vessel when loading or discharging  
174 alongside Offshore Units. If the port regulations or the seamen and/or labour unions do not  
175 permit the crew of the Vessel to carry out any of this work, then the Charterers shall make, at  
176 their own expense, whatever other arrangements may be necessary, always under the direction  
177 of the Master.

178 (d) Vessel Operation

179 The Charterers shall furnish the Master with all instructions and sailing directions and the  
180 Master and Engineer shall keep full and correct logs accessible to the Charterers or their  
181 agents.

182 The entire operation, navigation, and management of the Vessel shall be in the exclusive  
183 control and command of the Owners, their Master, officers and crew. The Vessel will be  
184 operated and the services hereunder will be rendered as requested by the Charterers, subject  
185 always to the exclusive right of the Owners or the Master of the Vessel to determine whether  
186 operation of the Vessel may be safely undertaken. In the performance of the Charter Party, the

187 Owners are deemed to be an independent contractor, the Charterers being concerned only with  
188 the results of the services performed.

189 (e) Offshore Accommodation and Meals

190 If the Owners and the Charterers agree that the Vessel shall remain offshore overnight during  
191 some or all of the Charter Period then, notwithstanding [Clause 10](#) (Owners to Provide),  
192 accommodation and meals for the Master, officers and crew shall be provided and paid for by  
193 the party named in [Box 16](#) or, if left blank, by the Charterers.

194 **9. Conduct**

195 (a) If the Master has reason to be dissatisfied with the conduct of any persons placed on board the  
196 vessel by the Charterers, the Master shall have the right to refuse to carry any such persons.  
197 On receiving particulars of the complaint the Charterers shall promptly investigate the matter  
198 and if the complaint proves to be well founded, the Charterers shall as soon as reasonably  
199 possible take appropriate disciplinary action against such persons or, in the case of sub-  
200 contractors, require their employers to take such action.

201 (b) If the Charterers have reason to be dissatisfied with the conduct of the Master or any Officer or  
202 member of the crew, the Owners on receiving particulars of the complaint shall promptly  
203 investigate the matter and if the complaint proves to be well founded, the Owners shall as soon  
204 as reasonably possible make appropriate changes in the appointment.

205 **10. Owners to Provide**

206 The Owners shall provide and pay for all provisions, wages and all other expenses of the Master,  
207 officers and crew; all lubricants, maintenance and repair of the Vessel's hull, machinery and  
208 equipment as specified in ANNEX "A"; also, except as otherwise provided in this Charter Party, for  
209 all insurance on the Vessel, all dues and charges directly related to the Vessel's flag and/or  
210 registration, all deck, cabin and engine room stores cordage required for ordinary ship's purposes  
211 mooring alongside in harbour, and all fumigation expenses and ship sanitation certificates. The  
212 Owners' obligations under this Clause extend to cover all liabilities for consular charges appertaining  
213 to the Master, officers and crew, customs or import duties arising at any time during the performance  
214 of this Charter Party in relation to the personal effects of the Master, officers and crew, and in  
215 relation to the stores, provisions and other matters as aforesaid which the Owners are to provide  
216 and/or pay for and the Owners shall refund to the Charterers any sums they or their agents may  
217 have paid or been compelled to pay in respect of such liability.

218 **11. Charterers to Provide**

219 (a) While the Vessel is on hire the Charterers shall provide and pay for all fuel, water, dispersants,  
220 and transport thereof, port charges, pilotage and boatmen and canal steersmen (whether  
221 compulsory or not), launch hire (unless incurred in connection with the Owners' business), light  
222 dues, tug assistance, canal, dock, harbour, tonnage and other dues and charges, agencies and  
223 commissions incurred on the Charterers' business, costs for security or other watchmen, and of  
224 quarantine (if occasioned by the nature of the cargo carried or the ports visited whilst employed  
225 under this Charter Party but not otherwise).

226 (b) At all times the Charterers shall provide and pay for the loading and unloading of cargoes so far  
227 as not done by the Vessel's crew, cleaning of cargo tanks, all necessary dunnage, uprights and  
228 shoring equipment for securing deck cargo, all cordage except as to be provided by the  
229 Owners, all ropes, slings and special runners actually used for loading and discharging, inert  
230 gas required for the protection of cargo, and electrodes used for services under this Charter  
231 Party, and shall reimburse the Owners for the actual cost of replacement of special mooring  
232 lines to Offshore Units, wires, nylon spring lines etc. used for the services under this Charter  
233 Party, all hose connections and adaptors, and further, shall refill oxygen/acetylene bottles used  
234 in the provision of the services.

235 (c) Upon entering into this Charter Party or in any event no later than the time of delivery of the  
236 Vessel the Charterers shall provide the Owners with copies of any operational plans or

237 documents which are necessary for the safe and efficient operation of the Vessel. All  
238 documents received by the Owners shall be returned to the Charterers on redelivery.

239 (d) The Charterers shall pay for customs duties, all permits, import duties (including costs involved  
240 in establishing temporary or permanent importation bonds), and clearance expenses, both for  
241 the Vessel and/or equipment, required for or arising out of this Charter Party.

242 (e) The Charterers shall pay for any replacement of any lifting slings/wires and fuel transfer hoses  
243 and accessories which have been placed on board by the Owners or the Charterers, should  
244 such equipment be lost, damaged or become unserviceable, other than as a result of the  
245 Owners' negligence.

246 (f) The Charterers shall provide and pay for all visas and working permits required by their  
247 personnel. In the event that Charterers' personnel have been embarked on the Vessel without  
248 holding the required visa or working permits, the Charterers shall pay any fines, costs, or  
249 repatriation expenses.

250 (g) The Charterers shall pay for any fines, taxes or imposts levied in the event that contraband  
251 and/or unmanifested drugs and/or cargoes are found to have been shipped as part of the cargo  
252 and/or in containers on board provided by the Charterers. The Vessel shall remain on hire  
253 during any time lost as a result thereof.

254 (h) The Owners shall provide any financial security required and pay for any fines, taxes or imposts  
255 levied in the event that contraband and/or unmanifested drugs and/or cargoes are found on  
256 board or about the Vessel other than as part of the cargo and/or in containers on board. The  
257 Vessel shall be placed off hire during any time lost as a result thereof.

258 **12. Bunkers**

259 (a) Purchase Price

260 Charterers or Owners, as applicable, shall pay the shortfall or excess in the quantity of fuels  
261 remaining on board at redelivery as compared to the quantity on board at delivery at the price  
262 prevailing at the time and port of redelivery.

263 (b) Bunkering

264 The Charterers shall supply fuel of the specifications and grades stated in [Box 21](#). The fuels  
265 shall be of a stable and homogeneous nature and suitable for burning in the Vessel's engines  
266 and unless otherwise agreed in writing, shall comply with ISO standard 8217:2010 or any  
267 subsequent amendments thereof as well as with the relevant provisions of MARPOL, if  
268 applicable. The crew shall co-operate with the Charterers' bunkering agents and fuel suppliers  
269 and comply with their reasonable requirements during bunkering, including but not limited to  
270 checking, verifying and acknowledging sampling, reading or soundings, meters etc. before,  
271 during and/or after delivery of fuels.

272 (c) Liability

273 The Charterers shall be liable for any loss or damage to the Owners caused by the supply of  
274 fuels which are not in accordance with (b) above and the Owners shall not be held liable for any  
275 reduction in the Vessel's speed performance and/or increased bunker consumption nor for any  
276 time lost and any other consequences arising as a result of such supply.

277 **13. BIMCO ISPS/MTSA Clause for Time Charter Parties**

278 (a)

279 (i) The Owners shall comply with the requirements of the International Code for the Security of  
280 Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code)  
281 relating to the Vessel and "the Company" (as defined by the ISPS Code). If trading to or from  
282 the United States or passing through United States waters, the Owners shall also comply with  
283 the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the  
284 Vessel and the "Owner" (as defined by the MTSA).

285 (ii) Upon request the Owners shall provide a copy of the relevant International Ship Security  
286 Certificate (or the Interim International Ship Security Certificate) to the Charterers. The Owners  
287 shall provide the Charterers with the full style contact details of the Company Security Officer  
288 (CSO).

289 (iii) Except as otherwise provided in this Charter Party, loss, damages, expense or delay (excluding  
290 consequential loss, damages, expense or delay) caused by failure on the part of the Owners or  
291 "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause  
292 shall be for the Owners' account.

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

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

304 (c) Notwithstanding anything else contained in this Charter Party all delay, costs or expenses  
305 whatsoever arising out of or related to security regulations or measures required by the port  
306 facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not  
307 limited to, security guards, launch services, tug escorts, port security fees or taxes and  
308 inspections, shall be for the Charterers' account, unless such costs or expenses result solely  
309 from the Owners' negligence. All measures required by the Owners to comply with the Ship  
310 Security Plan shall be for the Owners' account.

311 (d) If either party makes any payment which is for the other party's account according to this  
312 Clause, the other party shall indemnify the paying party.

#### 313 14. Hire and Payments

314 (a) Hire  
315 The Charterers shall pay hire for the Vessel at the rate stated in [Box 22](#) per Working Day or pro  
316 rata for part thereof from the time that the Vessel is delivered to the Charterers until the  
317 expiration or earlier termination of this Charter Party ("Hire").

318 (b) Extension Hire  
319 If the option to extend the Charter Period under [Clause 1\(b\)](#) is exercised, Hire for such  
320 extension shall, unless stated in [Box 23](#), be agreed between the Owners and the Charterers.  
321 Should the parties fail to reach an agreement, then the Charterers' shall not have the option to  
322 extend the Charter Period.

323 (c) Adjustment of Hire  
324 The rate of Hire shall be adjusted to reflect documented changes, after the date of entering into  
325 the Charter Party or the date of commencement of employment, whichever is earlier, in the  
326 Owners' costs arising from changes in the Charterers' requirements, or laws and regulations  
327 governing the Vessel and/or its crew or this Charter Party or the application thereof.

328 (d) Invoicing  
329 All invoices shall be issued in the contract currency stated in [Box 22](#). In respect of reimbursable  
330 expenses incurred in currencies other than the contract currency, the rate of exchange into the  
331 contract currency shall be that quoted by the Central Bank of the country of such other currency  
332 as at the date of the Owners' invoice. Invoices covering Hire and any other payments due shall



333 be issued monthly as stated in [Box 26](#) or at the expiration or earlier termination of this Charter  
334 Party.

335 (e) Payments

336 Payments of Hire and disbursements for the Charterers' account shall be received within the  
337 number of days stated in [Box 28](#) from the date of receipt of the invoice. Payment shall be made  
338 in the currency stated in [Box 22](#) in full without discount to the account stated in [Box 27](#).  
339 However, any advances for disbursements made on behalf of and approved by the Owners may  
340 be deducted from Hire due. If payment is not received by the Owners within five (5) Banking  
341 Days following the due date the Owners are entitled to charge interest at the rate stated in [Box](#)  
342 [29](#) on the amount outstanding from and including the due date until payment is received. Where  
343 an invoice is disputed, the Charterers shall notify the Owners before the due date and in any  
344 event pay the undisputed portion of the invoice but shall be entitled to withhold payment of the  
345 disputed portion provided that such portion is reasonably disputed and the Charterers specify  
346 such reason. Interest will be chargeable at the rate stated in [Box 29](#) on such disputed amounts  
347 where resolved in favour of the Owners. Should the Owners prove the validity of the disputed  
348 portion of the invoice, balance payment shall be received by the Owners within five (5) Banking  
349 Days after the dispute is resolved. Should the Charterers' claim be valid, a corrected invoice  
350 shall be issued by the Owners.

351 (f)

352 (i) Where there is a failure to pay Hire by the due date, the Owners shall notify the Charterers in  
353 writing of such failure and further may also suspend the performance of any or all of their  
354 obligations under this Charter Party until such time as all the Hire due to the Owners under the  
355 Charter Party has been received by the Owners. Throughout any period of suspended  
356 performance under this Clause, the Vessel is to be and shall remain on Hire. The Owners' right  
357 to suspend performance under this Clause shall be without prejudice to any other rights they  
358 may have under this Charter Party.

359 (ii) If after five (5) days of the written notification referred to in [Clause 14\(f\)\(i\)](#) the Hire has still not  
360 been received the Owners may at any time while Hire remains outstanding withdraw the Vessel  
361 from the Charter Party.

362 (1) The right to withdraw is to be exercised promptly and in writing and is not dependent  
363 upon the Owners first exercising the right to suspend performance of their obligations  
364 under the Charter Party pursuant to [Clause 14\(f\)\(i\)](#) above.

365 (2) The receipt by the Owners of a payment from the Charterers after the five day period  
366 referred to above has expired but prior to the notice of withdrawal in accordance with (1)  
367 above shall not be deemed a waiver of the Owners' right to withdraw the Vessel from the  
368 Charter Party.

369 (iii) Where the Owners choose not to exercise any of the rights afforded to them by this Clause in  
370 respect of any particular late payment of Hire, or a series of late payments of Hire, under the  
371 Charter Party, this shall not be construed as a waiver of their right either to suspend  
372 performance under [Clause 14\(f\)\(i\)](#) or to withdraw the Vessel from the Charter Party under  
373 [Clause 14\(f\)\(ii\)](#) in respect of any subsequent late payment under this Charter Party.

374 (g) Audit

375 The Charterers shall have the right to appoint an independent chartered accountant to audit the  
376 Owners' books directly related to work performed under this Charter Party at any time, up to the  
377 expiry of the period stated in [Box 30](#), to determine the validity of the Owners' charges  
378 hereunder. The Owners undertake to make their records available for such purposes at their  
379 principal place of business during normal working hours. Any discrepancies discovered in  
380 payments made shall be promptly resolved by invoice or credit as appropriate.

381 15. Off hire

- 382 (a) If as a result of any deficiency or default of crew or of the Owners' stores, strike of Master,  
383 officers and crew, breakdown of the Vessel's machinery (excluding any machinery installed on  
384 the Vessel by the Charterers pursuant to [Clause 5](#) (Structural Alterations and Additional  
385 Equipment)), damage to hull or other accidents to the Vessel, the Vessel is prevented from  
386 working, no Hire shall be payable in respect of any time lost and any Hire paid in advance shall  
387 be adjusted accordingly provided always however that Hire shall not cease in the event of the  
388 Vessel being prevented from working as aforesaid as a result of:
- 389 (i) the carriage of cargo as noted in [Clause 7\(c\)\(iii\)](#) and [\(iv\)](#);
- 390 (ii) quarantine or risk of quarantine unless caused by the Master, officers or crew having  
391 communication with the shore at any infected area not in connection with the employment of the  
392 Vessel without the consent or the instructions of the Charterers;
- 393 (iii) deviation from her Charter Party duties or exposure to abnormal risks at the request of the  
394 Charterers;
- 395 (iv) detention in consequence of being driven into port or to anchorage through stress of weather or  
396 trading to shallow harbours or to river or ports with bars or sandbanks, or suffering an accident  
397 to her cargo, when the expenses resulting from such detention shall be for the Charterers'  
398 account howsoever incurred;
- 399 (v) detention or damage by ice; or
- 400 (vi) any act or omission of the Charterers, their servants or agents.
- 401 (b) Liability for Vessel not Working  
402 The Owners' liability for any loss, damage or delay sustained by the Charterers as a result of  
403 the Vessel being prevented from working by any of the events referred to in [Clause 15\(a\)](#),  
404 except if caused by the Owners' failure to comply with their obligations pursuant to [Clause 4\(b\)](#),  
405 shall be limited to suspension of hire.
- 406 (c) Maintenance  
407 Notwithstanding [Clause 15\(a\)](#), the Charterers shall grant the Owners a maximum of one (1)  
408 Working Day on hire, which shall be cumulative, per month or pro rata for part of a month from  
409 the commencement of the Charter Period for maintenance (hereinafter referred to as  
410 "maintenance allowance"). The Owners shall use all reasonable endeavours to carry out  
411 maintenance during periods of non-utilisation of the Vessel. During reasonable voyage time  
412 taken in transit to and from the port where the maintenance will be performed, the Vessel shall  
413 be on hire and such time shall not be counted against the accumulated maintenance allowance.  
414 Hire shall be suspended during any time taken in maintenance in excess of the accumulated  
415 maintenance allowance.
- 416 In the event of less time being used for maintenance than is granted in the maintenance  
417 allowance the Charterers shall, upon expiration or earlier termination of the Charter Party, pay  
418 the equivalent of the daily rate of Hire then prevailing in addition to Hire otherwise due under  
419 this Charter Party in respect of all such time not so taken or made available.
- 420 (d) Should the Vessel deviate or put back during a voyage for a reason which causes hire to be  
421 suspended pursuant to [Clause 15\(a\)](#) of this Charter Party, hire shall cease to be payable from  
422 the commencement of such deviation until the time when the Vessel is again ready to resume  
423 her service from a position not less favourable to the Charterers than that at which the deviation  
424 commenced, provided always that due allowance shall be given for any distance made good  
425 towards the Vessel's destination and any bunkers saved. However, should the Vessel be driven  
426 into port or anchorage by stress of weather or by any cause for which the Charterers are  
427 responsible under this Charter Party the Vessel shall remain on hire and all costs thereby  
428 incurred shall be for the Charterers' account.

429 (e) In the event that the Owners fail to procure the insurance policies required in accordance with  
430 [Clause 19\(a\)\(i\)](#) or if any such insurance policies lapse during the Charter Period, the Charterers  
431 shall be entitled not to use the services of the Vessel and the Vessel shall be off hire from the  
432 time when the Charterers give notice to the Owners to this effect until the Owners have  
433 established that the said insurance policies have been effected or the Charterers terminate this  
434 Charter Party in accordance with [Clause 31\(b\)\(vi\)](#).

435 **16. Liabilities and Indemnities**

436 **(a) Knock for Knock**

437 **(i) Owners**

438 Notwithstanding anything else contained in this Charter Party excepting [Clauses 7\(c\)\(iii\), 11\(b\),](#)  
439 [11\(e\), 11\(g\), 12\(c\), 13, 16\(c\), 16\(f\), 17\(b\),](#) and [20\(c\)](#), the Charterers shall not be responsible for  
440 loss of or damage to the property of any member of the Owners' Group, including the Vessel, or  
441 for personal injury or death of any member of the Owners' Group arising out of or in any way  
442 connected with the performance or non-performance of this Charter Party, even if such loss,  
443 damage, injury or death is caused wholly or partially by the act, neglect, gross neglect or default  
444 of the Charterers' Group, and even if such loss, damage, injury or death is caused wholly or  
445 partially by unseaworthiness of any vessel; and the Owners shall indemnify, protect, defend and  
446 hold harmless the Charterers from any and against all claims, costs, expenses, actions,  
447 proceedings, suits, demands and liabilities whatsoever arising out of or in connection with such  
448 loss, damage, personal injury or death, unless such loss, damage, injury or death has resulted  
449 from the Charterers' Group's act or omission committed with the intent to cause same or  
450 recklessly and with knowledge that such loss, damage, injury or death would probably result.

451 **(ii) Charterers**

452 Notwithstanding anything else contained in this Charter Party excepting [Clauses 13, 17\(a\),](#) and  
453 [18](#), the Owners shall not be responsible for loss of, damage to, or any liability arising out of  
454 anything towed by the Vessel, any cargo laden upon or carried by the Vessel or her tow, the  
455 property of any member of the Charterers' Group, whether owned or chartered, including their  
456 Offshore Units, or for personal injury or death of any member of the Charterers' Group or of  
457 anyone on board anything towed by the Vessel, arising out of or in any way connected with the  
458 performance or non-performance of this Charter Party, even if such loss, damage, liability, injury  
459 or death is caused wholly or partially by the act, neglect, gross neglect or default of the Owners'  
460 Group, and even if such loss, damage, liability, injury or death is caused wholly or partially by  
461 the unseaworthiness of any vessel; and the Charterers shall indemnify, protect, defend and hold  
462 harmless the Owners from any and against all claims, costs, expenses, actions, proceedings,  
463 suits, demands, and liabilities whatsoever arising out of or in connection with such loss,  
464 damage, liability, personal injury or death, unless such loss, damage, injury or death has  
465 resulted from the Owners' Group's act or omission committed with the intent to cause same or  
466 recklessly and with knowledge that such loss, damage, injury or death would probably result.

467 **(b) Consequential Damages**

468 Neither the Owners nor the Charterers shall be liable to the other party for:

469 **(i)** any loss of profit, loss of use or loss of production whatsoever and whether arising directly or  
470 indirectly from the performance or non-performance of this Charter Party, and whether or not  
471 the same is due to negligence or any other fault on the part of either party, their servants or  
472 agents, or

473 **(ii)** any consequential loss or damage for any reason whatsoever, whether or not the same is due  
474 to any breach of contract, negligence or any other fault on the part of either party, their servants  
475 or agents.

476 **(c) Limitations**

477 Except as provided in the following Clauses:

478 [Clause 10](#) (Owners to Provide);

479 [Clause 11](#) (Charterers to Provide);



480 [Clause 12\(c\)](#) (Bunkers - Liability);  
481 [Clause 14](#) (Hire and Payments);  
482 [Clause 16\(a\)](#) (Liabilities and Indemnities – Knock for Knock);  
483 [Clause 16\(f\)](#) (Liabilities and Indemnities – Toxic or Noxious Substances);  
484 [Clause 17](#) (Pollution);  
485 [Clause 18](#) (Wreck Removal);  
486 [Clause 20\(c\)](#) (Saving of Life and Salvage); and  
487 [Clause 21](#) (Liens and Claims);

488 the liability of either party shall in no event whatsoever exceed the amount stated in [Box 31](#) (or,  
489 if left blank, twenty per cent (20%) of the total sum of hire due pursuant to the Charter Period  
490 stated in [Box 9](#)) for any loss, damage, delay or expense of whatsoever nature, and howsoever  
491 arising out of the Charter Party.

492 Nothing contained in this Charter Party shall be construed or held to deprive the Owners or the  
493 Charterers, as against any person or party, including as against each other, of any right to claim  
494 limitation of liability provided by any applicable law, statute or convention, save that nothing in  
495 this Charter Party shall create any right to limit liability. Where the Owners or the Charterers  
496 may seek an indemnity under the provisions of this Charter Party or against each other in  
497 respect of a claim brought by a third party, the Owners or the Charterers shall seek to limit their  
498 liability against such third party.

499 **(d) Mutual exclusion**  
500 In the event that either party fails to perform the Charter Party, or unequivocally indicates its  
501 intention not to perform it, in a way which thereby permits the other party to treat the Charter  
502 Party as at an end other than under the terms of the Charter Party, any such claim that the  
503 other party may have shall not be limited or excluded by the terms of this Charter Party.

504 **(e) Himalaya Clause**  
505 **(i)** All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges  
506 and conditions granted or provided by this Charter Party or by any applicable statute, rule or  
507 regulation for the benefit of the Charterers shall also apply to and be for the benefit of the  
508 Charterers' parent, affiliated, related and subsidiary companies; the Charterers' contractors,  
509 sub-contractors, co-venturers and customers (having a contractual relationship with the  
510 Charterers, always with respect to the job or project on which the Vessel is employed); their  
511 respective Employees and their respective underwriters.

512 **(ii)** All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges  
513 and conditions granted or provided by this Charter Party or by any applicable statute, rule or  
514 regulation for the benefit of the Owners shall also apply to and be for the benefit of the Owners'  
515 parent, affiliated, related and subsidiary companies, the Owners' contractors, sub-contractors,  
516 the Vessel, its Master, officers and crew, its registered owner, its operator, its demise  
517 charterer(s), their respective Employees and their respective underwriters.

518 **(iii)** The Owners or the Charterers shall be deemed to be acting as agent or trustee of and for the  
519 benefit of all such persons and parties set forth above, but only for the limited purpose of  
520 contracting for the extension of such benefits to such persons and parties.

521 **(f) Toxic or Noxious Substances**  
522 The Charterers shall always be responsible for any losses, damages or liabilities suffered by the  
523 Owners' Group, by the Charterers, or by third parties, with respect to the Vessel or other  
524 property, personal injury or death, pollution or otherwise, which losses, damages or liabilities  
525 are caused, directly or indirectly, as a result of the Vessel's carriage of any toxic or noxious  
526 substances in whatever form as ordered by the Charterers, and the Charterers shall defend,  
527 indemnify the Owners and hold the Owners harmless for any expense, loss or liability  
528 whatsoever or howsoever arising with respect to the carriage of toxic or noxious substances.

529 **17. Pollution**

- 530 (a) Except as otherwise provided for in [Clause 20\(c\)\(iii\)](#), the Owners shall be liable for, and agree to  
531 indemnify, defend and hold harmless the Charterers against all claims, costs, expenses,  
532 actions, proceedings, suits, demands and liabilities whatsoever arising out of actual or  
533 threatened pollution damage and the cost of cleanup or control thereof arising from acts or  
534 omissions of the Owners or their personnel which cause or allow discharge, spills or leaks from  
535 the Vessel, except as may emanate from cargo thereon or therein.
- 536 (b) The Charterers shall be liable for and agree to indemnify, defend and hold harmless the Owners  
537 from all claims, costs, expenses, actions, proceedings, suits, demands, liabilities, loss or  
538 damage whatsoever arising out of or resulting from any actual or threatened pollution damage  
539 emanating from anything towed by the Vessel, cargo laden upon or carried by the Vessel or her  
540 tow, the property of any member of the Charterers' Group, whether owned or chartered,  
541 including their Offshore Units, even where caused wholly or partially by the act, neglect or  
542 default of the Owners, their Employees, contractors or sub-contractors or by the  
543 unseaworthiness of the Vessel.
- 544 (c) The Charterers shall, upon giving notice to the Owners or the Master, have the right (but shall  
545 not be obliged) to place on board the Vessel and/or have in attendance at the site of any  
546 pollution or threatened incident one or more Charterers' representative(s) to observe the  
547 measures being taken by Owners and/or national or local authorities or their respective  
548 servants, agents or contractors to prevent or minimise pollution damage and to provide advice,  
549 equipment or manpower or undertake such other measures, at Charterers' risk and expense, as  
550 are permitted under applicable law and as Charterers believe are reasonably necessary to  
551 prevent or minimise such pollution damage or to remove the threat of pollution damage.

552 **18. Wreck Removal**

553 If the Vessel becomes a wreck and is an obstruction to navigation and has to be removed by order of  
554 any lawful authority having jurisdiction over the area where the Vessel is placed or as a result of  
555 compulsory law, the Owners shall be liable for any and all expenses in connection with the raising,  
556 removal, destruction, lighting or marking of the Vessel.

557 **19. Insurance**

- 558 (a)
- 559 (i) The Owners undertake that at time of delivery under this Charter Party and throughout the  
560 Charter Period the insurance policies set forth in ANNEX "B" shall be in effect, with reputable  
561 insurers. Policy limits shall not be less than those indicated. Reasonable deductibles are  
562 acceptable and shall be for the account of the Owners.
- 563 (ii) The Charterers shall upon request be named as co-insured. The Owners shall upon request  
564 cause insurers to waive subrogation rights against the Charterers (as encompassed in [Clause](#)  
565 [16\(e\)\(i\)](#)). Co-insurance and/or waivers of subrogation shall be given only insofar as these relate  
566 to liabilities which are properly the responsibility of the Owners under the terms of this Charter  
567 Party.
- 568 (b) The Owners shall upon request furnish the Charterers with copies of certificates of insurance  
569 which provide sufficient information to verify that the Owners have complied with the insurance  
570 requirements of this Charter Party.

571 **20. Saving of Life and Salvage**

- 572 (a) The Vessel shall be permitted to deviate for the purpose of saving life at sea without prior  
573 approval of or notice to the Charterers and without loss of Hire provided however that notice of  
574 such deviation is given as soon as possible.
- 575 (b) Subject to the Charterers' consent, which shall not be unreasonably withheld, the Vessel shall  
576 be at liberty to undertake attempts at salvage, it being understood that the Vessel shall be off-  
577 hire from the time she leaves port or commences to deviate and she shall remain off-hire until  
578 she is again in every way ready to resume the Charterers' service at a position which is not less  
579 favourable to the Charterers than the position at the time of leaving port or deviating for the

580 salvage services. All salvage monies earned by the Vessel shall be divided equally between the  
581 Owners and the Charterers, after deducting the Master's, officers' and crew's share, legal  
582 expenses, value of fuel and lubricants consumed, Hire of the Vessel lost by the Owners during  
583 the salvage, repairs to damage sustained, if any, and any other extraordinary loss or expense  
584 sustained as a result of the salvage. The Charterers shall be bound by all measures taken by  
585 the Owners in order to secure payment of salvage and to fix its amount.

586 (c) The Owners shall waive their right to claim any award for salvage performed on property owned  
587 by or contracted to the Charterers, always provided such property was the object of the  
588 operation the Vessel was chartered for, and the Vessel shall remain on hire when rendering  
589 salvage services to such property. This waiver is without prejudice to any right the Vessel's  
590 Master, officers and crew may have under any title. If the Owners render assistance to such  
591 property in distress on the basis of "no claim for salvage", then, notwithstanding any other  
592 provisions contained in this Charter Party and even in the event of neglect or default of the  
593 Owners, Master, officers or crew:

594 (i) The Charterers shall be responsible for and shall indemnify the Owners against payments  
595 made, under any legal rights, to the Master, officers and crew in relation to such assistance.

596 (ii) The Charterers shall be responsible for and shall reimburse the Owners for any loss or damage  
597 sustained by the Vessel or her equipment by reason of rendering such assistance and shall also  
598 pay the Owners' additional expenses thereby incurred.

599 (iii) The Charterers shall be responsible for any actual or potential spill, seepage and/or emission of  
600 any pollutant howsoever caused occurring within the offshore site and any pollution resulting  
601 therefrom wheresoever it may occur and including but not limited to the cost of such measures  
602 as are reasonably necessary to prevent or mitigate pollution damage, and the Charterers shall  
603 indemnify the Owners against any liability, cost or expense arising by reason of such actual or  
604 potential spill, seepage and/or emission.

605 (iv) The Vessel shall not be off-hire as a consequence of giving such assistance, or effecting repairs  
606 under [Clause 20\(c\)\(ii\)](#), and time taken for such repairs shall not count against time granted  
607 under [Clause 15\(c\)](#).

608 (v) The Charterers shall indemnify the Owners against any liability, cost and/or expense  
609 whatsoever in respect of any loss of life, injury, damage or other loss to person or property  
610 howsoever arising from such assistance.

611 **21. Lien and Claims**

612 The Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them  
613 or their agents, which might have priority over the title and interest of the Owners in the Vessel.  
614 Except as provided in [Clause 16](#) (Liabilities and Indemnities), the Charterers shall indemnify and  
615 hold the Owners harmless against any lien of whatsoever nature arising upon the Vessel during the  
616 Charter Period while she is under the control of the Charterers, and against any claims against the  
617 Owners arising out of the employment of the Vessel by the Charterers or out of any neglect of the  
618 Charterers in relation to the Vessel or the operation thereof.

619 Should the Vessel be arrested by reason of claims or liens arising out of her operation hereunder,  
620 unless brought about by the act or neglect of the Owners, the Charterers shall at their own expense  
621 take all reasonable steps to secure that within a reasonable time the Vessel is released and at their  
622 own expense put up bail to secure release of the Vessel.

623 **22. Sublet and Assignment**

624 (a) Charterers

625 The Charterers shall have the option of subletting, assigning or loaning the Vessel to any  
626 person or company not competing with the Owners, subject to the Owners' prior approval which  
627 shall not be unreasonably withheld or delayed, upon giving notice in writing to the Owners, but  
628 the original Charterers shall always remain responsible to the Owners for due performance of

629 the Charter Party. The person or company taking such subletting, assigning or loan and their  
630 contractors and sub-contractors shall be deemed contractors of the Charterers for all the  
631 purposes of this Charter Party. The Owners make it a condition of such consent that additional  
632 Hire shall be paid as agreed between the Charterers and the Owners in [Box 32](#), having regard  
633 to the nature and period of any intended service of the Vessel.

634 (b) Owners  
635 The Owners may not assign or transfer any part of this Charter Party without the written  
636 approval of the Charterers, which approval shall not be unreasonably withheld or delayed.  
637 Approval by the Charterers of such subletting or assignment shall not relieve the Owners of  
638 their responsibility for due performance of the part of the services which is sublet or assigned.

639 **23. Substitute Vessel**  
640 The Owners shall be entitled at any time, whether before delivery or at any other time during the  
641 Charter Period, to provide a substitute vessel of equivalent capability, subject to the Charterers' prior  
642 approval which shall not be unreasonably withheld or delayed.

643 **24. BIMCO War Risks Clause CONWARTIME 2013**  
644 (a) For the purpose of this Clause, the words:  
645 (i) "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or  
646 other operators who are charged with the management of the Vessel, and the Master; and  
647 (ii) "War Risks" shall include any actual, threatened or reported.

648 war, act of war, civil war or hostilities; revolution; rebellion; civil commotion; warlike operations;  
649 laying of mines; acts of piracy and/or violent robbery and/or capture/seizure (hereinafter  
650 "Piracy"); acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed  
651 against all vessels or imposed selectively against vessels of certain flags or ownership, or  
652 against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or  
653 political group, or the government of any state or territory whether recognised or not, which, in  
654 the reasonable judgement of the Master and/or the Owners, may be dangerous or may become  
655 dangerous to the Vessel, cargo, crew or other persons on board the Vessel.

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

663 (c) The Vessel shall not be required to load contraband cargo, or to pass through any blockade as  
664 set out in Sub-clause (a), or to proceed to an Area where it may be subject to search and/or  
665 confiscation by a belligerent.

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

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

672 (f) If the Owners become liable under the terms of employment to pay to the crew any bonus or  
673 additional wages in respect of sailing into an Area which is dangerous in the manner defined by  
674 the said terms, then the actual bonus or additional wages paid shall be reimbursed to the  
675 Owners by the Charterers at the same time as the next payment of hire is due, or upon  
676 redelivery, whichever occurs first.

- 677 (g) The Vessel shall have liberty:
- 678 (i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes,  
679 sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any  
680 other way whatsoever, which are given by the government of the nation under whose flag the  
681 Vessel sails, or other government to whose laws the Owners are subject, or any other  
682 government of any state or territory whether recognised or not, body or group whatsoever acting  
683 with the power to compel compliance with their orders or directions;
- 684 (ii) to comply with the requirements of the Owners' insurers under the terms of the Vessel's  
685 insurance(s);
- 686 (iii) to comply with the terms of any resolution of the Security Council of the United Nations, the  
687 effective orders of any other Supranational body which has the right to issue and give the same,  
688 and with national laws aimed at enforcing the same to which the Owners are subject, and to  
689 obey the orders and directions of those who are charged with their enforcement;
- 690 (iv) to discharge at any alternative port any cargo or part thereof which may expose the Vessel to  
691 being held liable as a contraband carrier;
- 692 (v) to call at any alternative port to change the crew or any part thereof or other persons on board  
693 the Vessel when there is reason to believe that they may be subject to internment,  
694 imprisonment, detention or similar measures.
- 695 (h) If in accordance with their rights under the foregoing provisions of this Clause, the Owners shall  
696 refuse to proceed to the loading or discharging ports, or any one or more of them, they shall  
697 immediately inform the Charterers. No cargo shall be discharged at any alternative port without  
698 first giving the Charterers notice of the Owners' intention to do so and requesting them to  
699 nominate a safe port for such discharge. Failing such nomination by the Charterers within 48  
700 hours of the receipt of such notice and request, the Owners may discharge the cargo at any  
701 safe port of their own choice. All costs, risk and expenses for the alternative discharge shall be  
702 for the Charterers' account.
- 703 (i) The Charterers shall indemnify the Owners for claims arising out of the Vessel proceeding in  
704 accordance with any of the provisions of Sub-clauses (b) to (h) which are made under any bills  
705 of lading, waybills or other documents evidencing contracts of carriage.
- 706 (j) When acting in accordance with any of the provisions of Sub-clauses (b) to (h) of this Clause  
707 anything is done or not done, such shall not be deemed a deviation, but shall be considered as  
708 due fulfilment of this Charter Party.

709 **25. War Cancellation**

710 Either party may cancel this Charter Party on the outbreak of war (whether there be a declaration of  
711 war or not) between the countries stated in [Box 33](#).

712 **26. BIMCO Ice Clause for Time Charter Parties**

713 (a) The Vessel shall not be obliged to force ice but, subject to the Owners' prior approval having  
714 due regard to its size, construction and class, may follow ice-breakers.

715 (b) The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or  
716 area where lights, lightships, markers or buoys have been or are about to be withdrawn by  
717 reason of ice, nor where on account of ice there is, in the Master's sole discretion, a risk that, in  
718 the ordinary course of events, the Vessel will not be able safely to enter and remain at the port  
719 or area or to depart after completion of loading or discharging. If, on account of ice, the Master  
720 in his sole discretion considers it unsafe to proceed to, enter or remain at the place of loading or  
721 discharging for fear of the Vessel being frozen in and/or damaged, he shall be at liberty to sail to  
722 the nearest ice-free and safe place and there await the Charterers' instructions.



723 (c) Any delay or deviation caused by or resulting from ice shall be for the Charterers' account and  
724 the Vessel shall remain on-hire.

725 (d) Any additional premiums and/or calls required by the Vessel's underwriters due to the Vessel  
726 entering or remaining in any icebound port or area, shall be for the Charterers' account.

727 **27. Health and Safety and the Environment**

728 The Owners shall comply with and adhere to all applicable international, national and local  
729 regulations pertaining to health and safety, and the environment, and such Charterers' instructions  
730 as may be appended hereto.

731 **28. Compliance with Laws and Regulations**

732 The parties will not do or permit to be done anything which might cause any breach or infringement  
733 of the laws and regulations of the Flag State, or of the places where the Vessel trades.

734 **29. Drugs and Alcohol Policy**

735 The Owners undertake that they have, and shall maintain for the duration of this Charter Party, a  
736 policy on Drugs and Alcohol Abuse applicable to the Vessel (the "D & A Policy") that meets or  
737 exceeds the standards in the OCIMF Guidelines for the Control of Drugs and Alcohol Onboard Ship  
738 1995 as amended from time to time. The Owners shall exercise due diligence to ensure that the D &  
739 A Policy is understood and complied with on and about the Vessel. An actual impairment, shall not in  
740 and itself mean that the Owners have failed to exercise due diligence.

741 **30. Taxes**

742 Each party shall pay taxes due on its own profit, income and personnel. The Charterers shall pay all  
743 other taxes and dues arising out of the operation or use of the Vessel during the Charter Period. In  
744 the event of change in the Area of Operation or change in local regulation and/or interpretation  
745 thereof, resulting in an unavoidable and documented change of the Owners' tax liability after the date  
746 of entering into the Charter Party or the date of commencement of employment, whichever is the  
747 earlier, Hire shall be adjusted accordingly.

748 **31. Early Termination**

749 **(a) At Charterers' Convenience**

750 The Charterers may terminate this Charter Party at any time by giving the Owners written notice  
751 of termination as stated in [Box 34](#), upon expiry of which, this Charter Party will terminate. Upon  
752 such termination, Charterers shall pay the compensation for early termination stated in [Box 35](#)  
753 and the demobilisation charge stated in [Box 13](#), as well as Hire or other payments due under  
754 the Charter Party up to the time of termination. If [Box 34](#) is left blank, this [Clause 31\(a\)](#) shall not  
755 apply.

756 **(b) For Cause**

757 If either party becomes aware of the occurrence of any event described in this Clause that party  
758 shall so notify the other party promptly in writing of such occurrence and its intention to  
759 terminate if it does not cease within three (3) Days after such notification has been given. If the  
760 occurrence has not ceased within three (3) Days after such notification has been given, this  
761 Charter Party may be terminated by either party by giving notice to the other party in  
762 accordance with [Clause 35](#) (Notices), (unless the event is caused by a breach of Charter Party  
763 by the terminating party), without prejudice to any other rights which the terminating party may  
764 have, under any of the following circumstances:

765 **(i) Requisition**

766 If the government of the state of registry and/or the flag of the Vessel, or any agency thereof,  
767 requisitions for hire or title or otherwise takes possession of the Vessel during the Charter  
768 Period.

769 **(ii) Confiscation**

770 If any government, individual or group, whether or not purporting to act as a government or on  
771 behalf of any government, confiscates, requisitions, expropriates, seizes or otherwise takes  
772 possession of the Vessel during the Charter Period (other than by way of arrest for the purpose  
773 of obtaining security).

774 **(iii) Bankruptcy**

775 If the other party has a petition presented for its winding up or administration which is not  
776 discharged within fourteen (14) days of presentation or any other action is taken with a view to  
777 its winding up (otherwise than for the purpose of reorganisation or amalgamation without  
778 insolvency), or become bankrupt or commits an act of bankruptcy, or makes any arrangement  
779 or composition for the benefit of creditors, or has a receiver or manager or administrative  
780 receiver or administrator or liquidator appointed in respect of any of its assets, or suspends  
781 payments, or has anything analogous to any of the foregoing under the law of any jurisdiction  
782 occur to it, or ceases or threatens to cease to carry on business, without prejudice to the  
783 accrued rights of that party.

784 **(iv) Loss of Vessel**

785 If the Vessel is lost or becomes a constructive total loss, or is missing unless the Owners  
786 promptly state their intention to provide, and do in fact provide, within 14 days of the Vessel  
787 being lost or missing, at the port or place from which the Vessel last sailed (or some other  
788 mutually acceptable port or place) a substitute vessel pursuant to [Clause 23](#) (Substitute  
789 Vessel). In the case of termination, Hire shall cease from the date the Vessel was lost or, in the  
790 event of a constructive total loss, from the date of the event giving rise to such loss. If the date  
791 of loss cannot be ascertained or the Vessel is missing, payment of Hire shall cease from the  
792 date the Vessel was last reported.

793 **(v) Force Majeure**

794 If a force majeure condition as defined in [Clause 32](#) (Force Majeure) prevents or hinders the  
795 performance of the Charter Party for a period exceeding fifteen (15) consecutive days from the  
796 time at which the impediment begins to prevent or hinder performance if notice is given without  
797 delay or, if notice is not given without delay, from the time at which notice thereof reaches the  
798 other party.

799 **(vi)** If the Owners have not procured the insurance policies in accordance with [Clause 19\(a\)\(i\)](#) on  
800 delivery or any such insurance policies lapse during the Charter Period.

801 Termination as a result of any of the above mentioned causes shall not relieve the Charterers of  
802 any obligation for Hire and any other payments due up to the date of termination.

803 **(c) Default**

804 If either party is in repudiatory breach of its obligations under this Charter party, the other party  
805 shall have the right to terminate this Charter Party with immediate effect by giving notice in  
806 accordance with [Clause 35](#) (Notices) without prejudice to any other rights which the terminating  
807 party may have under this Charter Party.

808 **(d) Off hire**

809 In the event the Owners are unable to perform their obligations under this Charter Party due to  
810 events stated in [Clause 15\(a\)](#) for:

811 **(i)** a single consecutive period which exceeds that stated in [Box 36\(i\)](#) or, if left blank, twenty per  
812 cent (20%) of the total Charter Period, including any extensions which have been declared; or

813 **(ii)** combined periods which exceed that stated in [Box 36\(ii\)](#) in aggregate, or if left blank twenty-five  
814 per cent (25%) of the total Charter Period, including any extensions which have been declared,

815 and the Owners have not provided a substitute vessel pursuant to [Clause 23](#) (Substitute Vessel), this  
816 Charter Party may be terminated by the Charterers by giving notice in accordance with [Clause 35](#)  
817 (Notices) without prejudice to any other rights which either party may have under this Charter Party.

818 **32. Force Majeure**  
819 Neither party shall be liable for any loss, damage, liquidated damages or delay due to any of the  
820 following force majeure events and/or conditions to the extent the party invoking force majeure is  
821 prevented or hindered from performing any or all of their obligations under this Charter Party,  
822 provided they have made all reasonable efforts to avoid, minimize or prevent the effect of such  
823 events and/or conditions:

- 824 (a) acts of God;
- 825 (b) any Government requisition, control, intervention, requirement or interference;
- 826 (c) any circumstances arising out of war, threatened act of war or warlike operations, acts of  
827 terrorism, sabotage or piracy, or the consequences thereof;
- 828 (d) riots, civil commotion, blockades or embargoes;
- 829 (e) epidemics;
- 830 (f) earthquakes, landslides, floods or other extraordinary weather conditions;
- 831 (g) strikes, lockouts or other industrial action, unless limited to the Employees of the party seeking to  
832 invoke force majeure;
- 833 (h) fire, accident, explosion except where caused by negligence of the party seeking to invoke force  
834 majeure;
- 835 (i) any other similar cause beyond the reasonable control of either party.

836 The party seeking to invoke force majeure shall notify the other party in writing within two (2) Days of  
837 the occurrence of any such event/condition.

838 **33. Confidentiality**  
839 All information or data provided or obtained in connection with the performance of this Charter Party  
840 is and shall remain confidential and not be disclosed without the prior written consent of the other  
841 party and shall not be used for any purpose other than in the performance of this Charter Party. The  
842 parties shall use their best efforts to ensure that such information shall not be disclosed to any third  
843 party by any of their sub-contractors, Employees and agents. All information and data provided by a  
844 party is and shall remain the property of that party.

845 This Clause shall not apply to any information or data:

- 846 (a) that has already been published or is in the public domain; or
- 847 (b) which a party may be entitled or is bound to disclose under compulsion of law; or
- 848 (c) is requested by any regulatory authority; or
- 849 (d) as may be disclosed to any parent company or company in the same group of which a party  
850 forms part; or
- 851 (e) as may be necessary to disclose for the proper administration or implementation of this Charter  
852 Party; or
- 853 (f) as may be disclosed to a party's professional advisers for the proper performance of their  
854 professional services; or



855 (g) as may be required in the event of actual or pending court or arbitration proceedings which may  
856 arise out of or in connection with this Charter Party; or

857 (h) as may be required to be disclosed pursuant to a supply contract, which directly or indirectly  
858 references this Charter Party and any rates referenced herein.

859 **34. BIMCO Dispute Resolution Clause 2013**

860 (a)\* This Charter Party shall be governed by and construed in accordance with English law and any  
861 dispute arising out of or in connection with this Charter Party shall be referred to arbitration in  
862 London in accordance with the Arbitration Act 1996 or any statutory modification or re-  
863 enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

864 The arbitration shall be conducted in accordance with the London Maritime Arbitrators  
865 Association (LMAA) Terms current at the time when the arbitration proceedings are  
866 commenced.

867 The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall  
868 appoint its arbitrator and send notice of such appointment in writing to the other party requiring  
869 the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and  
870 stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own  
871 arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other  
872 party does not appoint its own arbitrator and give notice that it has done so within the fourteen  
873 (14) days specified, the party referring a dispute to arbitration may, without the requirement of  
874 any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise  
875 the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if  
876 he had been appointed by agreement.

877 Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide  
878 for the appointment of a sole arbitrator.

879 In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or  
880 such other sum as the parties may agree) the arbitration shall be conducted in accordance with  
881 the LMAA Small Claims Procedure current at the time when the arbitration proceedings are  
882 commenced.

883 In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small  
884 Claims Procedure and neither the claim nor any counterclaim exceeds the sum of USD 400,000  
885 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance  
886 with the LMAA Intermediate Claims Procedure current at the time when the arbitration  
887 proceedings are commenced.

888 (b)\* This Charter Party and any non-contractual obligations arising out of it shall be governed by and  
889 construed in accordance with Title 9 of the United States Code and the Maritime Law of the  
890 United States and any dispute arising out of or in connection with this Charter Party shall be  
891 referred to three (3) persons at New York, one to be appointed by each of the parties hereto,  
892 and the third by the two so chosen; their decision or that of any two of them shall be final, and  
893 for the purposes of enforcing any award, judgment may be entered on an award by any court of  
894 competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the  
895 Society of Maritime Arbitrators, Inc.

896 In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or  
897 such other sum as the parties may agree) the arbitration shall be conducted in accordance with  
898 the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc.

899 (c) This Contract shall be governed by and construed in accordance with Singapore\*\*/English\*\*  
900 law.

901 Any dispute arising out of or in connection with this Contract, including any question regarding  
902 its existence, validity or termination shall be referred to and finally resolved by arbitration in  
903 Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and  
904 any statutory modification or re-enactment thereof save to the extent necessary to give effect to  
905 the provisions of this Clause.

906 The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore  
907 Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration proceedings  
908 are commenced.

909 The reference to arbitration of disputes under this clause shall be to three arbitrators. A party  
910 wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such  
911 appointment in writing to the other party requiring the other party to appoint its own arbitrator  
912 and give notice that it has done so within fourteen (14) calendar days of that notice and stating  
913 that it will appoint its own arbitrator as sole arbitrator unless the other party appoints its own  
914 arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other  
915 party does not give notice that it has done so within the fourteen (14) days specified, the party  
916 referring a dispute to arbitration may, without the requirement of any further prior notice to the  
917 other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly.  
918 The award of a sole arbitrator shall be binding on both parties as if he had been appointed by  
919 agreement.

920 Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide  
921 for the appointment of a sole arbitrator.

922 In cases where neither the claim nor any counterclaim exceeds the sum of USD 75,000 (or such  
923 other sum as the parties may agree) the arbitration shall be conducted before a single arbitrator  
924 in accordance with the SCMA Small Claims Procedure current at the time when the arbitration  
925 proceedings are commenced.

926 **(d)\*** This Charter Party shall be governed by and construed in accordance with the laws of the place  
927 mutually agreed by the parties and any dispute arising out of or in connection with this Charter  
928 Party shall be referred to arbitration at a mutually agreed place, subject to the procedures  
929 applicable there.

930 **(e)** Notwithstanding (a), (b), (c) or (d) above, the parties may agree at any time to refer to mediation  
931 any difference and/or dispute arising out of or in connection with this Charter Party. In the case  
932 of a dispute in respect of which arbitration has been commenced under (a), (b), (c) or (d) above,  
933 the following shall apply:

934 **(i)** Either party may at any time and from time to time elect to refer the dispute or part of the  
935 dispute to mediation by service on the other party of a written notice (the "Mediation Notice")  
936 calling on the other party to agree to mediation.

937 **(ii)** The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice  
938 confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator  
939 within a further 14 calendar days, failing which on the application of either party a mediator will  
940 be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal  
941 may designate for that purpose. The mediation shall be conducted in such place and in  
942 accordance with such procedure and on such terms as the parties may agree or, in the event of  
943 disagreement, as may be set by the mediator.

944 **(iii)** If the other party does not agree to mediate, that fact may be brought to the attention of the  
945 Tribunal and may be taken into account by the Tribunal when allocating the costs of the  
946 arbitration as between the parties.

947 **(iv)** The mediation shall not affect the right of either party to seek such relief or take such steps as it  
948 considers necessary to protect its interest.

949 (v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration  
950 procedure shall continue during the conduct of the mediation but the Tribunal may take the  
951 mediation timetable into account when setting the timetable for steps in the arbitration.

952 (vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs  
953 incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

954 (vii) The mediation process shall be without prejudice and confidential and no information or  
955 documents disclosed during it shall be revealed to the Tribunal except to the extent that they  
956 are disclosable under the law and procedure governing the arbitration.

957 *(Note: The parties should be aware that the mediation process may not necessarily interrupt time*  
958 *limits.)*

959 (f) If [Box 39](#) is not appropriately filled in, [sub-clause \(a\)](#) of this Clause shall apply. [Sub-clause \(e\)](#)  
960 shall apply in all cases.

961 \* [Sub-clauses \(a\), \(b\), \(c\) and \(d\)](#) are alternatives; indicate alternative agreed in [Box 39](#).

962 \*\* *Singapore and English law are alternatives; if Sub-clause (c) agreed also, indicate choice of*  
963 *Singapore or English law in [Box 39](#). If neither or both are indicated in [Box 39](#), then English law shall*  
964 *apply by default.*

965 **35. Notices**

966 Any party giving notice under this Charter Party shall ensure that it is effectively given and such  
967 notice shall be treated as received during the recipients' office hours. If such notice is sent outside  
968 the recipients' office hours it shall be treated as received during the recipients' next working day. For  
969 the purpose of giving notices the Owners' contact details are stated in [Box 37](#) and the Charterers'  
970 contact details are stated in [Box 38](#).

971 **36. Severance**

972 If by reason of any enactment or judgment any provision of this Charter Party shall be deemed or  
973 held to be illegal, void or unenforceable in whole or in part, all other provisions of this Charter Party  
974 shall be unaffected thereby and shall remain in full force and effect.

975 **37. Entire Agreement**

976 This Charter Party, including all Annexes referenced herein and attached hereto, is the entire  
977 agreement of the parties and supersedes all previous written or oral understandings relating to the  
978 obligations contained herein and which may not be modified except by a written amendment signed  
979 by both parties.

980 **38. Headings**

981 The headings of this Charter Party are for identification only and shall not be deemed to be part  
982 hereof or be taken into consideration in the interpretation or construction of this Charter Party.

983 **39. Singular/Plural**

984 The singular includes the plural and vice versa as the context admits or requires.

**BIMCO**
**TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS**  
**CODE NAME: SUPPLYTIME 2005**

PART I

 First issued 1975.  
 Revised 1989 and 2005.

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 Adopted by  
 International Support Vessel  
 Owners' Association (ISOA), London

 Copyright published by  
 BIMCO Copenhagen

1. Place and date of contract		3. Charterers/Place of business (full style, address, e-mail and fax no.)	
2. Owners/Place of business (full style, address, e-mail and fax no.)		6. Cancelling date <a href="#">(Cl. 2(a) and (c))</a>	
4. Vessel's name and IMO number (ANNEX A)		5. Date of delivery <a href="#">(Cl. 2(a) and (c))</a>	
7. Port or Place of delivery <a href="#">(Cl. 2(a))</a>		8. Port or place redelivery/notice of redelivery <a href="#">(Cl. 2(d))</a>	
		(i) Port or place of redelivery	
		(ii) Number of days' notice of redelivery	
9. Period of hire <a href="#">(Cl. 1(a))</a>		10. Extension of period of hire (optional) <a href="#">(Cl. 1(b))</a>	
		(i) Period of extension	
		(ii) Advance notice for declaration of option (days)	
11. Automatic extension period to complete voyage or well <a href="#">(Cl. 1(c))</a>		12. Mobilisation charge <a href="#">(Cl. 2(b)(i))</a>	
(i) Voyage or well (state which)		(i) Lump sum	
(ii) Maximum extension period (state number of days)		(ii) When due	
13. Early termination of charter (state amount of hire payable) <a href="#">(Cl. 31(a))</a>		14. Number of days' notice of early termination <a href="#">(Cl. 31(a))</a>	15. Demobilisation charge (lump sum) <a href="#">(Cl. 2(e) and Cl. 31(a))</a>
(i) State yes, if applicable			
(ii) If yes, state amount of hire payable			
16. Area of operation <a href="#">(Cl. 6(a))</a>		17. Employment of vessel restricted to (state nature of services(s)) <a href="#">(Cl. 6(a))</a>	
18. Specialist operations <a href="#">(Cl. 6(a))</a>		19. Bunkers <a href="#">(Cl. 10)</a>	
(i) State if vessel may be used for ROV operations		(i) Quantity of bunkers on delivery and redelivery	
(ii) State if vessel may be employed as a diving platform		(ii) Price of bunkers on delivery	
		(iii) Price for bunkers on redelivery	
		(iv) Fuel specifications and grades for fuel supplied by Charterers	
20. Charter hire (state rate and currency) <a href="#">(Cl. 12(a), (d) and (e))</a>		21. Extension hire (if agreed, state rate) <a href="#">(Cl. 12(b))</a>	
22. Invoicing for hire and other payments <a href="#">(Cl. 12(d))</a>		23. Payments (state mode and place of payment; also state beneficiary and bank account) <a href="#">(Cl. 12(e))</a>	
(i) State whether to be issued in advance or arrears			
(ii) State by whom to be issued if other than the party stated in Box 2			
(iii) State to whom to be issued if addressee other than stated in Box 3			
24. Payment of hire, bunker invoices and disbursements for Charterers' account (state maximum number of days) <a href="#">(Cl. 12(e))</a>		25. Interest rate payable <a href="#">(Cl. 12(e))</a>	26. Maximum audit period <a href="#">(Cl. 12(g))</a>
27. Meals (state rate agreed) <a href="#">(Cl. 6(c)(i))</a>	28. Accommodation (state rate agreed) <a href="#">(Cl. 6(c)(i))</a>	29. Sublet (state amount of daily increment of charter hire) <a href="#">(Cl. 20)</a>	

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30. War Cancellation (indicate countries agreed) <a href="#">(Cl. 23)</a>
31. General Average (Place of settlement – only to be filled in if other than London) <a href="#">(Cl. 26)</a>
32. Taxes (Payable by Owners) <a href="#">(Cl. 30)</a>
33. Breakdown (State period) <a href="#">(Cl. 31(b)(v))</a>
34. Dispute resolution (state (a), (b) or (c) of Cl. 34, as agreed; if (c) agreed also state Place of Arbitration) <a href="#">(Cl. 34)</a>
35. Numbers of additional clauses covering special provisions, if agreed.

It is mutually agreed that this Contract shall be performed subject to the conditions contained in the Charter consisting of PART I, including additional clauses, if any agreed and stated in [Box 35](#), and PART II as well as [ANNEX "A"](#) and [ANNEX "B"](#) as annexed to this Charter. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II and [ANNEX "A"](#) and [ANNEX "B"](#) to the extent of such conflict but no further.

Signature (Owners)	Signature (Charterers)
--------------------	------------------------

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**VESSEL SPECIFICATION**

**1. General**

- (a) Owner: Name: \_\_\_\_\_  
Address: \_\_\_\_\_
- (b) Operator: Name: \_\_\_\_\_  
Address: \_\_\_\_\_
- (c) Vessel's Name: \_\_\_\_\_ Builder: \_\_\_\_\_
- (d) Year built: \_\_\_\_\_
- (e) Type: \_\_\_\_\_
- (f) Classification and Society: \_\_\_\_\_
- (g) Flag: \_\_\_\_\_
- (h) Date of next scheduled drydocking: \_\_\_\_\_

**2. Performance**

- (a) Certified Bollard Pull (Tonnes): \_\_\_\_\_
- (b) Speed/Consumption (Non-Towing)  
(Approx. Daily Fuel Consumption) (Fair Weather)  
  
Max Speed: \_\_\_\_\_ Kts (app.) \_\_\_\_\_ Tonnes  
Service Speed: \_\_\_\_\_ Kts (app.) \_\_\_\_\_ Tonnes  
Standby (main engines secured): \_\_\_\_\_ Tonnes
- (c) Approx. Towing/Working Fuel Consumption  
Engine Power 100% \_\_\_\_\_ Tonnes
- (d) Type(s) and Grade(s) of Fuel Used: \_\_\_\_\_

**3. Dimensions and Capacities/Discharge Rates**

- (a) L.O.A. (m): \_\_\_\_\_ Breadth (m): \_\_\_\_\_ Depth (m): \_\_\_\_\_  
Max Draught (m): \_\_\_\_\_
- (b) Deadweight (metric tons): \_\_\_\_\_
- Discharge Rate
- (c) \* Cargo Fuel max (m<sup>3</sup>): \_\_\_\_\_ /hr at \_\_\_\_\_ head
- (d) \* Drill Water max (m<sup>3</sup>): \_\_\_\_\_ /hr at \_\_\_\_\_ head
- (e) Potable Water (m<sup>3</sup>): \_\_\_\_\_ /hr at \_\_\_\_\_ head
- (f) Dry Bulk ( cu.m ): \_\_\_\_\_ in Tanks \_\_\_\_\_ /hr at \_\_\_\_\_ head
- (g) Liquid Mud ( cu.m ): \_\_\_\_\_ /hr at \_\_\_\_\_ head  
(max. SG) \_\_\_\_\_  
State type of recirculation system i.e.  
mechanical agitation, centrifugal pumps etc. \_\_\_\_\_
- (h) Cargo Deck Area (m<sup>2</sup>): \_\_\_\_\_ Capacity (m.t.): \_\_\_\_\_  
Length (m) x Breadth (m): \_\_\_\_\_  
Load Bearing Capacity \_\_\_\_\_

- (i) Heavy Weight Brine ( cu.m ): \_\_\_\_\_  
(max. SG) \_\_\_\_\_ /hr at \_\_\_\_\_ head  
\* Multipurpose Tanks yes/no: \_\_\_\_\_

**4. Machinery**

- (a) BHP Main Engines: \_\_\_\_\_
- (b) Engine Builder: \_\_\_\_\_
- (c) Number of Engines and Type: \_\_\_\_\_
- (d) Generators: \_\_\_\_\_
- (e) Stabilisers: \_\_\_\_\_
- (f) Bow Thruster(s): \_\_\_\_\_
- (g) Stern Thruster(s): \_\_\_\_\_
- (h) Propellers/Rudders: \_\_\_\_\_
- (i) Number and Pressure Rating of Bulk Compressors: \_\_\_\_\_

- (j) Fuel Oil Metering System: \_\_\_\_\_

**5. Towing and Anchor Handling Equipment**

- (a) (i) Stern Roller (Dimensions): \_\_\_\_\_
- (ii) Anchor Handling/Towing Winch: \_\_\_\_\_
- (iii) Rig Chail Locker Capacity (linear feet of  
3 in. Chain): \_\_\_\_\_
- (iv) Tugger Winches: \_\_\_\_\_
- (v) Chain Stopper Make and Type: \_\_\_\_\_
- (b) (i) Towing Wire: \_\_\_\_\_
- (ii) Spare Towing Wire: \_\_\_\_\_
- (iii) Work Wire: \_\_\_\_\_
- (iv) Spare Work Wire: \_\_\_\_\_
- (v) Other Anchor Handling Equipment  
(e.g. Pelican Hooks, Shackles, Stretchers etc.): \_\_\_\_\_

**6. Radio and Navigation Equipment**

- (a) Radios  
Single Side Band: \_\_\_\_\_  
VHF: \_\_\_\_\_  
Satcom: \_\_\_\_\_

VESSEL SPECIFICATION

(b) Electronic Navigation Equipment: \_\_\_\_\_  
\_\_\_\_\_

(c) Gyro: \_\_\_\_\_

(d) Radar: \_\_\_\_\_

(e) Autopilot: \_\_\_\_\_

(f) Depth Sounder: \_\_\_\_\_

**7. Fire Fighting Equipment**

(a) Class (FF1, FF2, FF3, other): \_\_\_\_\_

(b) Fixed: \_\_\_\_\_

(c) Portable: \_\_\_\_\_

**8. Accommodation**

(a) Crew: \_\_\_\_\_ (b) Passengers: \_\_\_\_\_

**9. Galley**

(a) Freezer Space (m<sup>3</sup>): \_\_\_\_\_

(b) Cooler (m<sup>3</sup>): \_\_\_\_\_

**10. Additional Equipment**

(a) Mooring Equipment: \_\_\_\_\_  
\_\_\_\_\_

(b) Joystick: \_\_\_\_\_

(c) Other: \_\_\_\_\_  
\_\_\_\_\_

**11. Standby/Survivor Certificate**

Yes/No

Nos: \_\_\_\_\_

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## INSURANCE

Insurance policies (as applicable) to be procured and maintained by the Owners under Clause 17:

- (1) Marine Hull Insurance. – Hull and Machinery Insurance shall be provided with limits equal to those normally carried by the Owners for the Vessel.
- (2) Protection and Indemnity (Marine Liability Insurance. – Protection and Indemnity (P&I) or Marine Liability Insurance with coverage equivalent to the cover provided by members of the International Group Protection and Indemnity Associations with a limit of cover no less than USD                      for any one event. The cover shall include liability for collision and damage to fixed and floating objects to the extent not covered by the insurance in (1) above.
- (3) General Third Party Liability Insurance. – To the extent not covered by the insurance in (2) ABOVE, Coverage shall be for:  
Bodily Injury                      per person  
Property Damage                      per occurrence.
- (4) Workmen's Compensation and Employer's liability Insurance for Employees. –  
To the extent not covered in the insurance in (2) above, covering Owners' employees and other persons for whom Owners are liable as employer pursuant to applicable law for statutory benefits as set out and required by local law in area of operation or area in which the Owners may become legally obliged to pay benefits.
- (5) Comprehensive General Automobile Liability Insurance. –  
Covering all owned, hired and non-owned vehicles, coverage shall be for:  
Bodily Injury                      According to the local law.  
Property Damage                      In an amount equivalent to  
single limit per occurrence.
- (6) Such other insurances as may be agreed.

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## PART II

## SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

<b>Definitions</b>	1	free of cargo and with clean tanks at the port or place	68
<b>"Owners"</b> shall mean the party stated in <a href="#">Box 2</a>	2	as stated in <a href="#">Box 8(i)</a> or such other port or place as may	69
<b>"Charterers"</b> shall mean the party stated in <a href="#">Box 3</a>	3	be mutually agreed. The Charterers shall give not less	70
<b>"Vessel"</b> shall mean the vessel named in <a href="#">Box 4</a> and	4	than the number of days notice in writing of their intention	71
with particulars stated in ANNEX "A"	5	to redeliver the Vessel, as stated in <a href="#">Box 8(ii)</a> .	72
<b>"Well"</b> shall mean the time required to drill, test,	6	<b>(e) Demobilisation.</b> - The Charterers shall pay a lump	73
complete and/or abandon a single borehole including	7	sum demobilisation charge without discount in the amount	74
any side-track thereof.	8	as stated in <a href="#">Box 15</a> which amount shall be paid on the	75
<b>"Offshore Unit"</b> shall mean any vessel, offshore	9	expiration or on earlier termination of this Charter Party.	76
installation, structure and/or mobile unit used in offshore	10		
exploration, construction, pipe-laying or repair,	11	<b>3. Condition of Vessel</b>	77
exploitation or production.	12	<b>(a)</b> The Owners undertake that at the date of delivery	78
<b>"Employees"</b> shall mean employees, directors,	13	under this Charter Party the Vessel shall be of the	79
officers, servants, agents or invitees.	14	description and Class as specified in ANNEX "A",	80
		attached hereto, and in a thoroughly efficient state of	81
		hull and machinery.	82
<b>1. Charter Period</b>	15	<b>(b)</b> The Owners shall exercise due diligence to	83
<b>(a)</b> The Owners let and the Charterers hire the Vessel	16	maintain the Vessel in such Class and in every way fit	84
for the period as stated in <a href="#">Box 9</a> from the time the Vessel	17	for the service stated in <a href="#">Clause 6</a> throughout the period	85
is delivered to the Charterers.	18	of this Charter Party.	86
<b>(b)</b> Subject to <a href="#">Clause 12(b)</a> , the Charterers have the	19		
option to extend the Charter Period in direct continuation	20	<b>4. Structural Alterations and Additional Equipment</b>	87
for the period stated in <a href="#">Box 10(i)</a> , but such an option	21	The Charterers shall, at their expense, have the option	88
must be declared in accordance with <a href="#">Box 10(ii)</a> .	22	of making structural alterations to the Vessel or installing	89
<b>(c)</b> The Charter Period shall automatically be	23	additional equipment with the written consent of the	90
extended for the time required to complete the voyage	24	Owners, which shall not be unreasonably withheld.	91
or well (whichever is stated in <a href="#">Box 11(i)</a> ) in progress,	25	Unless otherwise agreed, the Vessel is to be redelivered	92
such time not to exceed the period stated in <a href="#">Box 11(ii)</a> .	26	reinstated, at the Charterers' expense, to her original	93
		condition. The Vessel is to remain on hire during any	94
<b>2. Delivery and Redelivery</b>	27	period of these alterations or reinstatement. The	95
<b>(a) Delivery.</b> - Subject to <a href="#">Clause 2(b)</a> the Vessel shall	28	Charterers shall at all times be responsible for repair	96
be delivered by the Owners free of cargo and with clean	29	and maintenance of any such alteration or additional	97
tanks at any time between the date stated in <a href="#">Box 5</a> and	30	equipment. However, the Owners may, upon giving	98
the date stated in <a href="#">Box 6</a> at the port or place stated in	31	notice, undertake any such repair and maintenance at	99
<a href="#">Box 7</a> where the Vessel can safely lie always afloat.	32	the Charterers' expense, when necessary for the safe	100
<b>(b) Mobilisation.</b> -	33	and efficient performance of the Vessel.	101
<b>(i)</b> The Charterers shall pay a lump sum mobilisation	34		
charge as stated in <a href="#">Box 12</a> without discount.	35	<b>5. Survey</b>	102
<b>(ii)</b> Should the Owners agree to the Vessel loading	36	The Owners and the Charterers shall jointly appoint an	103
and transporting cargo and/or undertaking any	37	independent surveyor for the purpose of determining	104
other service for the Charterers en route to the	38	and agreeing in writing, the condition of the Vessel, any	105
port of delivery or from the port of redelivery, then	39	anchor handling and towing equipment specified in	106
all terms and conditions of this Charter Party shall	40	<a href="#">ANNEX "A"</a> , and the quality and quantity of fuel,	107
apply to such loading and transporting and/or	41	lubricants and water at the time of delivery and redelivery	108
other service exactly as if performed during the	42	hereunder. The Owners and the Charterers shall jointly	109
Charter Period excepting only that any lump sum	43	share the time and expense of such surveys.	110
freight agreed in respect thereof shall be payable	44		
and earned on shipment or commencement of	45	<b>6. Employment and Area of Operation</b>	111
the service as the case may be, the Vessel and/	46	<b>(a)</b> The Vessel shall be employed in offshore activities	112
or goods lost or not lost.	47	which are lawful in accordance with the law of the place	113
<b>(c) Cancelling.</b> - If the Vessel is not delivered by	48	of the Vessel's flag and/or registration and of the place	114
midnight local time on the cancelling date stated in <a href="#">Box</a>	49	of operation. Such activities shall be restricted to the	115
<a href="#">6</a> , the Charterers shall be entitled to cancel this Charter	50	service(s) as stated in <a href="#">Box 17</a> , and to voyages between	116
Party. However, if the Owners will be unable to deliver	51	any good and safe port or place and any place or	117
the Vessel by the cancelling date, they may give notice	52	offshore unit where the Vessel can safely lie always	118
in writing to the Charterers at any time prior to the delivery	53	afloat within the Area of Operation as stated in <a href="#">Box 16</a>	119
date as stated in <a href="#">Box 5</a> and shall state in such notice the	54	which shall always be within International Navigation	120
date by which they will be able to deliver the Vessel. The	55	Limits and which shall in no circumstances be exceeded	121
Charterers may within 24 hours of receipt of such notice	56	without prior agreement and adjustment of the Hire and	122
give notice in writing to the Owners cancelling this Charter	57	in accordance with such other terms as appropriate to	123
Party. If the Charterers do not give such notice, then the	58	be agreed; provided always that the Charterers do not	124
later date specified in the Owners' notice shall be	59	warrant the safety of any such port or place or offshore	125
substituted for the cancelling date for all the purposes of	60	unit but shall exercise due diligence in issuing their	126
this Charter Party. In the event the Charterers cancel	61	orders to the Vessel as if the Vessel were their own	127
the Charter Party, it shall terminate on terms that neither	62	property and having regard to her capabilities and the	128
party shall be liable to the other for any losses incurred	63	nature of her employment.	129
by reason of the non-delivery of the Vessel or the	64	Unless otherwise stated in <a href="#">Box 18(i)</a> , the Charterers	130
cancellation of the Charter Party.	65	shall not have the right to use the Vessel for ROV	131
<b>(d) Redelivery.</b> - The Vessel shall be redelivered on	66	operations. Unless otherwise stated in <a href="#">Box 18(ii)</a> , the	132
the expiration or earlier termination of this Charter Party	67	Vessel shall not be employed as a diving platform.	133

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## SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

(b) Relevant permission and licences from responsible authorities for the Vessel to enter, work in and leave the Area of Operation shall be obtained by the Charterers and the Owners shall assist, if necessary, in every way possible to secure such permission and licences.	134 135 136 137 138 139	that are non-negotiable documents and which are clearly marked as such.	202 203
(c) <u>The Vessel's Space.</u> - The whole reach and burden and decks of the Vessel shall throughout the Charter Period be at the Charterers' disposal reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores. The Charterers shall be entitled to carry, so far as space is available and for their purposes in connection with their operations:	140 141 142 143 144 145 146 147	(3) The Charterers shall indemnify the Owners against all liabilities that may arise from the signing of such cargo documents in accordance with the directions of the Charterers to the extent that the terms of such cargo documents impose more onerous liabilities than those assumed by the Owners under the terms of this Charter Party.	204 205 206 207 208 209 210
(i) Persons other than crew members, other than fare paying, and for such purposes to make use of the Vessel's available accommodation not being used on the voyage by the Vessel's Crew. The Owners shall provide suitable provisions and requisites for such persons for which the Charterers shall pay at the rate as stated in <a href="#">Box 27</a> per meal and at the rate as stated in <a href="#">Box 28</a> per day for the provision of bedding and services for persons using berth accommodation.	148 149 150 151 152 153 154 155 156 157	(b) The Vessel's Crew if required by Charterers will connect and disconnect electric cables, fuel, water and pneumatic hoses when placed on board the Vessel in port as well as alongside the offshore units; will operate the machinery on board the Vessel for loading and unloading cargoes; and will hook and unhook cargo on board the Vessel when loading or discharging alongside offshore units. If the port regulations or the seamen and/or labour unions do not permit the Crew of the Vessel to carry out any of this work, then the Charterers shall make, at their own expense, whatever other arrangements may be necessary, always under the direction of the Master.	211 212 213 214 215 216 217 218 219 220 221 222
(ii) Lawful cargo whether carried on or under deck.	158	(c) If the Charterers have reason to be dissatisfied with the conduct of the Master or any Officer or member of the Crew, the Owners on receiving particulars of the complaint shall promptly investigate the matter and if the complaint proves to be well founded, the Owners shall as soon as reasonably possible make appropriate changes in the appointment.	223 224 225 226 227 228 229
(iii) Explosives and dangerous cargo whether in bulk or packaged, provided proper notification has been given and such cargo is marked and packed in accordance with the national regulations of the Vessel and/or the International Maritime Dangerous Goods Code and/or other pertinent regulations. Failing such proper notification, marking or packing the Charterers shall indemnify the Owners in respect of any loss, damage or liability whatsoever and howsoever arising therefrom. The Charterers accept responsibility for any additional expenses (including reinstatement expenses) incurred by the Owners in relation to the carriage of explosives and dangerous cargo.	159 160 161 162 163 164 165 166 167 168 169 170 171 172	(d) The entire operation, navigation, and management of the Vessel shall be in the exclusive control and command of the Owners, their Master, Officers and Crew. The Vessel will be operated and the services hereunder will be rendered as requested by the Charterers, subject always to the exclusive right of the Owners or the Master of the Vessel to determine whether operation of the Vessel may be safely undertaken. In the performance of the Charter Party, the Owners are deemed to be an independent contractor, the Charterers being concerned only with the results of the services performed.	230 231 232 233 234 235 236 237 238 239 240 241
(iv) Hazardous or noxious substances, subject to <a href="#">Clause 14(f)</a> , proper notification and any pertinent regulations.	173 174 175		
(d) <u>Laying-up of Vessel.</u> - The Charterers shall have the option of laying up the Vessel at an agreed safe port or place for all or any portion of the Charter Period in which case the Hire hereunder shall continue to be paid but, if the period of such lay-up exceeds 30 consecutive days, there shall be credited against such Hire the amount which the Owners shall reasonably have saved by way of reduction in expenses and overheads as a result of the lay-up of the Vessel.	176 177 178 179 180 181 182 183 184		
<b>7. Master and Crew</b>	185	<b>8. Owners to Provide</b>	242
(a) (i) The Master shall carry out his duties promptly and the Vessel shall render all reasonable services within her capabilities by day and by night and at such times and on such schedules as the Charterers may reasonably require without any obligations of the Charterers to pay to the Owners or the Master, Officers or the Crew of the Vessel any excess or overtime payments. The Charterers shall furnish the Master with all instructions and sailing directions and the Master and Engineer shall keep full and correct logs accessible to the Charterers or their agents.	186 187 188 189 190 191 192 193 194 195 196 197	(a) The Owners shall provide and pay for all provisions, wages and all other expenses of the Master, Officers and Crew; all maintenance and repair of the Vessel's hull, machinery and equipment as specified in <a href="#">ANNEX "A"</a> ; also, except as otherwise provided in this Charter Party, for all insurance on the Vessel, all dues and charges directly related to the Vessel's flag and/or registration, all deck, cabin and engine room stores, cordage required for ordinary ship's purposes mooring alongside in harbour, and all fumigation expenses and de-ratisation certificates. The Owners' obligations under this Clause extend to cover all liabilities for consular charges appertaining to the Master, Officers and Crew, customs or import duties arising at any time during the performance of this Charter Party in relation to the personal effects of the Master, Officers and Crew, and in relation to the stores, provisions and other matters as aforesaid which the Owners are to provide and/or pay for and the Owners shall refund to the Charterers any sums they or their agents may have paid or been compelled to pay in respect of such liability.	243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263
(ii)(1) No Bills of Lading shall be issued for shipments under this Charter Party.	198	(b) On delivery the Vessel shall be equipped, if appropriate, at the Owners' expense with any towing and anchor handling equipment specified in <a href="#">ANNEX "A"</a> .	264 265 266
(2) The Master shall sign cargo documents as directed by the Charterers in the form of receipts	200 201		
		<b>9. Charterers to Provide</b>	267
		(a) While the Vessel is on hire the Charterers shall	268

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## SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

provide and pay for all fuel, lubricants, water,	269	and port of redelivery unless otherwise stated in <a href="#">Box</a>	337
dispersants, firefighting foam and transport thereof, port	270	<a href="#">19 (iii)</a> . The Charterers shall purchase the lubricants	338
charges, pilotage and boatmen and canal steersmen	271	on board at delivery at the list price and the Owners	339
(whether compulsory or not), launch hire (unless	272	shall purchase the lubricants on board at redelivery at	340
incurred in connection with the Owners' business), light	273	the list price.	341
dues, tug assistance, canal, dock, harbour, tonnage and	274	(c) <u>Bunkering</u> . – The Charterers shall supply fuel of the	342
other dues and charges, agencies and commissions	275	specifications and grades stated in <a href="#">Box 19 (iv)</a> . The fuels	343
incurred on the Charterers' business, costs for security	276	shall be of a stable and homogeneous nature and unless	344
or other watchmen, and of quarantine (if occasioned	277	otherwise agreed in writing, shall comply with ISO	345
by the nature of the cargo carried or the ports visited	278	standard 8217:1996 or any subsequent amendments	346
whilst employed under this Charter Party but not	279	thereof as well as with the relevant provisions of	347
otherwise).	280	MARPOL. The Chief Engineer shall co-operate with the	348
(b) At all times the Charterers shall provide and pay	281	Charterers' bunkering agents and fuel suppliers and	349
for the loading and unloading of cargoes so far as not	282	comply with their requirements during bunkering,	350
done by the Vessel's crew, cleaning of cargo tanks, all	283	including but not limited to checking, verifying and	351
necessary dunnage, uprights and shoring equipment	284	acknowledging sampling, reading or soundings, meters	352
for securing deck cargo, all cordage except as to be	285	etc. before, during and/or after delivery of fuels. During	353
provided by the Owners, all ropes, slings and special	286	delivery four representative samples of all fuels shall be	354
runners (including bulk cargo discharge hoses) actually	287	taken at a point as close as possible to the Vessel's	355
used for loading and discharging, inert gas required for	288	bunker manifold. The samples shall be labelled and	356
the protection of cargo, and electrodes used for offshore	289	sealed and signed by suppliers, Chief Engineer and the	357
works, and shall reimburse the Owners for the actual	290	Charterers or their agents. Two samples shall be retained	358
cost of replacement of special mooring lines to offshore	291	by the suppliers and one each by the Vessel and the	359
units, wires, nylon spring lines etc. used for offshore	292	Charterers. If any claim should arise in respect of the	360
works, all hose connections and adaptors, and further,	293	quality or specification or grades of the fuels supplied,	361
shall refill oxygen/acetylene bottles used for offshore	294	the samples of the fuels retained as aforesaid shall be	362
works.	295	analysed by a qualified and independent laboratory.	363
(c) Upon entering into this Charter Party or in any	296	(d) <u>Liability</u> . – The Charterers shall be liable for any	364
event no later than the time of delivery of the Vessel	297	loss or damage to the Owners caused by the supply of	365
the Charterers shall provide the Owners with copies of	298	unsuitable fuels or fuels which do not comply with the	366
any operational plans or documents which are	299	specifications and grades set out in <a href="#">Box 19 (iv)</a> and the	367
necessary for the safe and efficient operation of the	300	Owners shall not be held liable for any reduction in the	368
Vessel. All documents received by the Owners shall be	301	Vessel's speed performance and/or increased bunker	369
returned to the Charterers on redelivery.	302	consumption nor for any time lost and any other	370
(d) The Charterers shall pay for customs duties, all	303	consequences arising as a result of such supply.	371
permits, import duties (including costs involved in	304		
establishing temporary or permanent importation	305		
bonds), and clearance expenses, both for the Vessel	306		
and/or equipment, required for or arising out of this	307		
Charter Party.	308		
(e) The Charterers shall pay for any replacement of	309		
any anchor handling/towing/lifting wires and accessories	310		
which have been placed on board by the Owners or the	311		
Charterers, should such equipment be lost, damaged or	312		
become unseviceable, other than as a result of the	313		
Owners' negligence.	314		
(f) The Charterers shall pay for any fines, taxes or	315		
imposts levied in the event that contraband and/or	316		
unmanifested drugs and/or cargoes are found to have	317		
been shipped as part of the cargo and/or in containers	318		
on board. The Vessel shall remain on hire during any	319		
time lost as a result thereof. However, if it is established	320		
that the Master, Officers and/or Crew are involved in	321		
smuggling then any financial security required shall be	322		
provided by the Owners.	323		
10. <b>Bunkers</b>	324		
(a) <u>Quantity at Delivery/Redelivery</u> . – The Vessel shall	325		
be delivered with at least the quantity of fuel as stated	326		
in <a href="#">Box 19 (j)</a> and the Vessel shall be redelivered with	327		
about the same quantity as on delivery, provided always	328		
that the quantity of fuels at redelivery is at least sufficient	329		
to allow the Vessel to safely reach the nearest port at	330		
which fuels of the required type or better are available.	331		
(b) <u>Purchase Price</u> . – The Charterers shall purchase	332		
the fuels on board at delivery at the price prevailing at	333		
the time and port of delivery unless otherwise stated in	334		
<a href="#">Box 19 (ii)</a> and the Owners shall purchase the fuels on	335		
board at redelivery at the price prevailing at the time	336		
		11. <b>BIMCO ISPS/MTSA Clause for Time Charter Parties</b>	372
		(a) (i) The Owners shall comply with the requirements	373
		of the International Code for the Security of Ships	374
		and of Port Facilities and the relevant amendments	375
		to Chapter XI of SOLAS (ISPS Code) relating to	376
		the Vessel and "the Company" (as defined by the	377
		ISPS Code). If trading to or from the United States	378
		or passing through United States waters, the	379
		Owners shall also comply with the requirements	380
		of the US Maritime Transportation Security Act	381
		2002 (MTSA) relating to the Vessel and the	382
		"Owner" (as defined by the MTSA).	383
		(ii) Upon request the Owners shall provide a copy of	384
		the relevant International Ship Security Certificate	385
		(or the Interim International Ship Security	386
		Certificate) to the Charterers. The Owners shall	387
		provide the Charterers with the full style contact	388
		details of the Company Security Officer (CSO).	389
		(iii) Except as otherwise provided in this Charter Party,	390
		loss, damages, expense or delay (excluding	391
		consequential loss, damages, expense or delay)	392
		caused by failure on the part of the Owners or	393
		"the Company"/"Owner" to comply with the	394
		requirements of the ISPS Code/MTSA or this	395
		Clause shall be for the Owners' account.	396
		(b) (i) The Charterers shall provide the Owners and	397
		the Master with their full style contact details and,	398
		upon request, any other information the Owners	399
		require to comply with the ISPS Code/MTSA.	400
		Furthermore, the Charterers shall ensure that all	401
		sub-charter parties they enter into during the	402
		period of this Charter Party contain the following	403
		provision:	404



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## SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

"The Charterers shall provide the Owners with their full style contact details and, where sub-letting is permitted under the terms of the charter party, shall ensure that the contact details of all sub-charterers are likewise provided to the Owners".	405	If payment is not received by the Owners within 5 banking days following the due date the Owners are entitled to charge interest at the rate stated in <a href="#">Box 25</a> on the amount outstanding from and including the due date until payment is received.	473
(ii) Except as otherwise provided in this Charter Party, loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account.	406	Where an invoice is disputed, the Charterers shall notify the Owners before the due date and in any event pay the undisputed portion of the invoice but shall be entitled to withhold payment of the disputed portion provided that such portion is reasonably disputed and the Charterers specify such reason. Interest will be chargeable at the rate stated in <a href="#">Box 25</a> on such disputed amounts where resolved in favour of the Owners.	474
(c) Notwithstanding anything else contained in this Charter Party all delay, costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be for the Charterers' account, unless such costs or expenses result solely from the Owners' negligence. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.	407	Should the Owners prove the validity of the disputed portion of the invoice, balance payment shall be received by the Owners within 5 banking days after the dispute is resolved. Should the Charterers' claim be valid, a corrected invoice shall be issued by the Owners.	475
(d) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.	408	(f) (i) Where there is a failure to pay Hire by the due date, the Owners shall notify the Charterers in writing of such failure and further may also suspend the performance of any or all of their obligations under this Charter Party until such time as all the Hire due to the Owners under the Charter Party has been received by the Owners. Throughout any period of suspended performance under this Clause, the Vessel is to be and shall remain on Hire. The Owners' right to suspend performance under this Clause shall be without prejudice to any other rights they may have under this Charter Party.	476
<b>12. Hire and Payments</b>	409	(ii) If after 5 days of the written notification referred to in <a href="#">Clause 12(f)(i)</a> the Hire has still not been received the Owners may at any time while Hire remains outstanding withdraw the Vessel from the Charter Party. The right to withdraw is to be exercised promptly and in writing and is not dependent upon the Owners first exercising the right to suspend performance of their obligations under the Charter Party pursuant to <a href="#">Clause 12(f)(i)</a> above. The receipt by the Owners of a payment from the Charterers after the five day period referred to above has expired but prior to the notice of withdrawal shall not be deemed a waiver of the Owners' right to cancel the Charter Party.	477
(a) <u>Hire.</u> - The Charterers shall pay Hire for the Vessel at the rate stated in <a href="#">Box 20</a> per day or pro rata for part thereof from the time that the Vessel is delivered to the Charterers until the expiration or earlier termination of this Charter Party.	410	(iii) Where the Owners choose not to exercise any of the rights afforded to them by this Clause in respect of any particular late payment of Hire, or a series of late payments of Hire, under the Charter Party, this shall not be construed as a waiver of their right either to suspend performance under <a href="#">Clause 12(f)(i)</a> or to withdraw the Vessel from the Charter Party under <a href="#">Clause 12(f)(ii)</a> in respect of any subsequent late payment under this Charter Party.	478
(b) <u>Extension Hire.</u> - If the option to extend the Charter Period under <a href="#">Clause 1(b)</a> is exercised, Hire for such extension shall, unless stated in <a href="#">Box 21</a> , be agreed between the Owners and the Charterers. Should the parties fail to reach an agreement, then the Charterers shall not have the option to extend the Charter Period.	411	(iv) The Charterers shall indemnify the Owners in respect of any liabilities incurred by the Owners under the Bill of Lading or any other contract of carriage as a consequence of the Owners' proper suspension of and/or withdrawal from any or all of their obligations under this Charter Party.	479
(c) <u>Adjustment of Hire.</u> - The rate of hire shall be adjusted to reflect documented changes, after the date of entering into the Charter Party or the date of commencement of employment, whichever is earlier, in the Owners' costs arising from changes in the Charterers' requirements, or regulations governing the Vessel and/or its Crew or this Charter Party or the application thereof.	412	(g) <u>Audit.</u> - The Charterers shall have the right to appoint an independent chartered accountant to audit the Owners' books directly related to work performed under this Charter Party at any time after the conclusion of the Charter Party, up to the expiry of the period stated in <a href="#">Box 26</a> , to determine the validity of the Owners' charges hereunder. The Owners undertake to make their records available for such purposes at their	480
(d) <u>Invoicing.</u> - All invoices shall be issued in the contract currency stated in <a href="#">Box 20</a> . In respect of reimbursable expenses incurred in currencies other than the contract currency, the rate of exchange into the contract currency shall be that quoted by the Central Bank of the country of such other currency as at the date of the Owners' invoice. Invoices covering Hire and any other payments due shall be issued monthly as stated in <a href="#">Box 22(i)</a> or at the expiration or earlier termination of this Charter Party. Notwithstanding the foregoing, bunkers and lubricants on board at delivery shall be invoiced at the time of delivery.	413		481
(e) <u>Payments.</u> - Payments of Hire, bunker invoices and disbursements for the Charterers' account shall be received within the number of days stated in <a href="#">Box 24</a> from the date of receipt of the invoice. Payment shall be made in the currency stated in <a href="#">Box 20</a> in full without discount to the account stated in <a href="#">Box 23</a> . However, any advances for disbursements made on behalf of and approved by the Owners may be deducted from Hire due.	414		482
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principal place of business during normal working hours.	541	agree to furnish the Charterers with the Owners'	609
Any discrepancies discovered in payments made shall	542	proposed drydocking schedule and the Charterers	610
be promptly resolved by invoice or credit as appropriate.	543	agree to make every reasonable effort to assist the	611
		Owners in adhering to such predetermined drydocking	612
		schedule for the Vessel.	613
<b>13. Suspension of Hire</b>	544		
(a) If as a result of any deficiency of Crew or of the	545		
Owners' stores, strike of Master, Officers and Crew,	546		
breakdown of machinery, damage to hull or other	547		
accidents to the Vessel, the Vessel is prevented from	548		
working, no Hire shall be payable in respect of any time	549		
lost and any Hire paid in advance shall be adjusted	550		
accordingly provided always however that Hire shall	551		
not cease in the event of the Vessel being prevented	552		
from working as aforesaid as a result of:	553		
(i) the carriage of cargo as noted in <a href="#">Clause 6(c)(iii)</a>	554		
and (iv);	555		
(ii) quarantine or risk of quarantine unless caused by	556		
the Master, Officers or Crew having communication	557		
with the shore at any infected area not in	558		
connection with the employment of the Vessel	559		
without the consent or the instructions of the	560		
Charterers;	561		
(iii) deviation from her Charter Party duties or	562		
exposure to abnormal risks at the request of the	563		
Charterers;	564		
(iv) detention in consequence of being driven into port	565		
or to anchorage through stress of weather or	566		
trading to shallow harbours or to river or ports	567		
with bars or suffering an accident to her cargo,	568		
when the expenses resulting from such detention	569		
shall be for the Charterers' account howsoever	570		
incurred;	571		
(v) detention or damage by ice;	572		
(vi) any act or omission of the Charterers, their	573		
servants or agents.	574		
(b) <u>Liability for Vessel not Working.</u> – The Owners'	575		
liability for any loss, damage or delay sustained by the	576		
Charterers as a result of the Vessel being prevented	577		
from working by any cause whatsoever shall be limited	578		
to suspension of hire, except as provided in <a href="#">Clause</a>	579		
<a href="#">11(a)(iii)</a> .	580		
(c) <u>Maintenance and Drydocking.</u> – Notwithstanding	581		
<a href="#">Clause 13(a)</a> , the Charterers shall grant the Owners a	582		
maximum of 24 hours on hire, which shall be	583		
cumulative, per month or pro rata for part of a month	584		
from the commencement of the Charter Period for	585		
maintenance and repairs including drydocking	586		
(hereinafter referred to as "maintenance allowance").	587		
The Vessel shall be drydocked at regular intervals. The	588		
Charterers shall place the Vessel at the Owners'	589		
disposal clean of cargo, at a port (to be nominated by	590		
the Owners at a later date) having facilities suitable to	591		
the Owners for the purpose of such drydocking.	592		
During reasonable voyage time taken in transits	593		
between such port and Area of Operation the Vessel	594		
shall be on hire and such time shall not be counted	595		
against the accumulated maintenance allowance.	596		
Hire shall be suspended during any time taken in	597		
maintenance repairs and drydocking in excess of the	598		
accumulated maintenance allowance.	599		
In the event of less time being taken by the Owners for	600		
repairs and drydocking or, alternatively, the Charterers	601		
not making the Vessel available for all or part of this	602		
time, the Charterers shall, upon expiration or earlier	603		
termination of the Charter Party, pay the equivalent of	604		
the daily rate of Hire then prevailing in addition to Hire	605		
otherwise due under this Charter Party in respect of all	606		
such time not so taken or made available.	607		
Upon commencement of the Charter Period, the Owners	608		
		<b>14. Liabilities and Indemnities</b>	614
		(a) <u>Definitions</u>	615
		For the purpose of this Clause "Owners' Group" shall	616
		mean: the Owners, and their contractors and sub-	617
		contractors, and Employees of any of the foregoing.	618
		For the purpose of this Clause "Charterers' Group" shall	619
		mean: the Charterers, and their contractors, sub-	620
		contractors, co-venturers and customers (having a	621
		contractual relationship with the Charterers, always with	622
		respect to the job or project on which the Vessel is	623
		employed), and Employees of any of the foregoing.	624
		(b) <u>Knock for Knock</u>	625
		(i) <u>Owners.</u> - Notwithstanding anything else contained	626
		in this Charter Party excepting <a href="#">Clauses 6(c)(iii)</a> ,	627
		<a href="#">9(b)</a> , <a href="#">9(e)</a> , <a href="#">9(f)</a> , <a href="#">10(d)</a> , <a href="#">11</a> , <a href="#">12(f)(iv)</a> , <a href="#">14 (d)</a> , <a href="#">15 (b)</a> ,	628
		<a href="#">18(c)</a> , <a href="#">26</a> and <a href="#">27</a> , the Charterers shall not be	629
		responsible for loss of or damage to the property	630
		of any member of the Owners' Group, including	631
		the Vessel, or for personal injury or death of any	632
		member of the Owners' Group arising out of or in	633
		any way connected with the performance of this	634
		Charter Party, even if such loss, damage, injury or	635
		death is caused wholly or partially by the act,	636
		neglect, or default of the Charterers' Group, and	637
		even if such loss, damage, injury or death is caused	638
		wholly or partially by unseaworthiness of any	639
		vessel; and the Owners shall indemnify, protect,	640
		defend and hold harmless the Charterers from any	641
		and against all claims, costs, expenses, actions,	642
		proceedings, suits, demands and liabilities	643
		whatsoever arising out of or in connection with such	644
		loss, damage, personal injury or death.	645
		(ii) <u>Charterers.</u> - Notwithstanding anything else	646
		contained in this Charter Party excepting <a href="#">Clause</a>	647
		<a href="#">11</a> , <a href="#">15(a)</a> , <a href="#">16</a> and <a href="#">26</a> , the Owners shall not be	648
		responsible for loss of, damage to, or any liability	649
		arising out of anything towed by the Vessel, any	650
		cargo laden upon or carried by the Vessel or her	651
		tow, the property of any member of the Charterers'	652
		Group, whether owned or chartered, including	653
		their Offshore Units, or for personal injury or death	654
		of any member of the Charterers' Group or of	655
		anyone on board anything towed by the Vessel,	656
		arising out of or in any way connected with the	657
		performance of this Charter Party, even if such	658
		loss, damage, liability, injury or death is caused	659
		wholly or partially by the act, neglect or default of	660
		the Owners' Group, and even if such loss,	661
		damage, liability, injury or death is caused wholly	662
		or partially by the unseaworthiness of any vessel;	663
		and the Charterers shall indemnify, protect,	664
		defend and hold harmless the Owners from any	665
		and against all claims, costs, expenses, actions,	666
		proceedings, suits, demands, and liabilities	667
		whatsoever arising out of or in connection with	668
		such loss, damage, liability, personal injury or	669
		death.	670
		(c) <u>Consequential Damages.</u> -	671
		Neither party shall be liable to the other for any	672
		consequential damages whatsoever arising out of or in	673
		connection with the performance or non-performance	674
		of this Charter Party, and each party shall protect, defend	675
		and indemnify the other from and against all such claims	676

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from any member of its Group as defined in <a href="#">Clause 14(a)</a> .	677	defend and hold harmless the Charterers against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of actual or threatened pollution damage and the cost of cleanup or control thereof arising from acts or omissions of the Owners or their personnel which cause or allow discharge, spills or leaks from the Vessel, except as may emanate from cargo thereon or therein.	745
"Consequential damages" shall include, but not be limited to, loss of use, loss of profits, shut-in or loss of production and cost of insurance, whether or not foreseeable at the date of this Charter Party.	678		746
	679		747
	680		748
	681		749
	682		750
<b>(d) Limitations.-</b>	683		751
Nothing contained in this Charter Party shall be construed or held to deprive the Owners or the Charterers, as against any person or party, including as against each other, of any right to claim limitation of liability provided by any applicable law, statute or convention, save that nothing in this Charter Party shall create any right to limit liability. Where the Owners or the Charterers may seek an indemnity under the provisions of this Charter Party or against each other in respect of a claim brought by a third party, the Owners or the Charterers shall seek to limit their liability against such third party.	684		752
	685	<b>(b)</b> The Charterers shall be liable for and agree to indemnify, defend and hold harmless the Owners from all claims, costs, expenses, actions, proceedings, suits, demands, liabilities, loss or damage whatsoever arising out of or resulting from any other actual or threatened pollution damage, even where caused wholly or partially by the act, neglect or default of the Owners, their Employees, contractors or sub-contractors or by the unseaworthiness of the Vessel.	753
	686		754
	687		755
	688		756
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	691		759
	692		760
	693		761
	694	<b>(c)</b> The Charterers shall, upon giving notice to the Owners or the Master, have the right (but shall not be obliged) to place on board the Vessel and/or have in attendance at the site of any pollution or threatened incident one or more Charterers' representative to observe the measures being taken by Owners and/or national or local authorities or their respective servants, agents or contractors to prevent or minimise pollution damage and to provide advice, equipment or manpower or undertake such other measures, at Charterers' risk and expense, as are permitted under applicable law and as Charterers believe are reasonably necessary to prevent or minimise such pollution damage or to remove the threat of pollution damage.	762
	695		763
	696		764
<b>(e) Himalaya Clause.-</b>	697		765
<b>(i)</b> All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Charter Party or by any applicable statute, rule or regulation for the benefit of the Charterers shall also apply to and be for the benefit of the Charterers' parent, affiliated, related and subsidiary companies; the Charterers' contractors, sub-contractors, co-venturers and customers (having a contractual relationship with the Charterers, always with respect to the job or project on which the Vessel is employed) ; their respective Employees and their respective underwriters.	698		766
	699		767
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	704		772
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	706		774
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	708		776
	709	<b>16. Wreck Removal</b>	777
<b>(ii)</b> All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Charter Party or by any applicable statute, rule or regulation for the benefit of the Owners shall also apply to and be for the benefit of the Owners' parent, affiliated, related and subsidiary companies, the Owners' contractors, sub-contractors, the Vessel, its Master, Officers and Crew, its registered owner, its operator, its demise charterer(s), their respective Employees and their respective underwriters.	710	If the Vessel becomes a wreck and is an obstruction to navigation and has to be removed by order of any lawful authority having jurisdiction over the area where the Vessel is placed or as a result of compulsory law, the Owners shall be liable for any and all expenses in connection with the raising, removal, destruction, lighting or marking of the Vessel.	778
	711		779
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	714		782
	715		783
	716		784
	717	<b>17. Insurance</b>	785
	718		786
	719	<b>(a)</b> (i) The Owners shall procure and maintain in effect for the duration of this Charter Party, with reputable insurers, the insurances set forth in <a href="#">ANNEX "B"</a> . Policy limits shall not be less than those indicated. Reasonable deductibles are acceptable and shall be for the account of the Owners.	787
	720		788
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	724		792
	725	<b>(ii)</b> The Charterers shall upon request be named as co-insured. The Owners shall upon request cause insurers to waive subrogation rights against the Charterers (as encompassed in <a href="#">Clause 14(e)(i)</a> ). Co-insurance and/or waivers of subrogation shall be given only insofar as these relate to liabilities which are properly the responsibility of the Owners under the terms of this Charter Party.	793
	726		794
	727		795
<b>(f) Hazardous or Noxious Substances.</b>	728		796
Notwithstanding any other provision of this Charter Party to the contrary, the Charterers shall always be responsible for any losses, damages or liabilities suffered by the Owners' Group, by the Charterers, or by third parties, with respect to the Vessel or other property, personal injury or death, pollution or otherwise, which losses, damages or liabilities are caused, directly or indirectly, as a result of the Vessel's carriage of any hazardous or noxious substances in whatever form as ordered by the Charterers, and the Charterers shall defend, indemnify the Owners and hold the Owners harmless for any expense, loss or liability whatsoever or howsoever arising with respect to the carriage of hazardous or noxious substances.	729		797
	730		798
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	742		810
<b>15. Pollution</b>	742		
<b>(a)</b> Except as otherwise provided for in <a href="#">Clause 18(c)(iii)</a> , the Owners shall be liable for, and agree to indemnify,	743		
	744		





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blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever); by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.	945 946 947 948 949 950 951 952 953 954 955	(ii) to comply with the order, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;	1013 1014 1015 1016
(b) The Vessel, unless the written consent of the Owners be first obtained, shall not be ordered to or required to continue to or through, any port, place, area or zone (whether of land or sea), or any waterway or canal, where it appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, she shall be at liberty to leave it.	956 957 958 959 960 961 962 963 964 965 966	(iii) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;	1017 1018 1019 1020 1021 1022 1023
(c) The Vessel shall not be required to load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.	967 968 969 970 971 972 973 974	(iv) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;	1024 1025 1026 1027
(d) (i) The Owners may effect war risks insurance in respect of the Hull and Machinery of the Vessel and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefor shall be for their account.	975 976 977 978 979 980 981	(v) to call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions.	1028 1029 1030 1031 1032
(ii) If the Underwriters of such insurance should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, or pass through any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then the actual premiums and/or calls paid shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due, or upon redelivery, whichever occurs first.	982 983 984 985 986 987 988 989 990 991 992	(g) If in accordance with their rights under the foregoing provisions of this Clause, the Owners shall refuse to proceed to the loading or discharging ports, or any one or more of them, they shall immediately inform the Charterers. No cargo shall be discharged at any alternative port without first giving the Charterers notice of the Owners' intention to do so and requesting them to nominate a safe port for such discharge. Failing such nomination by the Charterers within 48 hours of the receipt of such notice and request, the Owners may discharge the cargo at any safe port of their own choice.	1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043
(e) If the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous in the manner defined by the said terms, then the actual bonus or additional wages paid shall be reimbursed to the Owners by the Charterers at the same time as the next payment of hire is due, or upon redelivery, whichever occurs first.	993 994 995 996 997 998 999 1000	(h) If in compliance with any of the provisions of sub-clauses (b) to (g) of this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter Party.	1044 1045 1046 1047
(f) The Vessel shall have liberty:-	1001	<b>23. War Cancellation Clause 2004</b>	1048
(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;	1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012	Either party may cancel this Charter Party on the outbreak of war (whether there be a declaration of war or not)	1049 1050 1051
		(a) between any two or more of the following countries: the United States of America; Russia; the United Kingdom; France; and the People's Republic of China, or,	1052 1053 1054 1055
		(b) between the countries stated in <a href="#">Box 30</a> .	1056
		<b>24. BIMCO Ice Clause for Time Charter Parties</b>	1057
		(a) The Vessel shall not be obliged to force ice but, subject to the Owners' prior approval having due regard to its size, construction and class, may follow ice-breakers.	1058 1059 1060 1061
		(b) The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or area where lights, lightships, markers or buoys have been or are about to be withdrawn by reason of ice, nor where on account of ice there is, in the Master's sole discretion, a risk that, in the ordinary course of events, the Vessel will not be able safely to enter and remain at the port or area or to depart after completion of loading or discharging. If, on account of ice, the Master in his sole discretion considers it unsafe to proceed to, enter or remain at the place of loading or discharging for fear of the Vessel being frozen in and/or damaged, he shall be at liberty to sail to the nearest ice-free and safe place and there await the Charterers' instructions.	1062 1063 1064 1065 1066 1067 1068 1069 1070 1071 1072 1073 1074 1075
		(c) Any delay or deviation caused by or resulting from ice shall be for the Charterers' account and the Vessel shall remain on-hire.	1076 1077 1078
		(d) Any additional premiums and/or calls required by	1079



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the Vessel's underwriters due to the Vessel entering or remaining in any icebound port or area, shall be for the Charterers' account.	1080 1081 1082		
<b>25. Epidemic/Fever</b>	1083	<b>29. Drugs and Alcohol Policy</b>	1145
The Vessel shall not be ordered to nor bound to enter without the Owners' written permission any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel.	1084 1085 1086 1087 1088	The Owners undertake that they have, and shall maintain for the duration of this Charter Party, a policy on Drugs and Alcohol Abuse applicable to the Vessel (the "D & A Policy") that meets or exceeds the standards in the OCIMF Guidelines for the Control of Drugs and Alcohol Onboard Ship 1995 as amended from time to time.	1146 1147 1148 1149 1150 1151
Notwithstanding the terms of <a href="#">Clause 13</a> , Hire shall be paid for all time lost including any lost owing to loss of or sickness to the Master, Officers, Crew or passengers or to the action of the Crew in refusing to proceed to such place or to be exposed to such risks.	1089 1090 1091 1092 1093	The Owners shall exercise due diligence to ensure that the D & A Policy is understood and complied with on and about the Vessel. An actual impairment, shall not in and itself mean that the Owners have failed to exercise due diligence.	1152 1153 1154 1155 1156
<b>26. General Average and New Jason Clause</b>	1094	<b>30. Taxes</b>	1157
General Average shall be adjusted and settled in London unless otherwise stated in <a href="#">Box 31</a> , according to York-Antwerp Rules, 1994.	1095 1096 1097	Within the day rate the Owners shall be responsible for the taxes stated in <a href="#">Box 32</a> and the Charterers shall be responsible for all other taxes.	1158 1159 1160
Hire shall not contribute to General Average. Should adjustment be made in accordance with the law and practice of the United States of America, the following provision shall apply:	1098 1099 1100 1101	In the event of change in the Area of Operation or change in local regulation and/or interpretation thereof, resulting in an unavoidable and documented change of the Owners' tax liability after the date of entering into the Charter Party or the date of commencement of employment, whichever is the earlier, Hire shall be adjusted accordingly.	1161 1162 1163 1164 1165 1166 1167
"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 consequence of which, the Owners are not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the Owners in General Average to the payment of any sacrifices, loss 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.	1102 1103 1104 1105 1106 1107 1108 1109 1110 1111 1112	<b>31. Early Termination</b>	1168
If a salving vessel is owned or operated by the Owners, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Owners, or their agents, 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, shippers, consignees or owners of the cargo to the Owners before delivery".	1113 1114 1115 1116 1117 1118 1119 1120	<b>(a) At Charterers' Convenience.</b> - The Charterers may terminate this Charter Party at any time by giving the Owners written notice of termination as stated in <a href="#">Box 14</a> , upon expiry of which, this Charter Party will terminate. Upon such termination, Charterers shall pay the compensation for early termination stated in <a href="#">Box 13</a> and the demobilisation charge stated in <a href="#">Box 15</a> , as well as Hire or other payments due under the Charter Party up to the time of termination. Should <a href="#">Box 13</a> be left blank, <a href="#">Clause 31(a)</a> shall not apply.	1169 1170 1171 1172 1173 1174 1175 1176 1177 1178
<b>27. Both-to-Blame Collision Clause</b>	1121	<b>(b) For Cause.</b> - If either party becomes informed of the occurrence of any event described in this Clause that party shall so notify the other party promptly in writing and in any case within 3 days after such information is received. If the occurrence has not ceased within 3 days after such notification has been given, this Charter Party may be terminated by either party, without prejudice to any other rights which either party may have, under any of the following circumstances:	1179 1180 1181 1182 1183 1184 1185 1186 1187
If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Owners in the navigation or the management of the Vessel, the Charterers will indemnify the Owners against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represent loss of or damage to, or any claim whatsoever of the owners of any goods carried under this Charter Party paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set-off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the Vessel or the Owners. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than or in addition to the colliding ships or objects are at fault in respect of a collision or contact.	1122 1123 1124 1125 1126 1127 1128 1129 1130 1131 1132 1133 1134 1135 1136 1137 1138 1139	<b>(i) Requisition.</b> - If the government of the state of registry and/or the flag of the Vessel, or any agency thereof, requisitions for hire or title or otherwise takes possession of the Vessel during the Charter Period.	1188 1189 1190 1191 1192
<b>28. Health and Safety</b>	1140	<b>(ii) Confiscation.</b> - If any government, individual or group, whether or not purporting to act as a government or on behalf of any government, confiscates, requisitions, expropriates, seizes or otherwise takes possession of the Vessel during the Charter Period (other than by way of arrest for the purpose of obtaining security).	1193 1194 1195 1196 1197 1198 1199
The Owners shall comply with and adhere to all applicable international, national and local regulations pertaining to health and safety, and such Charterers' instructions as may be appended hereto.	1141 1142 1143 1144	<b>(iii) Bankruptcy.</b> - In the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed or if it suspends payment or ceases to carry on business.	1200 1201 1202 1203 1204 1205
		<b>(iv) Loss of Vessel.</b> - If the Vessel is lost or becomes a constructive total loss, or is missing unless the Owners promptly state their intention to provide, and do in fact provide, within 14 days of the Vessel being lost or missing, at the port or place from which the Vessel last sailed (or some other	1206 1207 1208 1209 1210 1211

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mutually acceptable port or place) a substitute	1212	that has already been published or is in the public	1279
vessel pursuant to <a href="#">Clause 21</a> . In the case of	1213	domain.	1280
termination, Hire shall cease from the date the	1214	All information and data provided by a party is and shall	1281
Vessel was lost or, in the event of a constructive	1215	remain the property of that party.	1282
total loss, from the date of the event giving rise to	1216		
such loss. If the date of loss cannot be ascertained	1217		
or the Vessel is missing, payment of Hire shall	1218		
cease from the date the Vessel was last reported.	1219		
(v) <a href="#">Breakdown</a> . - If, at any time during the term of	1220	<b>34. BIMCO Dispute Resolution Clause</b>	1283
this Charter Party a breakdown of the Owners'	1221	<b>*(a)</b> This Charter Party shall be governed by and	1284
equipment or Vessel result in the Owners being	1222	construed in accordance with English law and any	1285
unable to perform their obligations hereunder for	1223	dispute arising out of or in connection with this Charter	1286
a period exceeding that stated in <a href="#">Box 33</a> and have	1224	Party shall be referred to arbitration in London in	1287
not initiated reasonable steps within 48 hours to	1225	accordance with the Arbitration Act 1996 or any statutory	1288
remedy the non-performance or provided a	1226	modification or re-enactment thereof save to the extent	1289
substitute vessel pursuant to <a href="#">Clause 21</a> .	1227	necessary to give effect to the provisions of this Clause.	1290
(vi) <a href="#">Force Majeure</a> . - If a force majeure condition as	1228	The arbitration shall be conducted in accordance with	1291
defined in <a href="#">Clause 32</a> prevents or hinders the	1229	the London Maritime Arbitrators Association (LMAA)	1292
performance of the Charter Party for a period	1230	Terms current at the time when the arbitration	1293
exceeding 15 consecutive days from the time at	1231	proceedings are commenced.	1294
which the impediment causes the failure to	1232	The reference shall be to three arbitrators. A party	1295
perform if notice is given without delay or, if notice	1233	wishing to refer a dispute to arbitration shall appoint its	1296
is not given without delay, from the time at which	1234	arbitrator and send notice of such appointment in writing	1297
notice thereof reaches the other party.	1235	to the other party requiring the other party to appoint its	1298
(vii) <a href="#">Default</a> . - If either party is in repudiatory breach	1236	own arbitrator within 14 calendar days of that notice	1299
of its obligations hereunder.	1237	and stating that it will appoint its arbitrator as sole	1300
Termination as a result of any of the above mentioned	1238	arbitrator unless the other party appoints its own	1301
causes shall not relieve the Charterers of any obligation	1239	arbitrator and gives notice that it has done so within the	1302
for Hire and any other payments.	1240	14 days specified. If the other party does not appoint its	1303
		own arbitrator and give notice that it has done so within	1304
		the 14 days specified, the party referring a dispute to	1305
		arbitration may, without the requirement of any further	1306
		prior notice to the other party, appoint its arbitrator as	1307
		sole arbitrator and shall advise the other party	1308
<b>32. Force Majeure</b>	1241	accordingly. The award of a sole arbitrator shall be	1309
Neither party shall be liable for any loss, damage or	1242	binding on both parties as if he had been appointed by	1310
delay due to any of the following force majeure events	1243	agreement.	1311
and/or conditions to the extent the party invoking force	1244	Nothing herein shall prevent the parties agreeing in	1312
majeure is prevented or hindered from performing any	1245	writing to vary these provisions to provide for the	1313
or all of their obligations under this Charter Party,	1246	appointment of a sole arbitrator.	1314
provided they have made all reasonable efforts to avoid,	1247	In cases where neither the claim nor any counterclaim	1315
minimize or prevent the effect of such events and/or	1248	exceeds the sum of US\$50,000 (or such other sum as	1316
conditions:	1249	the parties may agree) the arbitration shall be conducted	1317
<b>(a)</b> acts of God;	1250	in accordance with the LMAA Small Claims Procedure	1318
<b>(b)</b> any Government requisition, control, intervention,	1251	current at the time when the arbitration proceedings	1319
requirement or interference;	1252	are commenced.	1320
<b>(c)</b> any circumstances arising out of war, threatened	1253	<b>*(b)</b> This Charter Party shall be governed by and	1321
act of war or warlike operations, acts of terrorism,	1254	construed in accordance with Title 9 of the United States	1322
sabotage or piracy, or the consequences thereof;	1255	Code and the Maritime Law of the United States and	1323
<b>(d)</b> riots, civil commotion, blockades or embargoes;	1256	any dispute arising out of or in connection with this	1324
<b>(e)</b> epidemics;	1257	Charter Party shall be referred to three persons at New	1325
<b>(f)</b> earthquakes, landslides, floods or other extraor-	1258	York, one to be appointed by each of the parties hereto,	1326
inary weather conditions;	1259	and the third by the two so chosen; their decision or	1327
<b>(g)</b> strikes, lockouts or other industrial action, unless	1260	that of any two of them shall be final, and for the	1328
limited to the Employees of the party seeking to invoke	1261	purposes of enforcing any award, judgement may be	1329
force majeure;	1262	entered on an award by any court of competent	1330
<b>(h)</b> fire, accident, explosion except where caused by	1263	jurisdiction. The proceedings shall be conducted in	1331
negligence of the party seeking to invoke force majeure;	1264	accordance with the rules of the Society of Maritime	1332
<b>(i)</b> any other similar cause beyond the reasonable	1265	Arbitrators, Inc.	1333
control of either party.	1266	In cases where neither the claim nor any counterclaim	1334
The party seeking to invoke force majeure shall notify	1267	exceeds the sum of US\$50,000 (or such other sum as	1335
the other party in writing within 2 working days of the	1268	the parties may agree) the arbitration shall be conducted	1336
occurrence of any such event/condition.	1269	in accordance with the Shortened Arbitration Procedure	1337
		of the Society of Maritime Arbitrators, Inc. current at	1338
<b>33. Confidentiality</b>	1270	the time when the arbitration proceedings are	1339
All information or data provided or obtained in	1271	commenced.	1340
connection with the performance of this Charter Party	1272	<b>*(c)</b> This Charter Party shall be governed by and	1341
is and shall remain confidential and not be disclosed	1273	construed in accordance with the laws of the place	1342
without the prior written consent of the other party. The	1274	mutually agreed by the parties and any dispute arising	1343
parties shall use their best efforts to ensure that such	1275	out of or in connection with this Charter Party shall be	1344
information shall not be disclosed to any third party by	1276	referred to arbitration at a mutually agreed place, subject	1345
any of their sub-contractors, Employees and agents.	1277	to the procedures applicable there.	1346
This Clause shall not apply to any information or data	1278		

## PART II

## SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

(d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Charter Party.	1347 1348 1349 1350	expenses.	1390
In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:	1351 1352 1353	(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.	1391 1392 1393 1394 1395
(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.	1354 1355 1356 1357 1358	<i>(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)</i>	1396 1397
(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.	1359 1360 1361 1362 1363 1364 1365 1366 1367 1368 1369 1370 1371	If <a href="#">Box 34</a> in PART I is not appropriately filled in, <a href="#">sub-clause 34(a)</a> of this Clause shall apply. Sub-clause (d) shall apply in all cases. * <a href="#">Sub-clauses 34(a)</a> , <a href="#">34(b)</a> and <a href="#">34(c)</a> are alternatives; indicate alternative agreed in <a href="#">Box 34</a> .	1398 1399 1400 1401 1402
(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.	1372 1373 1374 1375 1376	<b>35. Notices</b>	1403
(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.	1377 1378 1379	(a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Charter Party shall be in writing.	1404 1405 1406
(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.	1380 1381 1382 1383 1384 1385	(b) For the purposes of this Charter Party, "in writing" shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.	1407 1408 1409 1410 1411
(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and	1386 1387 1388 1389	<b>36. Headings</b>	1412
		The headings of this Charter Party are for identification only and shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction of this Charter Party.	1413 1414 1415 1416
		<b>37. Severance</b>	1417
		If by reason of any enactment or judgement any provision of this Charter Party shall be deemed or held to be illegal, void or unenforceable in whole or in part, all other provisions of this Charter Party shall be unaffected thereby and shall remain in full force and effect.	1418 1419 1420 1421 1422 1423
		<b>38. Entire Agreement</b>	1424
		This Charter Party, including all Annexes referenced herein and attached hereto, is the entire agreement of the parties, which supersedes all previous written or oral understandings and which may not be modified except by a written amendment signed by both parties.	1425 1426 1427 1428 1429