



CONDITION AND MAINTENANCE OF VESSEL, INCLUDING REMOVAL OF EQUIPMENT AT END OF CHARTER

OSV CHARTERING CONTRACT MANAGEMENT
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AGENDA

1. Condition of the Vessel: description and class of the Vessel at delivery
2. Owners' obligations to exercise due diligence and the requirements to:
 - i. Maintain the Vessel
 - ii. Ensure the Vessel is fit for purpose
3. Breaches of description of the Vessel and / or due diligence & consequences
4. Structural alterations and additional equipment



CONDITION OF VESSEL DESCRIPTION AND CLASS

~~"3(a) The Owners undertake that at~~ At the date of delivery... the Vessel shall be of the description and Class ~~class~~ as specified in "ANNEX A" ..., and in a thoroughly efficient state of hull and machinery."



CONDITION OF VESSEL CLAUSE 3(a) – ON DELIVERY

SUPPLYTIME '05 - Owners undertake that the Vessel will at the date of delivery be:

- of the description and class specified in Annex A; and
- in a thoroughly efficient state of hull and machinery

SUPPLYTIME '89 – obligation continues throughout the duration of the Charterparty

SUPPLYTIME'17 – there is no ongoing obligation for Owners, but effect same as '05



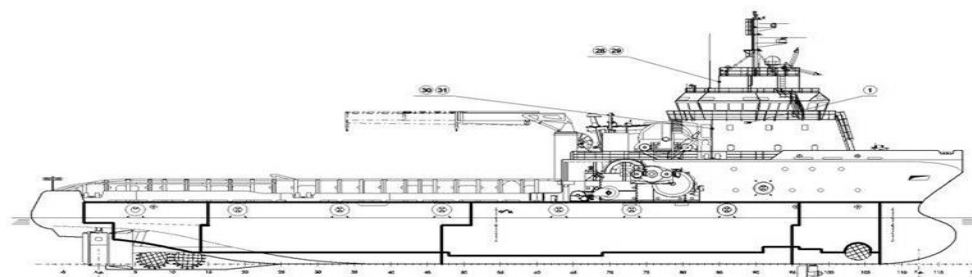
CONDITION OF VESSEL ANNEX A

Annex A sets out Vessel specification including:

- Year of build
 - Class
 - Flag
 - Next scheduled drydocking
 - Performance
 - Dimensions and capacities
 - Machinery
 - Towing & anchor handling equipment
 - Radio and navigation equipment
 - Fire fighting equipment
 - Accommodation
 - Galley
 - Any additional equipment
-



CONDITION OF VESSEL ANNEX A





CONDITION OF VESSEL CLAUSE 3(A) – ON DELIVERY

SUPPLYTIME '05 – Clause 3(a) is an absolute obligation not qualified by requirement to exercise due diligence

SUPPLYTIME '17 – Clause 3(a) is an absolute obligation not qualified by requirement to exercise due diligence (but note the different wording)



CONDITION OF VESSEL QUALIFICATIONS

Owners' qualifying statements:

- "about"
 - "approximately"
 - "without guarantee"
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CONDITION OF VESSEL
QUALIFICATIONS



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CONDITION OF VESSEL
CLASS





CONDITION OF VESSEL DUE DILIGENCE

"3(b) The Owners shall exercise due diligence to maintain the Vessel in such Class **class** and in every way fit for the service stated in ~~Clause 6~~ **Clause 6 (Employment and Area of Operation)** throughout the period of this Charter Party."



CONDITION OF VESSEL DUE DILIGENCE



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CONDITION OF VESSEL
SUPPLYTIME '89



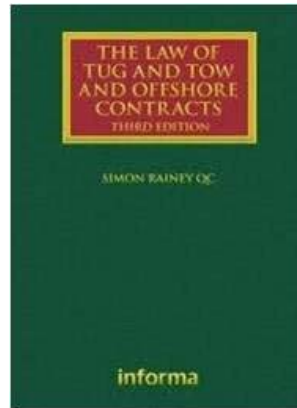
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CONDITION OF VESSEL

- Clause 1 – period of Charter Party (boxes 9, 10 and 11)
- Clause 6 – Employment and area of operation of vessel (boxes 16, 17 and 18)

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CONDITION OF VESSEL



"Throughout the charter service, Owners shall, whenever the passage of time, wear and tear or any event...requires steps to be taken to maintain or restore the conditions stipulated in Clause ...1, exercise due diligence so as to maintain or restore the vessel."

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CONDITION OF VESSEL SHELLTIME 4



CONDITION OF VESSEL DUE DILIGENCE

In order for the Owners to demonstrate the exercise of due diligence they must:

- Carry out any inspections, repairs or other preparations which, in the circumstances, a skilled and prudent shipowner would carry out
 - Any work carried out must be done with reasonable skill, care and competence
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CONDITION OF VESSEL DUE DILIGENCE





CONDITION OF VESSEL DUE DILIGENCE

- Owners **not** liable for any failure to exercise due diligence by any person who has worked on Vessel before it came into their ownership, possession or control
 - Owners **are** liable for any defect in the Vessel which reasonably discoverable when it comes into their ownership, possession or control
 - If bad work concealed and cannot be detected by reasonable care, Owners **not** liable
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CONDITION OF VESSEL DUE DILIGENCE





CONDITION OF VESSEL
WANT OF DUE DILIGENCE HAS TO BE CAUSATIVE



THE "YAMATOGAWA"



CONDITION OF VESSEL
DUE DILIGENCE – MAINTENANCE

1. Keep up a prudent programme of inspections and surveys, replacements and renewals
2. If vessel, machinery or equipment becomes inefficient need to take reasonable steps within a reasonable time to effect repairs





CONDITION OF VESSEL MAINTENANCE – CLAUSE 13(c)

SUPPLYTIME '17
Clause 13(c)

- (i) ~~"Maintenance - Notwithstanding Clause Subclauses 13(a) and 13(c)(ii), the Charterers shall grant the Owners a maximum of Owners shall be entitled to twenty-four (24) hours on hire per month or pro rata, which shall be cumulative, per month or pro rata for part of a month from the commencement of the Charter Period charter period for the purposes of for maintenance, survey, repair and repairs including dry-docking (Maintenance Days hereinafter referred to as "maintenance allowance"). During any such Maintenance Days, the Charterers' obligations under Subclause 9(a) (Charterers to Provide) shall be suspended. Using, or not using Maintenance Days shall be the Owners' decision alone and they shall give the Charterers' reasonable notice of their intention to use such days and how many. Hire shall not be payable for accumulated Maintenance Days not used by the Owners. However, hire for any Maintenance Days which, at the Charterers' request, have not been used shall be payable on redelivery or earlier termination of the Charter Party."~~
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CONDITION OF VESSEL MAINTENANCE – CLAUSE 13(c)

Clause 13(c)

- (ii) ~~"Dry-docking - The Charterers shall permit the Vessel shall be drydocked to dry-dock at regular intervals. The Charterers shall place in accordance with its classification society requirements. Unless on-hire by reason of accumulated Maintenance Days, the Vessel shall be off-hire from the time the Charterers place it at the Owners' disposal clean of cargo, at a port (to be nominated by the Owners at a later date) having facilities suitable to the Owners for the purpose of such drydocking. During reasonable voyage time taken in transits between such port and Area of Operation. The Vessel shall be go back on hire and such from the time it is placed at the Charterers' disposal at the place where it was originally released."~~

~~Whenever a dry-docking is required, the Charterers shall not be counted against the accumulated maintenance allowance. Hire beforehand remove any cargo, and clean any cargo tanks as necessary to effect such dry-docking, after which the Vessel shall be suspended during any placed at the Owners' disposal. The Vessel shall be returned to the Charterers when it has completed dry-docking and returned to the port or place where it was placed at the Owners' disposal. The Owners' choice of dry-dock location shall always be reasonable as to time taken in maintenance repairs and drydocking in excess of the accumulated maintenance allowance. and cost, both to themselves and to the Charterers."~~



CONDITION OF VESSEL MAINTENANCE – CLAUSE 13 (c)

Clause 13(c)(ii) cont.

In the event of less time being taken by the Owners for repairs and drydocking or, alternatively, the Charterers not making the Vessel available for all or part of this time, the Charterers shall, upon expiration or earlier termination of the Charter Party, pay the equivalent of the daily rate of Hire then prevailing in addition to Hire otherwise due under this Charter Party in respect of all such time not so taken or made available. Upon commencement of the charter period, the Owners agree to furnish the Charterers with the Owners' proposed drydocking schedule and the Charterers agree to make every reasonable effort to assist the Owners in adhering to such predetermined drydocking schedule for the Vessel.

At the commencement of the charter period, the Owners shall provide the Charterers with the Vessel's class dry-docking schedule for the charter period, including any options to extend."



CONDITION OF VESSEL MAINTENANCE – CLAUSE 13 (c)

SUPPLYTIME'05

- 24 hours maintenance allowance (cumulative, per month or pro rata) granted

• "...if the 24 hours are not spent in a particular month they will automatically be transferred to the next. That means that after two months Owners will have 48 hours, after 2½ months Owners will have 60 hours and so on. The time it takes for the Vessel to sail from the area of operation to the drydock will count as time on hire and not against the accumulated time. As a comfort to the Charterers, it is stated that the Vessel will be drydocked at regular intervals and that the Owners must furnish the Charterers with a drydock schedule at the commencement of the charter period."



CONDITION OF VESSEL MAINTENANCE DAYS

THE NEW REGIME UNDER SUPPLYTIME '17 – CLAUSE 13(C)

1. One day per month for maintenance, repair, **survey** and dry-docking
 2. There is no accumulation of hire equivalent of Maintenance Days
 3. Owners pay for “Charterers to provide” items/services when using Maintenance Days
 4. Using or not using the Maintenance Days is Owners’ decision
 5. But: if Charterers refuse Owners’ request (on reasonable notice) to use Maintenance Days then **accumulated hire equivalent is payable** (which accumulates from the commencement of the Charter Period)
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CONDITION OF VESSEL MAINTENANCE – CLAUSE 13 (c)

SUPPLYTIME'17 – DRYDOCKING – Clause 13(c)(ii)

1. Dry-docking clause – Vessel shall be off-hire from when Charterers place Vessel at Owners’ disposal
 2. Owners’ and Charterers’ obligations as to dry-docking:
 - Charterers shall remove any cargo and clean holds beforehand – can be onerous
 - Owners’ choice of place of dry-docking shall “always” be reasonable in terms of time and costs
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CONDITION OF VESSEL FIT FOR SERVICE

- Seaworthy
- Suitable for the particular service which the vessel is to perform



CONDITION OF VESSEL SEAWORTHINESS

"The ship must have that degree of fitness which an ordinary careful owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it. Would a prudent owner have required that it should be made good before sending his ship to sea, had he known of it?"

F.C. Bradley & Sons v. Federal Steam Navigation [1926] 24 L.L.Rep. 446

More specifically, Griffiths, L.J., in *The Aquacharm* [1982] 1 Lloyd's Rep. 7 (a voyage charter case) at page 11, stated:

"there are two aspects of seaworthiness. The first requires that the ship, her crew and her equipment shall be in all respects sound and able to encounter and withstand the ordinary perils of the sea during the contemplated voyage. The second requires that the ship shall be suitable to carry the contract cargo".

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CONDITION OF VESSEL BREACH



"I'm no attorney, but that's a material breach if I've ever seen one."

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CONDITION OF VESSEL BREACH





CONDITION OF VESSEL CONSEQUENCES OF BREACH

SUPPLYTIME '05 / SUPPLYTIME '17

- Breach of absolute obligations under Clause 3(a) gives Charterers right to reject Vessel
 - Breach of Clauses 3(a) and 3(b) may give rise to a claim in damages
 - In absence of substitute Vessel (Clause 21) right to early termination (Clause 31 ST'05 / Clause 34 ST'17)
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STRUCTURAL ALTERATIONS CLAUSE 4

"The Charterers shall **have the option**, at their expense, ~~have the option~~ of making structural alterations to the Vessel or installing additional equipment ~~with~~, **both requiring** the written consent of the Owners, which shall not be unreasonably withheld. Unless otherwise agreed, the Vessel is to be redelivered reinstated **and all additional equipment removed**, at the Charterers' expense, to her ~~original~~ condition **on delivery, fair wear and tear excepted**. The Vessel is to remain on hire during any period of these alterations or reinstatement. The Charterers shall at all times be responsible for repair and maintenance of any such alteration or additional equipment. However, the Owners may, upon giving notice, undertake any such repair and maintenance at the Charterers' expense, when necessary for the safe and efficient performance of the Vessel. **The equipment installed by the Charterers shall not become the property of the Owners.**"





STRUCTURAL ALTERATIONS CLAUSE 4

SUPPLYTIME'05:

- Owners have given their written consent, which must not be unreasonably withheld
 - The Vessel is to be redelivered in her original condition with work to reinstate the Vessel at the Charterers' expense
 - The Vessel is on-hire while alterations and reinstatement is undertaken
 - Charterers responsible for repair and maintenance of their equipment
-



STRUCTURAL ALTERATIONS CLAUSE 4

SUPPLYTIME'17:

- New "Fair wear and tear" exception
 - Clear that the equipment installed by Charterers does not belong to Owners and to be removed at redelivery at Charterers' expense
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STRUCTURAL ALTERATIONS CONSENT

1. The burden is on the party requesting consent to show that the refusal by the other party of such consent is unreasonable
 2. What is reasonable in each case will depend on the facts
 3. The party whose consent is required does not need to show that refusal of its consent is right or justified, simply that it is reasonable in the circumstances
 4. In determining what is reasonable, the party whose consent is required is entitled to have regard to its own interests.
 5. The party whose consent has to be obtained is not required to balance his own interests with those of the party requesting consent.
 6. However, if the party requesting consent would suffer disproportionate detriment as a result of a refusal, the refusal of such consent may nonetheless be deemed unreasonable
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STRUCTURAL ALTERATIONS REPAIRS

- "Often the Owners do not possess the specialist knowledge required to maintain such equipment. The wording of this clause has therefore been changed to reflect the practice whereby the Owners might undertake repairs to Charterers' equipment if necessary for the safety and efficient performance of the Vessel- but otherwise the responsibility for repairs and maintenance rests with the Charterers.
- To avoid the possible duplication of work caused by the Charterers sending teams on board to do work already undertaken by the Owners, the provision has been amended to contain a formal requirement for the Owners to notify the Charterers (i) that there is a need for repairs and/or maintenance and (ii) that the Owners will undertake the work. The responsibility for such alterations and reinstatement rests with the Owners."

BIMCO Explanatory Notes to SUPPLYTIME 2017



STRUCTURAL ALTERATIONS REINSTATEMENT OF VESSEL



STRUCTURAL ALTERATIONS LIEN – CLAUSE 19

"The Owners shall have a lien upon all cargoes **fuel** and equipment **owned by the Charterers** for all claims against the Charterers under this Charter Party and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned. The Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the Vessel. ~~Except as provided in Clause 14, [knock-for-knock clause] the Charterers shall indemnify and hold the Owners harmless against any lien of whatsoever nature arising upon the Vessel during the Charter Period while she is under the control of the Charterers, and against any claims against the Owners arising out of the operation of the Vessel by the Charterers or out of any neglect of the Charterers in relation to the Vessel or the operation thereof. Should the Vessel be arrested by reason of claims or liens arising out of her **its** operation hereunder, unless brought about by the act or neglect of the Owners, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released and at their own expense put up bail to secure release of the Vessel."~~

Security to release the Vessel. Except as provided in Clause 14 ... and unless brought about by the act or neglect of the Owners, the Charterers shall indemnify and hold harmless against any lien of whatsoever nature arising upon the Vessel during the Charter Period while it is under the control of the Charterers, and against any claims against the Owners arising out of the operation of the Vessel by the Charterers or out of any neglect of the Charterers in relation to the Vessel or the operation thereof."



ANY QUESTIONS?



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