

ICS* Column – Commercial Aspects of Shipping

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“Commercial Aspects of Shipping – Anatomy of Charterparties”

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The Anatomy of Charter Parties

Voyage Charters. You will find a sample copy of 'GENCON (1994)' charter party at http://www.bimco.dk/upload/gencon_94.pdf. For those who would like to understand the construction of a voyage charter party well, I would suggest that a copy is printed out and preferably read together with the following notes. This is the latest revision of a long series of GENCON charter parties dating back to the 1920s. In common with many recently revised charter parties, this appears in what is known as "box form". The required information to be inserted in each fixture is conveniently allocated "boxes" on the front page, so that completing the charter party is relatively straightforward and the salient details can be seen at a glance.

The printed clauses, which are referred to in the top right hand corner of each "box", all appear in Part II, and are numbered 1 to 19.

It must be remembered that all charter parties emerge from negotiations between Owners and Charterers, usually through one or more brokers, and the resulting agreement may well require amendments to some of the printed clauses. In addition, as the GENCON is designed for non-specialised trades, both parties to the contract may well insist on certain additional clauses particular to their requirements to this standard form.

As a general rule, all the details which will eventually be inserted in the boxes of the charter-party are negotiable, and most will feature at some stage in the offers and counter-offers which are traded back and forth during the negotiations. Although the most fiercely contested area may be that of the freight level, the dates and the time allowed for cargo operations may also be crucial to the fixture, as we will see below.

Some of the information in the GENCON '94 after the broker's name and address is the date and place of when the 'fixture' (as a chartering agreement is called) was made. Next, there are boxes in which to enter the names of the parties and of course, the name of the ship details of its registered tonnages, dead weight, and any other characteristics important to the fixture, for example cubic capacity or perhaps the size of the hatches.

We all know that "ships don't run like trains" and there are many factors, which may affect the vessel's expected readiness to load. Nevertheless, this information should not be taken lightly. Because of the imponderables in time for merchant ships there is usually a span of some days between which the vessel may be presented for loading. If, however, an owner gives an expected readiness (box 9) and then subsequently takes on some intervening business which makes the ship much later than originally intended, he is guilty of misrepresentation. In extreme cases, such misrepresentation could be grounds for the charterer to cancel the contract, and the date when this could take effect is shown in the charterparty (box 21). We must mention the loading and discharging ports and the type and quantity of cargo to be loaded (Boxes 10, 11 and 12). Note that the printed clause 1 to which these details relate qualifies the places of loading and discharging by the phrase "or so near thereto as she may safely get and lie always afloat". Some loading or discharging berths, especially those in tidal rivers where small coasters regularly load; do not have enough water alongside at low tide to allow ships to remain afloat. These are often referred to as "NAABSA" berths (**N**ot **A**lways **A**float **B**ut **S**afe **A**ground). If the ship is fixed for loading or discharging at such a place, this must be specifically agreed in the charter party, otherwise the Owners have every right to refuse to put their vessel there.

As far as the cargo is concerned, the charterers are expected to give full details, and if they have fixed the ship for "a full and complete cargo" they can expect the Master and Owners to demand sufficient to bring the ship down to its load-line or to fill the cargo space. If they fail to satisfy this request they will be liable to pay "dead freight" on the shortfall as if it had been loaded.

Boxes 13 and 14 give details of the freight payable, whether it be "so much per tonne" or a "lump-sum" or on some other basis, and how, when and where it should be paid. The options in the printed clause 4 need to be carefully considered in conjunction with these details.

Then comes the all-important clause setting out the rate of freight including how, when and where it is to be paid.

A crucial point in connection with the freight is the question of which party should be responsible for the costs (and risks) of loading and discharging the cargo. The GENCON 1994 charter party only envisages a situation where the shippers pay for the loading and the consignees for the discharging. These are known as FIO terms (**F**ree **I**n and **O**ut) implying that both loading and discharging operations are free of expense to the shipowners. There are still trades where it is customary for the ship to pay for (or contribute to) the cost of loading and/or discharging and if the GENCON 1994 form was used for such a cargo then a typed clause would have to replace part of clause 5. Provision is made (in the case of a ship having its own cranes or derricks - cargo handling gear often simply referred to as "gear"); for charterers (or their shippers/receivers) to make use of it in loading or discharging - provided that this is expressly agreed in advance by a note in box 15. Note also from the printed clause that the Owners expect the charterers to be responsible for putting right any stevedore damage noted by the Master during cargo handling operations.

The next clause (clause 6, boxes 16, 17 and 18) introduces a word, which is exclusive to the world of chartering - 'laytime'. A word of which the precise definition is almost lost in history but for our purposes refers to the time allowed for loading, respectively discharging. This clause may seem surprisingly long but in simple terms it means when the ship is ready to load/discharge and how long the operations may take. There are many ways in which laytime can be expressed. In terms of hours or days, as so many tonnes per day, as separate periods for loading and discharging or a total time span for both operations, whether or not time stops counting for bad weather and so on.

Linked to when time commences to count and the amount of time allowed for loading and discharging is the penalty for exceeding the agreed limits. A ship is only earning income when she is on the move, not when she is lying idle in a port. A shipowner is, therefore, anxious to keep the time spent in loading and discharging to a minimum. This is especially true for employment under the voyage charters. If the charterers take too long over it, then the owner wants compensation which is covered by including a rate of 'demurrage' for every day or part of a day by which the agreed time is exceeded. The sum negotiated for this is inserted in box 20 and governed by clause 7.

In some dry cargo trades the converse may also apply, in that the charterers can earn a bonus if they load/discharge the ship in **less** time than agreed. This is termed 'despatch money' and if such an agreement is made it must be inserted as a typed clause in the GENCON 1994 form.

So clauses 5, 6 and 7 cover this dispute-prone area of time in port. Within these there are perhaps a few words and expressions which may be new to the readers such as: -

Trimming applies to bulk cargoes such as coal, where the surface of the loaded cargo needs to be levelled out to make best use for the space available and to minimise the danger of the cargo shifting in the hold during the voyage.

Dunnage is timber used to prevent metal to metal contact between cargo and the ship's hold or between (for example) steel plates, and to stop loose items from moving around in the hold during the voyage.

Tallying, is the name given to the procedure of checking the number of packages, as they are loaded/discharged.

Stevedores, although technically the name for those working on the ship itself during the loading/discharging is often used to describe all the loading/discharging labour.

The **Agents** referred to in Clause 6 (boxes 18 and 19) are not the Port Agents who will be appointed by the Owners to look after the ship's interests at the loading and discharge ports. But the agents of the charterers who will be responsible for co-ordinating the cargo operations at each end. The

Appointment of Port Agents is dealt with in clause 14, and they may be named in a typed clause attached to the charter party.

Clause 8 (the Lien Clause) is designed to protect the shipowner from non-payment of freight, demurrage and other such sums due to him.

Remember the date given in box 5 when the ship was expected to be ready to load? The cancelling date (Box 21, clause 9) defines the other end of this period known as the "laydays" after which the Charterers have the option to cancel the charter party if the ship has still not presented herself for loading. Cancellation tends to be a last resort in most instances, as the charterers are then faced with having to find another suitable vessel to carry their cargo, probably at short notice. Similarly the owners will have to find other employment for their ship, which may already be on its way to the expected loading port, but excessive delays may force the charterers to use this sanction.

The remaining clauses deal with such eventualities as collisions, strikes, war and ice, and establish the jurisdiction which will apply in the case of legal disputes or arbitration - an important consideration in international trading.

Please also note that clause 12 covers **General Average**. Another expression with a long history and now covered by an international convention (The York-Antwerp Rules). In essence, General Average is the procedure whereby if the ship is involved in extraordinary expense in order to avoid damage to the ship and her cargo then the cargo as well as the shipowner contributes to that expenditure; the formal wording reads '... preserving from peril the property involved in the common maritime venture'. The York-Antwerp Rules lay down how the various parties' contributions will be calculated, a procedure known as Average Adjusting. All prudent merchants are careful to include General Average in their insurance cover.

'Brokerage' (see clause 15) is the commission due to the broker or brokers involved in the fixture, and is the reward for the Brokers for succeeding in bringing the negotiations to a satisfactory conclusion. The amount of brokerage involved is usually between one and quarter (1¼%) and two and a half (2½%) percent of the gross freight, depending on whether one or more brokers are involved. Most charter parties, including GENCON 94 now include brokerage on demurrage and on 'dead freight' (freight paid on cargo not supplied by the charterers which should have been).

To sum up, a voyage charter will have a 'skeleton' the bones of which are: -

- Date
- Names of the parties
- Name of the ship with some description
- Loading port
- Cargo nature and quantity

Discharging port
Lay days and Cancelling dates
Rate of freight and manner of payment
Loading/Discharging costs
Speed of Loading and Discharging (laytime)
Demurrage rate
Brokerages (Commissions)

In the next issue we will look at the time charters.

For more details, visit www.ics.org.uk or www.ics.org.hk.

References:

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