

Commercial Aspects of Shipping – Bunkers

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In the previous article, we looked at the bunker basics and an estimation of bunkers requirement and more importantly, planning for bunkers intake during a voyage to arrive at the most optimum combination of minimizing the direct and associated costs of bunker procurement and maximizing the cargo lift for earning revenue. In this article, we review handing over and taking of bunkers, some samples of bunker clauses in charterparties and the importance of bunker analysis.

Sample Clauses

Bunkers on Delivery/Redelivery (BOD/BOR)

"It is common practice for time charterers to take over and pay the owner for bunkers remaining on board a vessel upon delivery on to time charter, and for owners to act similarly upon redelivery, the quantities of fuel, diesel and/or gas oil, and the prices per tonne of each, being negotiated when fixing. It is often the case that about the same quantities

and prices prevail at both ends of the timecharter, although occasionally one side or the other may benefit by shrewd negotiation, and obtains either inexpensive bunkers or sells at a good profit.

With some trip charters of short duration, however, this system of taking over and paying for bunkers remaining on board may prove unnecessarily cumbersome, and it may be arranged that charterers supply sufficient bunkers for the trip at their own expense, or that they pay an owner for only the estimated quantity of bunkers required for the trip out of the total remaining on board. Balances in one side's favour or the other are settled upon completion of the time charter in the financial reconciliation".¹

General wordings of a bunker clause for understanding are given below followed by a typical bunker clause as per NYPE 93 timecharter party.

Quote "Bunkers on delivery to be as on board estimated about xxxx.xxx metric tons of IFO and about xxx.xxx metric

tons of MDO. Bunkers of redelivery to be *about* same quantity as on delivery.

Bunker prices at both ends to be US\$ xxx.xx per metric ton for IFO and US\$ xxx.xx per metric ton for MDO.

The Charterers have the privilege to bunker the vessel prior to delivery, provided the bunkering does not interfere with the Owners' normal operation. Similar privilege is granted to the Owners prior to redelivery."Unquote

In any contract - clear understanding and appreciation of the obligations and rights is important. For a contract to be legally binding under English law, basic requirements must be satisfied. These conditions comprise of a valid offer, acceptance of all terms of the offer,

9. Bunkers	109
(a) The Charterers on delivery, and the Owners on redelivery, shall take over and pay for all fuel and diesel oil remaining on board the Vessel as hereunder. The Vessel shall be delivered with:	110
.....long*/metric* tons of fuel oil at the price ofper ton:	111
.....tons of diesel oil at the price ofper ton. The vessel shall	112
be redelivered with:tons at the price of per ton;	113
.....tons of diesel oil at the price of per ton.	114
* Same tons apply throughout this clause.	115
(b) The Charterers shall supply bunkers of a quality suitable for burning in the Vessel's engines and Auxiliaries and which conform to the specification(s) as set out in Appendix A.	116
The Owners reserve the right to make a claim against the Charterers for any damage to the main engines or the auxiliaries caused by the use of unsuitable fuels or fuels not complying with the agreed specification(s). Additionally, if bunker fuels supplied do not conform with the mutually agreed specification(s) or otherwise prove unsuitable for burning in the Vessel's engines or auxiliaries, the Owners shall not be held responsible for any such reduction in the Vessel's speed performance and/or increased bunker Consumption, nor for any time lost and any other consequences.	117
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adequate (not necessarily sufficient) consideration and finally the intention of the parties to make the contract legally binding. Thus, during commercial negotiations, both the parties try to arrive at clear agreement(s) and lay down terms and conditions in the contract. For example, in the above clause titled “Bunkers”, the parties agree to take over the bunkers on delivery and on redelivery handover the bunkers. The price of bunkers purchased by either party to the contract may be different by virtue of the purchases having been made at different times and places during the discharge of a charterparty. Hence, both the parties generally agree to a fixed unit price for the bunkers and insert this agreed price in the bunker clause. The quantities are arrived at after a bunker survey when the ship comes on hire and also at the time of coming off hire. It has been a practice to take ullage for the heavy oils and soundings for the diesel/gas oils. The linear measurements thus taken are then converted into volume by referring to the ullage and sounding tables respectively. Corrections to the figures for the trim are necessarily made. The temperature of the oil in the tank is recorded and used to convert the volume into metric tons. A reasonable care by those taking soundings, carrying out calculations, applying necessary corrections and finally maintaining proper records while duly communicating figures to the parties can go a long way in avoiding time consuming disputes.

Lines 117 to 124 are very important. Let us try to clearly spell out the rights and obligations of the parties as agreed to under this clause, if fully accepted –

1. Charters have the obligation to supply bunkers that is suitable for purpose or “fit for purpose”. In line 118, the use of the word “and” in the sentence “.....auxiliaries and which conform to the specification(s)” May be taken to mean that the charters not only have the obligation to supply bunkers as per the specifications set out in Appendix A (which could be said to conform to ISO 8217 RMG 35 for example) but also of the “quality suitable for burning in the Vessel’s engines and auxiliary”. In my

opinion, this could then take us into the arena of Sale of Goods Act 1979.

2. Lines 119 to 121 try to further expand upon the rights of the Owners to be able to make a claim should the bunkers are not of suitable quality causing damage to the main engines and auxiliaries. Here again, the wider definition of quality is seen by use of the words “.....caused by the use of unsuitable fuels or fuels not complying with the agreed specifications”. This may thus mean that a charterer (and thus the bunker supplier) can not take shelter under a simple compliance with the agreed specification e.g. ISO 8217 RMG 35. He remains obliged to supply bunkers that are fit for purpose. I will try to dig out a decision in a relevant case for the next article. Again, it is very essential that paper trail is in order and reasonable care is exercised to ensure that the losses are mitigated and the ship and shore staff can prove thus. A typical example would be as follows:

Bunker supply is made in conformation to the ISO 8217 RMG 35 but there is, say, polypropylene contamination. This contamination then leads to very frequent and severe clogging of the fuel filters. Ship is thus unable to use the fuel and the fuel has to be offloaded, tanks cleaned and new supply taken. Such an action costs money and takes time which again is money in terms of hire. Who is then responsible for this cost? Charterer has supplied bunkers in conformation with the agreed ISO 8217 RMG 35 specifications but the bunkers were found to be unsuitable for use in the engine and thus have paralyzed the ship’s main engine. It appears from the wordings in the clause that it is the charterer who is responsible and agreeing to such wordings at the time of formation of the contract translates the intention of the parties.

3. It is useful to clearly specify the *modus operandi* with regards to the ascertaining the quality of the supplied bunkers. This is usually done by a reference to the analysis to be carried out by a reputable and well known (of course acceptable to both the parties) bunker analysis company. Some examples can

be FOBAS (Lloyd’s Register’s Fuel Oil Bunker Analysis and Advisory Service), DNVPS (Det Norske Veritas) or say a laboratory such as AS&M of Dr. Vis. When the bunkers are received onboard the vessel, it is essential that the ship staff takes proper samples, following an acceptable procedure (drip and continuous sampling process) and hands over a sealed sample to the supplier, send the second sealed sample to the laboratory for analysis and keep the third sealed sample onboard the vessel for any further analysis requirement if any dispute arises. Care must be taken to ensure that the labels are duly filled in without any overwriting, signed by the witnesses. It is thus important to agree to a mutually acceptable procedure at the time of commercial negotiations to avoid acrimony in an unfortunate event of a troublesome supply.

4. In lines 121 to 124, the owner seeks to release himself from the speed and fuel consumption warranties that he has given to the charterer. The rationale is that the troublesome supply of bunkers does not allow the engines to perform as originally intended. In other words – had the bunkers been supplied in conformation with the specifications and also otherwise suitable for use in the engines – the owner would have stood by the warranties he had given under the time charter description. However, he is released of his obligation because the charterer failed to discharge his duty to supply “fit for purpose” bunkers which was then the cause of owner’s subsequent failure to deliver as promised under the warranties. In terms of cost implication under lines 121 to 124, following may please be noted, in addition to some other possible complications, machinery repair/ component replacement cost:

- a. Reduction of speed: resulting in extra time required to make the voyage, thus leading to underperformance.
- b. Trying to maintain a speed as close to the Charterparty speed and in the process consuming more fuel, leading to over-consumption.
- c. Offloading of the bunkers,

cleaning of tanks including expensive gas freeing – if required).

d. Deviation cost, new bunker arrangement cost, bunker price differential and other costs such as agency, anchorage etc.

It is thus important for the charterer to take measures to minimize his liability by exercising control over the bunker supplier. "In 1995 Bimco (The Baltic & International Maritime Council) produced a standard form of contract for bunker supplies which was entitled "Fuelcon" This form was not widely used because it was considered far too biased towards the buyer – the charterer and/or the shipowner.

The form was revised and in 2001 BIMCO produced the Standard Bunker Contract which is in two parts; the Confirmation Note confirms the Bunker nomination, the General terms and conditions set out the agreement. The

Confirmation Note is in classic BIMCO box style, the headings of each box being self explanatory. The main clauses cover

Quality – Clause 2; Quantities – Clause 3; Sampling – Clause 4; Delivery & Title – Clauses 5 & 10

Price & Payment – Clauses 7 & 8

It is interesting to note that a significant part of the form deals with environmental issues (Clause 14) and dispute resolution (Clause 15). These terms and conditions should be thoroughly studied.

Not all or even the majority of bunker supplies are carried out under Bimco contracts although this 2001 version is rather more popular than its predecessor. However the Bimco form provides a clear and logical compilation of the essential points to be considered when contracting for a supply of bunkers".¹

Thus it is important that, when buying bunkers, attention is paid to the

specification of the product. As mentioned earlier in this article, in order to double check that the bunkers actually supplied are the same quality as the bunkers bought, many shipowners are now using the services of an independent quality analysis service. As far as practically possible, the newly bunkered oil should not be mixed with the existing oil. It is also advisable, where practically possible, to avoid using the newly bunkered oil till the time a fuel oil analysis report has been received and is found to be satisfactory. Taking this topic further, we will touch upon a few more practical aspects in the next article.

References:

¹Text adapted from the Tutorship Material with kind permission from Director General, ICS, UK for promoting Shipping Education and the Institute of Chartered Shipbrokers.

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An exhibition on 23rd, 24th and 25th shall be held in concurrence with INMARCO conference sessions, wherein various companies shall display their marine-related Products and Services.