

# HEAVYCON

## Standard Transportation Contract for Heavy and Voluminous Cargoes Revised

HEAVYCON – BIMCO's Standard Transportation Contract for Heavy and Voluminous Cargoes - was originally adopted by BIMCO's Documentary Committee at its meeting in Copenhagen November 1985. The developments within the heavylift sector, which initiated the drafting of HEAVYCON, has since continued at a great speed with more types of cargoes and vessels tailor made for the various cargoes coming on to the market.

To reflect recent developments, HEAVYCON has now been updated through a thorough revision and re-issued with the code-name HEAVYCON 2007. It was adopted by the Documentary Committee at its meeting in Copenhagen November 2007.

The new version of HEAVYCON has been developed by a team of heavylift specialists. BIMCO is grateful to the representatives of BigLift Shipping, Schiffahrtskontor Altes Land, Fairmount, Heerema, Larsen & Partners and the Standard Club for their extensive and valuable work on this project.

Besides of bringing up to date the terms and conditions of HEAVYCON to reflect current commercial practice, the task of the drafting team has been to decide the applicability of the form to current trade practices in the industry. Originally HEAVYCON was intended for the super-heavylift (float-on/float-off) sector, but the form is to some extent also used by the mid-sized (lift-on/lift-off and roll-on/roll-off) sector.

The drafting team has aimed to make the HEAVYCON a suitable contract for the ocean carriage of heavy lifts, having sufficient flexibility to cover various loading and discharging methods, single or multiple loading and discharging ports, on or under deck stowage, entire or complete cargoes etc.

There are, however, various points by which the mid-sized sector distinguishes from the super-heavylift sector, and which make HEAVYCON less appropriate to the mid-sized sector. In the mid-sized sector, e.g., the cargo is often regarded as conventional cargo where the Hague/Hague Visby liability regime appropriately applies whereas HEAVYCON is based on a Knock for Knock liability regime. A form for the mid-sized heavy lift sector is therefore under development by a separate drafting team.

The drafting team has also discussed the applicability of HEAVYCON for installation operations. Installation operations are excluded from P&I cover and in general risks and liabilities introduced in installation projects were felt to fall outside the intended scope of HEAVYCON.

HEAVYCON 2007 is classified as a Voyage Charter Party, and the word "Contract" as used in the original HEAVYCON has been replaced with "Charter Party" throughout the form.

The drafting process has been thoroughly with several meetings. The drafting team has gone through every single provision of the original HEAVYCON to make sure that its provisions are brought up to date with current commercial practice. Furthermore, recent versions of BIMCO's standard clauses, e.g. BIMCO ice Clause for Voyage Charter parties, War Risks (VOYWAR 2004), BIMCO Dispute Resolution Clause. The result is a modern and comprehensive voyage charter party tailored to the specific needs of the heavylift sector.

Common to BIMCO charter parties, the revised HEAVYCON uses the trademark Box Layout Part I which usefully summarises the key variable information added by the parties. Part II of the form contains the main terms and conditions of the agreement.

As with all new BIMCO forms the revised HEAVYCON charter party will be made available as an editable Word document using BIMCO's widely used online charter party editing system, *idea*. This will enable users to fill in the expandable boxes in Part I of HEAVYCON 2007 with the variable information needed to complete the form. Additional clauses, if necessary, can also be added using *idea* – either from the built-in library of BIMCO standard clauses or from the users own uploaded library of clauses. Finalised documents can be e-mailed as a PDF file along with other attachments to chosen recipients. All documents created from templates on *idea* can be "re-cycled" for repeat or similar business to save time re-typing information. For more information about *idea* visit the BIMCO website at [www.bimco.org](http://www.bimco.org) to discover why *idea* has become the industry's most widely used charter party editing system.

Sample copies of HEAVYCON 2007 can be downloaded as PDF documents free of charge from BIMCO's website at [www.bimco.org](http://www.bimco.org).

To illustrate the changes made to the original HEAVYCON, the Secretariat has compiled the following clause by clause comparison between HEAVYCON and HEAVYCON 2007. The comparison does not include the new Part I box layout or the Annexes that accompany HEAVYCON 2007 as these documents are felt to be self-explanatory.

# HEAVYCON and HEAVYCON 2007

## Explanatory notes

For a sample copy of HEAVYCON 2007 visit the Documentary section of the BIMCO website at [www.bimco.org](http://www.bimco.org).

### 1. Definitions

In this Charter Party the following words and expressions shall have the meanings hereby assigned to them.

"The Owners" shall mean the party identified in **Box 2**.

"The Charterers" shall mean the party identified in **Box 3**.

"The Vessel" shall mean the vessel described in **Box 4**.

"Loading Port" shall mean the port(s), place(s) or area(s) specified in **Box 6**.

"Discharging Port" shall mean the port(s), place(s) or area(s) specified in **Box 7**.

"The Cargo" shall mean any goods or equipment or other items described in **Box 5**.

"The Transportation" shall mean the carriage of the Cargo and, as may be specified in Annex A (Demarcation of Scope of Work), the loading and discharging and all other operations connected therewith.

### Notes – Definitions

In general, Clause 1 defines the parties to the contract and some of the words and expressions used in the form.

Since vessels are the only means of transportation units, and since only one vessel is used in each transport, the reference to "transportation unit(s)" has been replaced with "vessel".

An Annex A (Demarcation of Scope of Work) has been added after Part II, in which the parties can specify other operations connected with e.g the engineering, the performance of the voyage and the loading and discharging of the cargo. The Scope of Work divides these other operations between the parties. To avoid any conflicts between the Scope of Work and Part II, a box has been added in Part I indicating the default position in case of a conflict.

### 2. Voyage

(a) It is agreed between the Owners and the Charterers that, subject to the terms and conditions of this Charter Party, the Cargo shall be transported by the Vessel from the Loading Port, or so near thereto as she may safely get and lie always safe and afloat, to the Discharging Port, or so near thereto as she may safely get and lie always safe and afloat.

(b) The Owners shall exercise due diligence in making the Vessel seaworthy before and at arrival at the Loading Port. The Owners shall perform the voyage with due despatch unless otherwise agreed.

### Notes – Voyage

2.(a) Any references to box numbers in respect of "Owners", "Charterers", "Cargo", "Loading Port", "Discharging Port" and "Vessel" have been deleted as these terms have already been defined in Clause 1.

2.(b) In order to align the Sub-clause with the wording used in PROJECTCON, the phrase "At the commencement of the voyage" has been replaced with "before and at arrival at the Loading Port". During the drafting process it was discussed whether the Owners should have an obligation to exercise due diligence in making the Vessel seaworthy throughout the voyage. It was, however, felt that such an obligation is too onerous on the Owners, e.g. in cases where cargo shifts by reasons outside the Owners' control thereby making the vessel unseaworthy.

### 3. Deviation/Delays/Part Cargo

- (a) The Vessel has the liberty to sail without pilots, to tow and/or assist vessels in distress, to deviate for the purpose of saving life, to replenish bunkers and/or to deviate for the purpose of safety of the Cargo, crew, Vessel and for any other reasonable purpose.
- (b) Without prejudice to the provisions of Clause 30 (General Average and New Jason Clause), should the Master decide, for the purpose of the safety of the Cargo, to deviate from the intended route which is stipulated in **Box 7**, the Charterers shall pay for all time lost as a consequence of the deviation at the demurrage rate stipulated in **Box 19**.

The time lost shall include all time used until the Vessel reaches the same or equidistant position to that where the deviation commenced and the Charterers shall also pay all additional expenses incurred by such deviation including bunkers, port charges, pilotage, tug boats, agency fees and any other expenses whatsoever incurred.

The Owners shall give prompt notification of any delay or deviation to the Charterers and any claims for additional compensation shall be supported by appropriate documentation.

- (c) If the Vessel for reasons beyond the Owners' control is delayed at Loading Port and/or Discharging Port, including obtaining free pratique, customs, port clearance or other formalities, such delays shall be paid for by the Charterers at the demurrage rate stipulated in **Box 19**.
- (d) Unless the Cargo is described as a full and complete cargo in **Box 5**, the Owners shall have the liberty of re-stowing the Cargo and of loading and of discharging other part cargoes for the account of other than the Charterers from places enroute or not enroute to places enroute or not enroute. The rotation of loading and discharging places shall be at the Owners' option. When the Owners exercise such option(s) this shall in no way constitute a deviation, notwithstanding anything else contained in this Charter Party.

#### Notes – Deviation/Delays/Part Cargo

3.(a) The Sub-clause provides the Vessel with a general liberty to deviate subject to the deviation being for "reasonable purpose". To bring HEAVYCON 2007 in line with the deviation clause in PROJECTCON, the liberty to assist other vessels is now limited to vessels in distress.

3.(b) A third paragraph in Sub-clause 3.(c) is added, introducing the notification provision from PROJECTCON.

3.(c) Throughout the form, "loading port(s) or place(s)" and "discharging port(s) or place(s)" have been replaced with "Loading Port" and "Discharging Port" which terms are defined in Clause 1 and have been extended to cover loading and discharging places.

3.(d) The provision entitles the Owners to load and discharge part cargo, where the contracted cargo is not a full cargo. It is, however, seldom that cargo intended for being carried on board heavylift vessels, are not a full cargo.

### 4. Loading and Discharging

- (a) The Charterers shall have the Cargo in all respects ready for the said voyage at the Loading Port on the date for which notice of expected load readiness is given by the Owners as per Clause 9 (Advance Notices), but not before the date stated in **Box 10** as first layday.

The Charterers shall nominate the precise loading area or place within the agreed Loading Port, which shall be always safe and accessible and suitable for the loading operation, upon receipt of the first notice given by the Owners pursuant to Clause 9 (Advance Notices), always subject to the approval of the Owners and the Master. Such approval shall not be unreasonably withheld.

- (b) The Owners shall provide the equipment stated in **Box 4** or in Annex A (Demarcation of Scope of Work) and shall in their own time and at their own expense prepare such equipment for the loading operations. All other equipment shall be provided by the Charterers. When the Cargo has been loaded and positioned, it shall be seafastened and/or lashed by the Owners at their expense, unless otherwise agreed in Annex A (Demarcation of Scope of Work), to the satisfaction of the Master.
- (c) At the Loading Port, the Cargo shall be delivered by the Charterers without delay in the sequence required by the Master at any time during day or night, Saturdays, Sundays (or their local equivalent) and holidays included and shall be loaded by one or more of the following methods stated in **Box 8**:

(i) \*If agreed in **Box 8** that the Charterers shall perform the loading operations, the Cargo shall be placed on board and positioned by the Charterers to the full satisfaction of the Master. The Charterers

shall procure and pay for all labour and all necessary equipment other than that stated in **Box 4**. The Charterers shall have free use of the Vessel's gear operated by the Vessel's crew.

(ii) \*If agreed in **Box 8** that the Cargo shall be loaded by means of float-on method, the Charterers shall position the Cargo prior to loading at 50 metres or at an agreed distance from the Vessel's submerged deck to the full satisfaction of the Master. The Owners shall attach lines to the Cargo and shall position and secure the Cargo over the submerged deck by using winches and/or tugs. The Owners shall procure and pay the necessary labour and winchmen either from the crew or from shore.

The Charterers shall procure and pay for workboats and tugs required for the positioning of the Cargo. The Owners shall have the right to use such workboats and tugs for the loading operation.

*\* Indicate alternative(s) (i) or (ii), as agreed, in **Box 8**.*

- (d) The Charterers shall name the precise discharging area or place within the Discharging Port, which shall be always safe and accessible and suitable for the discharging operation, well in advance of the Vessel's arrival, always subject to the approval of the Owners and the Master. Such approval shall not be unreasonably withheld.

At the Discharging Port the Charterers shall take delivery of the Cargo without delay in accordance with sub-clause (f) at any time during day or night, Saturdays, Sundays (or their local equivalent) and holidays included.

The entire discharge operation always to be done to the full satisfaction of the Master.

- (e) Prior to actual discharge the Owners shall, unless otherwise agreed in Annex A (Demarcation of Scope of Work), remove all seafastening and/or lashing and prepare the Vessel for the discharge operation.

- (f) The Cargo shall be discharged by one or more of the following methods stated in **Box 9**:

(i) \*If agreed in **Box 9** that the Charterers shall discharge the Cargo, the Charterers shall procure and pay for necessary winchmen and labour. The Charterers shall have free use of the Vessel's gear operated by the Vessel's crew.

(ii) \*If agreed in **Box 9** that the cargo shall be discharged by means of float off method, the Owners shall submerge the Vessel and float-off the Cargo. The Owners shall procure and pay the necessary labour and winchmen either from the crew or from shore.

The Charterers shall procure and pay for workboats and tugs required for discharging the Cargo. The Owners shall have the right to use such workboats and tugs for the discharging operations.

*\*Indicate alternative(s) (i) or (ii), as agreed, in **Box 9**.*

- (g) All expenses associated with the Vessel such as harbour dues, pilotages, local tug assistance, if required, agency fees, fuel and lubricants shall be paid for by the Owners except as otherwise provided for in this Charter Party.

- (h) Any compulsory shore labour connected with loading operations, lashing/seafastening, removal of lashing/seafastening and/or discharging operations required by local authorities or union regulations shall be for the Charterers' account.

#### **Notes – Loading and Discharging**

In brief, Clause 4 deals with loading in Sub-clauses (a) – (c) and with discharging in Sub-clauses (d) – (f). Sub-clauses (g) and (h) are about the division of various costs.

The Clause provides the parties with optional methods of loading and discharging. It is therefore important that the parties agree on which loading and discharging method shall apply and indicate their choice in Part I (Box 8 for loading and Box 9 for discharging operations).

4.(a) The Charterers shall nominate the loading area or place within the Loading Port subject to the Owners' and Masters' approval. In many cases, the areas etc. where heavylift vessels operate are not main-stream areas etc. but in uncharted waters. The Charterers therefore have no more knowledge than the Owners about the safety of such areas etc. for the vessel. As a matter of practice the Owners verify the safety of any areas etc. put forward by the Charterers.

4.(c)/4.(d) The addition "(or their local equivalent)" takes into consideration loading and discharging operations in countries where week-ends may fall at other dates than Saturdays and Sundays.

Sub-clauses 4.(c)(i)-(ii) state the methods of loading: (i) refers to loading the Cargo by lift-on, roll-on or skid-on method, and (ii) refers to loading the Cargo by the float-on method. Sub-clauses 4.(f)(i)-(ii) states the methods of discharging: (i) refers to discharging the Cargo by lift-off, roll-off or skid-off method, and (ii) refers to discharging the Cargo by float-off method.

The additional options of loading and discharging methods stated in the original Sub-clauses 4.3.(a) and 4.6.(a) providing for the Owners loading/discharging the Cargo with their own gear and tackle, have been deleted from HEAVYCON 2007 as these options are never used in the heavylift trade. Another change in HEAVYCON 2007 is that last sentence of the original Sub-clause 4.3.(c) has been deleted. The provision, by which the Owners were to reimburse the Charterers for the use of workboats or tugs, is not needed as this is standard in the heavylift trade.

4.(h) The Sub-clause consolidates the provisions for responsibility for compulsory shore labour previously dealt with in sub-clauses 4.3.(b) and 4.6.(b). The wording of Sub-clause (h) is more in line with the wording in other BIMCO forms.

#### **5. Permits/Licences**

- (a) All necessary permits and/or licences pertaining to the loading and/or discharging operations shall be provided and paid for by the Charterers, unless such permits and/or licences can only be obtained by the Owners, in which case they shall be provided by the Owners but paid for by the Charterers.

The Owners and the Charterers shall assist each other in obtaining such permits and/or licences.

- (b) Any delay caused by the Charterers in obtaining the permits and/or licences related to sub-clause 5(a) shall be at the Charterers' time and any time lost shall be paid for at the demurrage rate stipulated in **Box 19**.

#### **Notes – Permits/Licences**

5.(a) The Charterers may often find it difficult to obtain the necessary permits/licences for the loading/discharging operations. Thus, in HEAVYCON 2007 it has been added that in case such permits/licences can only be obtained by the Owners, then they shall be provided by the Owners but paid for by the Charterers. In general, the parties shall assist each other in this respect which is now clarified in the Clause.

#### **6. Duties, Taxes and Charges**

The Charterers shall pay all duties, taxes and charges whatsoever levied or based on the Cargo and/or the freight at the Loading Port and/or Discharging Port irrespective of how the amount thereof may be assessed, including agency commission assessed on the basis of the freight.

#### **Notes – Duties, Taxes and Charges**

In HEAVYCON 2007 it is clarified that the Charterers shall pay all duties etc. levied *or based* on the Cargo to take into account taxes levied on the Owners but based on the Cargo.

#### **7. Quarantine**

Unless due to health conditions on board the Vessel, any time lost as a result of quarantine formalities and/or health restrictions imposed or incurred at any stage of the voyage, including any such loss of time at the Loading Port and/or the Discharging Port, shall be paid for by the Charterers at the demurrage rate specified in **Box 19**. The Charterers shall also pay for all other expenses which may be incurred as a result thereof.

#### Notes – Quarantine

The provisions clarify the responsibility as between the parties for time lost as a result of quarantine formalities or imposition of health restrictions.

#### 8. Commencement of Loading/Cancelling Date

- (a) The first layday shall be on or between the dates stated in **Box 10** ("the Period").
- (b) The Period shall be narrowed down to one firm date ("the First Layday") in accordance with the notification schedule in **Box 11**. If **Box 11** is not filled in then the notification schedule is in Owners' option.
- (c) Each narrowed Period shall always be within the previously notified Period and the number of days' notice shall always be prior to the first day of the previously notified Period.
- (d) The cancelling date shall be the number of days stated in **Box 12** after the First Layday ("the Cancelling Date"). If **Box 12** is not filled in then fourteen (14) days shall apply.
- (e) The date of commencement of the loading shall be at any time on or between the First Layday and the Cancelling Date, both dates inclusive, in the Owners' option. Should the Owners give notice of readiness prior to the First Layday, the Charterers may, at their option, accept such an earlier loading date and the time used shall count against the free time in accordance with Clause 13 (Free Time/Demurrage).
- (f) Should it appear that the Vessel will not be ready to commence loading latest on the Cancelling Date the Owners shall immediately notify the Charterers. The Owners shall state a new cancelling date as soon as they are in a position to do so with reasonable certainty.  
  
Within seventy-two (72) running hours after receipt of the Owners' notice as aforesaid and latest when the Vessel is ready for loading, whichever is the earlier, the Charterers shall advise the Owners whether they elect to cancel this Charter Party, failing such advice the new cancelling date as notified by the Owners shall become the Cancelling Date.
- (g) Should the Charterers cancel the Charter Party in accordance with sub-clause (f), any amount paid to the Owners in advance and not earned shall be returned to the Charterers by the Owners.
- (h) The Owners shall not be responsible for any loss or damages whatsoever incurred by the Charterers as a result of the Charterers cancelling this Charter Party in accordance with sub-clause (f) nor shall the Owners be responsible for any loss or damages whatsoever suffered by the Charterers as a result of the failure of the Vessel to be ready for loading latest on the Cancelling Date.
- (i) Should the Cargo for reasons beyond the Owners' control not be loaded within fourteen (14) days after the free time for loading stated in **Box 18** has expired, the Owners shall have the option to cancel this Charter Party or to sail with only part of the Cargo on board.
- (j) If the Owners exercise their option to cancel the Charter Party in accordance with sub-clause (i), the Charterers shall pay to the Owners the applicable termination fee according to the provisions of Clause 21 (Termination) in addition to any demurrage incurred.
- (k) If the Owners exercise their option to sail with part of the Cargo on board in accordance with sub-clause (i) the Charterers shall pay to the Owners the full freight stated in **Box 16** in addition to any demurrage incurred.

#### Notes – Commencement of Laydays/Cancelling Date

8.(a)-(d) The Clause states the method for establishing the First Layday and the Cancelling Date. The parties are left with substantial freedom in this respect: In Box 10 the parties fill in the dates ("the Period") between which the First Layday shall be. In Box 11 the parties agree on a notification schedule according to which the Period is narrowed down to a firm date ("the First Layday"); notices can be given by Owners or Charterers, as the parties may agree.

In Box 12 the parties decide the number of days after the First Layday after which the charter party can be cancelled.

It will seldom happen that Box 11 is not filled in as the notification schedule is a very important issue for the Charterers. If Box 11 is not filled in then the notification schedule is in the Owners' option.

8.(f) Of particular interest is this interpellation provision by which the Owners are entitled to set a new Cancelling Date in case it appears that the Vessel is not able to commence loading latest at the Cancelling Date. The provision is advantageous to both the Owners and the Charterers. With today's market and the high daily running costs for the specialised heavy-lift vessels, it would not be fair to the Owners, if they had to continue on a ballast voyage to the Loading Port not knowing whether the Charterers will accept the Vessel or not. The Sub-clause gives clear guidelines

as to how to fix the new Cancelling Date. The Charterers, on the other hand, are helped to re-arrange their loading schedules if the Owners inform them according to the interpellation provision.

8.(i) deals with the situation where the Charterers have not tendered the full cargo within a given period. Where previously the Owners' only option was to cancel the Charter Party, the Owners now have an option to sail with part of the Cargo. Furthermore, where previously the time limit was linked to the Notice of Readiness, it is now linked to the expiry of free time for loading. This is advantageous to the Charterers, because this gives them more time to tender the full Cargo.

**9. Advance Notices**

(a) *Advance Notices of Expected Load-readiness*

The Owners shall give notices of the expected day of the Vessel's arrival and/or readiness to load fourteen (14) days, seven (7) days and three (3) days in advance unless otherwise stated in Box 12. Furthermore, the Owners shall give twenty-four (24) hours approximate notice of the expected hour of the Vessel's readiness to load.

(b) During the voyage the Owners shall give notice of expected time of arrival at Discharging Port with intervals of the number of days stipulated in **Box 14**.

**Notes – Notices**

The Clause originally dealt with notices in respect of (a) Expected Load-Readiness and (b) Notice of Readiness. In HEAVYCON 2007 Notice of Expected Load-readiness and Notice of Readiness are separated into two Clauses to create more clarity. Clause 9 now only deals with Notices of Expected Load-readiness.

9.(a) Contrary to the original HEAVYCON, the parties are free to agree the length of notices in HEAVYCON 2007. Only when the parties have not agreed the length of notices, the default notices in Clause 9 applies.

9.(b) The original Sub-clause 9.3 now forms Sub-clause 9.(b) and "or place(s)" has been added after "at discharging port(s)".

**10. Notice of Readiness**

The Owners shall give notice of readiness as per **Box 13** advising when the Vessel is ready to commence loading at the Loading Port and when the Vessel is ready to commence discharging at the Discharging Port as per **Box 14**. All notices may be given at any time of the day or night, Saturdays, Sundays (or their local equivalents) and holidays included and notwithstanding hindrances as referred to in Clause 3(c) (Deviations/Delays/ Part Cargo).

**Notes – Notice of Readiness**

The Owners are no longer confined to special means of communication when giving the notice of readiness.

**11. Marine Surveyor/Condition of the Vessel and Cargo**

(a) The Marine Surveyor(s) stated in **Box 15** shall be appointed for this Transportation. If **Box 15** has not been filled in the Charterers and the Owners shall agree on the appointment of Marine Surveyor(s) acceptable to the cargo underwriters.

(b) All relevant documentation required by the Marine Surveyor(s) for their approval of the Transportation shall be submitted to the Marine Surveyor at the earliest possible stage after this Charter Party is concluded, if not already submitted earlier. As soon as possible after submission of the relevant documentation, Transportation approval shall be given by the Marine Surveyor.

(c) The Charterers shall pay all expenses relating to the production of documentation related to the Cargo and/or the Charterers' equipment. The Owners shall pay all expenses relating to documentation related to the Vessel and all other equipment being provided by the Owners in the performance of the Transportation.

(d) The Charterers shall arrange and pay for all the Marine Surveyor(s) services, including approval of the Transportation.

(e) The Charterers warrant that the full description of the Cargo stated in **Box 5** is correct and further warrant that the Cargo is in all respects tight, staunch, strong and in every way fit for the Transportation.

(f) Should the Cargo and/or its description not be in compliance with the aforesaid then the Owners shall have the option to cancel this Charter Party.

- (g) If the Owners exercise their option to cancel the Charter Party in accordance with this Clause the Charterers shall pay to the Owners the applicable termination fee according to the provisions of Clause 21 (Termination).

**Notes - Marine Surveyor/Condition of the Vessel and Cargo**

The original Sub-clause 10.4 has been deleted. The provision stated that the Charterers and the Owners had an option to cancel the Charter Party in case the Marine Surveyor did not give transportation approval. However, since in practice the Marine Surveyor gives his approval when the cargo has been loaded and seafastened, the provision did not work.

**12. Freight**

- (a) The freight stipulated in **Box 16** shall be paid in instalments in accordance with **Box 17**. If **Box 17** is not completed then freight shall be fully prepaid upon completion of loading against surrender of the HEAVYCONRECEIPT or HEAVYCONBILL whichever the case may be. The freight shall be deemed earned upon completion of loading and shall be non-returnable whether the Vessel and/or Cargo is lost or not lost and whether lost due to perils of the sea or howsoever. The freight instalments shall be paid in full without any deductions in the currency and to the Owners' bank account stated in **Box 17**.
- (b) In the event of change in applicable laws or regulations and/or interpretation thereof, resulting in an unavoidable and documented change of the Owners' costs after the date of entering into the Charter Party, freight shall be adjusted accordingly.

**Notes – Freight**

12.(a) The provision states how freight is to be paid by the Charterers. Freight is to be paid in instalments according to a payment model agreed to by the parties. Only if the parties have not made any agreement, the fall-back position applies that freight is to be fully prepaid against surrender of either HEAVYCONRECEIPT or HEAVYCONBILL.

The term "discountless" has been replaced with "in full without any deductions". By adding the term "any" in front of "deductions" the provision encompasses discounts of whatsoever nature, including set-off.

Similarly, the term "telegraphically remitted" has been deleted and the parties can now agree how to transfer the freight instalments to the Owners' bank account.

12.(b) is new and refers to changes in relevant laws and/or regulations after the fixture. The wording "the freight shall be adjusted accordingly" takes such changes into account and imposes an obligation on the parties to adjust the freight. Similar provisions are found in other offshore/drilling contracts and therefore acceptable to both Charterers and Owners.

**13. Free Time/Demurrage**

- (a) The Charterers are allowed the free time stipulated in **Box 18** in the loading and discharging port(s) and for canal transit if applicable, Saturdays, Sundays (or their local equivalent) and holidays included.

The free time at the Loading Port shall start counting when notice of readiness has been tendered, in accordance with **Clause 10 (Notice of Readiness)**, whether in berth or not, unless loading has commenced earlier and shall count until the Cargo is in all respects fully seafastened on board the Vessel and approved by the Marine Surveyor(s).

The free time at the Discharging Port shall start counting when notice of readiness has been tendered in accordance with **Clause 10 (Notice of Readiness)**, whether in berth or not, unless discharge has commenced earlier and shall count until the Cargo is in all respects removed from the Vessel.

- (b) Demurrage shall be payable for all time used in excess of the free time. The demurrage rate for the Vessel is the amount stipulated in **Box 19** calculated per day or pro rata for part of a day.
- (c) Free time shall not count and if the Vessel is on demurrage, demurrage shall not accrue for time lost by reason of deficiency of the Master, officers or crew or strike or lockout of the Master, officers or crew or by reason of breakdown of the Vessel or its equipment.
- (d) Demurrage and other amounts which are calculated at the demurrage rate fall due day by day and are payable by the Charterers promptly, upon presentation of the Owners' invoice, to the Owners' bank account stated in **Box 17**.

#### Notes – Free Time/Demurrage

In HEAVYCON 2007, the term “free time” is used for the time allowed for loading and discharging operations. This term differs from the corresponding term “laytime” in other charter parties. The term “free time” is, however, well established and recognized in the heavylift sector.

13.(a) In order to create consistency with other BIMCO forms, “Fridays” in front of “Saturdays, Sundays and holidays included” has been deleted and “or their local equivalent” has been added.

Sub-clause 12.1. in the original HEAVYCON provided that free time at loading port(s) should start counting 6 running hours after notice of readiness has been tendered. In practice, loading operations start before the 6 running hours have expired, because both parties want the process to finish as quickly as possible, and there is no need to wait 6 hours before free time starts counting. Since the Sub-clause already recognized such earlier loading by stating “unless loading has commenced earlier” and since the “6 running hours” time frame is considered more relevant for the mid-size industry, the time frame has been deleted from Sub-clause 13.(a) in HEAVYCON 2007.

The fourth paragraph of Sub-clause 12.1. in the original HEAVYCON dealt with situations in which free time did not count. Since there is a need for a provision dealing with delays caused by the Owners, Clause 13.(c) in HEAVYCON 2007 has been phrased broader to justify deletion of the fourth paragraph in the original Sub-clause 12.1.

13.(c) ensures that the Charterers are not obliged to pay demurrage in case of a delay caused by a reason within the Owners’ control. Even from an Owners’ point of view this is reasonable.

13.(d) The Sub-clause only makes sense if demurrage is earned. Thus, “day by day” has been added after “fall due”. The last paragraph in Sub-clause 12.4 in the original HEAVYCON has been deleted from HEAVYCON 2007. It is not clear what is meant by “the Owners are entitled to *demurrage on account*”.

#### 14. Mobilisation/Demobilisation

(a) *Mobilisation*

If agreed upon in **Box 20** the Charterers shall pay the lump sum stipulated therein in respect of mobilisation, which amount shall be earned and non-returnable upon the Vessel’s arrival in the Loading Port.

(b) *Demobilisation*

If agreed upon in **Box 21** the Charterers shall pay the lump sum stipulated therein in respect of demobilisation, which amount shall be earned and non-returnable upon the Vessel’s arrival in the Discharging Port.

(c) The mobilisation and demobilisation amounts shall be payable against the Owners’ invoice.

#### Notes – Mobilisation/Demobilisation

Payment of mobilisation and demobilisation fees is not mandatory, and the parties are free to negotiate the size of the fees. The agreed figures should be filled in Part I. If the parties have not filled in the relevant boxed, no fee is payable.

#### 15. Canal Transit

(a) If the Transportation is scheduled to pass through the canal stated in **Box 7**, the Charterers shall be granted free time for any such transit, and such free time shall count against the number of hours stipulated in **Box 18**. If the Transportation is delayed beyond the free time stipulated therein, the Charterers shall pay for such extra transit time at the rate of demurrage stipulated in **Box 19** and paid in accordance with **Clause 13(d) (Free Time/Demurrage)** and shall, in addition, pay for all other documented extra expenses thereby incurred. Canal transit time is defined as from arrival at pilot station or customary waiting place or anchorage, whichever is the earlier, and until dropping last outbound pilot when leaving for the open sea.

(b) The freight rate stipulated in **Box 16** is based upon the Owners paying canal tolls limited to the amount stipulated in **Box 22**. Any increase in the canal tolls and/or any additional expenses imposed on the Transportation for the canal transit actually paid by the Owners shall be reimbursed by the Charterers to the Owners upon presentation of the Owners’ invoice.

(c) Should the transit of a canal be made impossible for reasons beyond the Owners’ control, the Charterers shall pay for all extra time by which the voyage is thereby prolonged at the rate of demurrage stipulated in **Box 19** and paid in accordance with **Clause 13(d) (Free Time/Demurrage)**.

The Charterers shall also pay all other expenses, including bunkers, in addition to those which would normally have been incurred had the Vessel been standing-by in port less the amount of canal tolls saved by the Owners for not having transitted the canal.

- (d) Notwithstanding the provisions of sub-clause (c) the Owners may, at their sole discretion, instruct the Master to discharge the cargo at the nearest safe and reachable port or place and such discharge shall be deemed due fulfilment of the Charter Party. All provisions of this Charter Party regarding freight, discharge of the cargo, free time and demurrage as agreed for the original Discharging Port shall also apply to the discharge at the substitute port.

**Notes – Canal Transit**

In practice the Clause is only relevant if the transportation is scheduled to pass through either Panama and/or Suez and except from minor changes the Clause has been left unamended.

15.(c) The reference to canal tolls “being refunded to” has been replaced with “saved by”. The Owners will not have paid out for canal tolls in advance, thus there is nothing to “being refunded”. However, the freight rate needs to be adjusted to take into account of the cost of tolls saved.

Box 7 in Part I has been changed to take into account situations with river transits.

**16. Bunker Escalation**

This Charter Party is concluded on the basis of the price per metric ton and the quantity and grades of bunkers stated in **Box 23**.

If the price actually paid by the Owners for this quantity of bunkers should be higher, the difference shall be paid by the Charterers to the Owners.

If the price actually paid by the Owners for this quantity of bunkers should be lower, the difference shall be paid by the Owners to the Charterers.

**Notes – Bunker Escalation**

Clause 15 in the original HEAVYCON has been replaced with the Bunker Escalation Clause found in PROJECTCON with the addition that also the various grades of bunkers can be stated in Part I. The replacement means that the bunker price(s) should no longer be the price(s) in force on the date of the Charter Party but simply the price(s) specified in Part I.

The quantities of bunkers, which may include consumption during mobilisation and demobilisation, are agreed upon by the parties when concluding the charter party.

In case of deviation, Clause 12 on Free time/Demurrage will apply.

**17. BIMCO Ice Clause for Voyage Charter Parties**

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

(a) Port of Loading

- (i) If at any time after setting out on the approach voyage the Vessel's passage is impeded by ice, or if on arrival the loading port is inaccessible by reason of ice, the Master or Owners shall notify the Charterers thereof and request them to nominate a safe and accessible alternative port.

If the Charterers fail within 48 running hours, Sundays and holidays included, to make such nomination or agree to reckon laytime as if the port named in the Charter Party were accessible or declare that they cancel the Charter Party, the Owners shall have the option of cancelling the Charter Party. In the event of cancellation by either party, the Charterers shall compensate the Owners for all proven loss of earnings under this Charter Party.

- (ii) If at any loading port the Master considers that there is a danger of the Vessel being frozen in, and provided that the Master or Owners immediately notify the Charterers thereof, the Vessel may leave with cargo loaded on board and proceed to the nearest safe and ice free place and there await the Charterers' nomination of a safe and accessible alternative port within 24 running hours, Sundays and holidays excluded, of the Master's or Owners' notification. If the Charterers fail to nominate such alternative port, the Vessel may proceed to any port(s), whether or not on the customary route for the chartered voyage, to complete with cargo for the Owners' account.

(b) Port of Discharge

- (i) If the voyage to the discharging port is impeded by ice, or if on arrival the discharging port is inaccessible by reason of ice, the Master or Owners shall notify the Charterers thereof. In such case, the Charterers shall have the option of keeping the Vessel waiting until the port is

accessible against paying compensation in an amount equivalent to the rate of demurrage or of ordering the Vessel to a safe and accessible alternative port.

If the Charterers fail to make such declaration within 48 running hours, Sundays and holidays included, of the Master or Owners having given notice to the Charterers, the Master may proceed without further notice to the nearest safe and accessible port and there discharge the cargo.

- (ii) If at any discharging port the Master considers that there is a danger of the Vessel being frozen in, and provided that the Master or Owners immediately notify the Charterers thereof, the Vessel may leave with cargo remaining on board and proceed to the nearest safe and ice free place and there await the Charterers' nomination of a safe and accessible alternative port within 24 running hours, Sundays and holidays excluded, of the Master's or Owners' notification. If the Charterers fail to nominate such alternative port, the Vessel may proceed to the nearest safe and accessible port and there discharge the remaining cargo.
- (c) On delivery of the cargo other than at the port(s) named in the Charter Party, all conditions of the Bill of Lading shall apply and the Vessel shall receive the same freight as if discharge had been at the original port(s) of destination, except that if the distance of the substituted port(s) exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port(s) shall be increased proportionately.

**Notes – BIMCO General Ice Clause for Voyage Charter Parties**

This clause is the latest edition of the BIMCO General Ice Clause for Voyage Charter Parties, adopted by the Documentary Committee in November 2004. More information on this clause can be found in BIMCO Bulletin No. 6/2004 page 42. The Bulletin is available for members at [www.bimco.org](http://www.bimco.org).

**18. Dangerous Cargo**

If part of the Cargo is of an inflammable, explosive or dangerous nature or condition or at any stage may develop into such nature or condition it must be packed and stored or stowed in accordance with the IMO Dangerous Goods Code and/or other applicable regulations always to the full satisfaction of the Master. Any delay to the Transportation in this respect shall be paid for by the Charterers at the demurrage rate stipulated in **Box 19** and in accordance with Clause 13(d) (Free Time/Demurrage).

**Notes – Dangerous Cargo**

The Clause covers various contingencies if part of the Cargo is of a dangerous nature.

**19. Lien**

The Owners shall have a lien on the Cargo and any Charterers' equipment for all freight and all other expenses in relation to the Transportation, deadfreight, advances, demurrage, damages for detention, general average and salvage including costs for recovering same.

**Notes – Lien**

The main objective of this Clause is to preserve the Owners' contractual right to lien the cargo and any of the Charterers' equipment.

**20. Substitution**

The Owners shall, at any time before the Cancelling Date, be entitled to substitute the Vessel named in **Box 4** with another vessel of equivalent capability and capacity, provided such substitute vessel is approved by the Marine Surveyor(s) and subject also to the Charterers' prior approval, which shall not be unreasonably withheld. Nothing herein shall be construed as imposing on the Owners an obligation to make such substitution.

**Notes – Substitution**

The original wording did not make substitution subject to the Charterers' prior approval. This was considered to be unpractical for the Charterers' business and it is now added that the substitute vessel – in addition of being approved by the Marine Surveyor – is also subject "to the Charterers' prior approval, which shall not be unreasonably withheld". This phrase is also used in PROJECTCON.

Parties should be aware that the Owners are *entitled* to substitution, i.e. they are not obliged to substitution.

## 21. Termination

- (a) Notwithstanding anything else provided herein, the Charterers shall have the right to terminate this Charter Party prior to the Vessel's arrival at the first loading port against payment of the applicable amount stated in **Box 24** less any prepaid freight.
- (b) Furthermore, the Charterers shall have the right to terminate this Charter Party after the Vessel's arrival at the first loading port but not later than upon commencement of loading against payment of the applicable amount stated in **Box 24** plus compensation for all time spent at the first loading port at the demurrage rate stated in **Box 19** less any prepaid freight together with the actual expenses incurred by the Owners in preparation for the loading.
- (c) If **Box 24** is not filled in, this Clause shall be deemed to be deleted.

### Notes – Termination

With this Clause, the Charterers have an additional right to terminate the Charter Party.

21.(a) and (b) The Clauses provide the Charterers with a right to terminate the Charter Party up to loading of the cargo but not after commencement of loading.

21.(c) The original Sub-clause stated that "If box 24 is not filled in, this Clause shall not apply". This wording did not clearly indicate the consequences in case the box was not filled in. Did it mean that there was no right for the Charterers to cancel at all or did it give the Charterers the right to cancel after commencement of loading? The phrase has now been replaced with "be deemed to be deleted" in the end of the Sub-clause. The rights of termination will then still be subject to law.

## 22. Liabilities and Indemnities

- (a) Definitions
  - For the purpose of this Clause "Owners' Group" shall mean: the Owners, and their contractors and sub-contractors, and employees of any of the foregoing.
  - For the purpose of this Clause "Charterers' Group" shall mean: the Charterers, and their 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), and employees of any of the foregoing.
- (b) Knock for Knock
  - (i) Owners - Notwithstanding anything else contained in this Charter Party excepting Clauses 24(b) (Pollution), 29 (Both to Blame Collision Clause) and 30 (General Average and New Jason Clause), the Charterers shall not be responsible for loss of or damage to the property of any member of the Owners' Group, including the Vessel, any liability in respect of wreck removal and the expense of moving, lighting or buoying the Vessel, any liability in respect of personal injury or death of any member of the Owners' Group, and any liability in respect of other cargo on board not the subject of this Charter Party, arising out of or in any way connected with the performance of this Charter Party, even if such loss, damage, injury or death is caused wholly or partially by the act, neglect, or default of the Charterers' Group, and even if such loss, damage, injury or death is caused wholly or partially by unseaworthiness of any vessel; and the Owners shall indemnify, protect, defend and hold harmless the Charterers 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, personal injury or death.
  - (ii) Charterers - Notwithstanding anything else contained in this Charter Party excepting Clause 24(a) (Pollution), 29 (Both to Blame Collision Clause) and 30 (General Average and New Jason Clause), the Owners shall not be responsible for loss of or damage caused to or sustained by the Cargo or the property of any member of the Charterers' Group, whether owned or chartered, any liability consequent upon delay to the Cargo, any liability in respect of wreck removal and the expense of moving, lighting or buoying the Cargo, any liability in respect of personal injury or death of any member of the Charterers' Group, arising out of or in any way connected with the performance of this Charter Party, even if such loss, damage, liability, injury or death is caused wholly or partially by the act, neglect or default of the Owners' Group, and even if such loss, damage, liability, injury or death is caused wholly or partially by the unseaworthiness of any vessel; and the Charterers shall indemnify, protect, defend and hold harmless the Owners 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, personal injury or death.

#### **Notes – Liabilities and Indemnities**

The Clause has been amended to be consistent with the formula used in SUPPLYTIME 2005, in particular in respect of the division in Owners' and Charterers' Groups. The wording in SUPPLYTIME 2005 has been amended to suit a voyage charter party. However, to keep consistency between the Liabilities and Indemnities provisions of SUPPLYTIME 2005 and HEAVYCON 2007, only a minimum of changes has been made.

22.(a) is a "preamble" and contains the definitions of the Owners' and Charterers' Groups. This will facilitate easier reading and understanding of the Clause,

22.(b) clearly indicates that the Owners' and Charterers' liability is based on a Knock for Knock liability regime, which is common in the heavylift trade. In general, this means that the Charterers take responsibility for the Cargo whereas the Owners take responsibility for the Vessel. Each party pays the claims of its own group following an accident. The Knock for Knock liability regime applies irrespective of blame and seeks to save time and expense in connection with casualties.

Sub-clause 21.2. in the original HEAVYCON dealt with Charterers' liability for delays. Delays are not dealt with in Clause 22 of HEAVYCON 2007, because delays have been considered an issue completely different from the damages mentioned in Clause 22.

The original Sub-clauses 21.3 – 21.5 has been moved to a separate Clause on Bills of Lading and Cargo Receipts. This is considered both more appropriate and logic.

#### **23. Consequential Damages**

Neither party shall be liable to the other for any consequential damages whatsoever arising out of or in connection with the performance or non-performance of this Charter Party, and each party shall protect, defend and indemnify the other from and against all such claims from any member of its Group as defined in Clause 22 (Liabilities and Indemnities).

"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.

#### **Notes – Consequential Damages**

This is a new Clause introducing the Consequential Damages Clause in SUPPLYTIME 2005. The Clause concerns performance claims under the Charter Party and a mutual obligation for each party to defend the other if a claim for which the other party is liable is claimed from the non-liable party. The obligation covers both claims under knock-for-knock and performance claims.

#### **24. Pollution**

(a) The Owners shall be liable for, and agree to indemnify, 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 originating from the Vessel or other property of the Owners.

(b) The Charterers shall be liable for, and agree to indemnify, defend and hold harmless the Owners 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 originating from the Cargo or other property of the Charterers.

#### **Notes – Pollution**

The original HEAVYCON did not deal with pollution. However, since heavylift vessels and the cargo carried onboard can result in pollution, Clause 24 in HEAVYCON 2007 establishes who is responsible for pollution damage originating from the Vessel and from the Cargo.

#### **25. Bill of Lading or Cargo Receipt**

The Owners and the Charterers shall agree and state in **Box 25** whether a Bill of Lading or a non-negotiable Cargo Receipt will be issued by Owners upon loading of the Cargo.

##### **(a) \*Bill of Lading**

If, as stated in **Box 25**, the Owners have agreed to issue a Bill of Lading, same shall be as per the HEAVYCONBILL form which shall incorporate all terms, conditions, liberties, clauses and exceptions of this Charter Party, including the Dispute Resolution Clause.

(i) The Owners shall not be liable for any loss, damage or delay to the Cargo in the period before loading and after discharge.

- (ii) Unless otherwise agreed, the Cargo shall be shipped on deck at Shippers' risk and the Owners not to be responsible for any loss or damage or delay to the Cargo whatsoever and whether due to negligence of whosoever or howsoever arising and by whosoever caused, and the Bill of Lading issued hereunder shall be so claused.
- (iii) If the Cargo is shipped under deck,
  1. The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 ("the Hague Rules") as amended by the Protocol signed at Brussels on 23 February 1968 ("the Hague-Visby Rules") and as enacted in the country of shipment shall apply to this Contract. When the Hague-Visby Rules are not enacted in the country of shipment, the corresponding legislation of the country of destination shall apply, irrespective of whether such legislation may only regulate outbound shipments.
  2. When there is no enactment of the Hague-Visby Rules in either the country of shipment or in the country of destination, the Hague-Visby Rules shall apply to this Contract save where the Hague Rules as enacted in the country of shipment or if no such enactment is in place, the Hague Rules as enacted in the country of destination apply compulsorily to this Contract.
  3. The Protocol signed at Brussels on 21 December 1979 ("the SDR Protocol 1979") shall apply where the Hague-Visby Rules apply, whether mandatorily or by this Contract.
  4. The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging, or while the cargo is in the charge of another carrier, or with respect to deck cargo and live animals.

(b) **\*Cargo Receipt**

If, as stated in **Box 25**, the Owners have agreed to issue a non-negotiable Cargo Receipt, same shall be as per the HEAVYCONRECEIPT form incorporating all terms, conditions, liberties, clauses and exceptions of this Charter Party, including the Dispute Resolution Clause.

- (i) It is expressly agreed that neither the Hague Rules nor the Hague-Visby Rules nor any statutory enactment thereof shall apply to this Charter Party and to the Cargo Receipt, unless compulsorily applicable, in which case the Owners take all reservations possible under such applicable legislation, relating to the period before loading and after discharging and while the goods are in the charge of another carrier, and to deck cargo.
- (ii) Unless otherwise agreed, the Cargo shall be shipped on deck at the Charterers' risk and the Owners not to be responsible for any loss or damage or delay to the Cargo whatsoever and whether due to negligence of whosoever or howsoever arising and by whosoever caused, and the Cargo Receipt issued hereunder shall be so claused.
- (iii) If the Cargo is shipped under deck, the Cargo Receipt shall be claused as per sub-clause (ii) above.
- (iv) The Cargo Receipt shall always be claused "All Risks Insurance has been placed for the full value of this cargo by the Charterers and in the name of the Charterers and the Owners."

(c) *\* Indicate alternative 25(a)(Bill of Lading) or 25(b)(Cargo Receipt), as agreed, in **Box 25**.*

**Notes – Bill of Lading or Cargo Receipt**

Sub-clauses (a) and (b) are alternatives.

The Bill of Lading provision in Sub-clause (a) has been amended to incorporate BIMCO's General Clause Paramount.

Sub-clause (b) provides the parties with the possibility of using a non-negotiable Cargo Receipt since in the heavy lift trade it is often the case that a bill of lading is not required because no on-sale of the Cargo during transit is contemplated. The advantage of using a Cargo Receipt is also that it is not necessary to present the Cargo Receipt at the Discharge Port in order to receive the Cargo. The Cargo can be delivered to the receivers nominated by the Charterers on production of proof of identity without any documentary formalities.

In both alternatives it is presumed that the Cargo will be shipped on deck. However, in the very rare cases where Cargo may be shipped under deck, both Sub-clauses contain suitable provisions takes into account such cases.

**26. Insurance**

(a) Without prejudice to the Charterers' obligations and liabilities under this Charter Party, the Charterers shall ensure that there is taken out and maintained at all material times and throughout the duration of this Charter Party a policy or policies of insurance in respect of all loss or damage to the Cargo up to the full value of the Cargo including but not limited to a policy or policies comprising All Risks cargo cover and cover against liabilities to third parties (including liability in respect of death and injury and claims for consequential loss), and wreck removal of the Cargo. The Charterers shall arrange without cost to the Owners that the Owners shall be named as co-insured under the said policy or policies of insurance and the Charterers shall arrange that the underwriters waive the right of subrogation against the Owners.

The Charterers hereby agree to produce the original certificates of insurance maintained hereunder to the Owners or their appointed representatives when requested so to do.

(b) The Owners shall arrange at their expense such insurance(s) as required to protect the Charterers against the Owners' liabilities under Clause 22 (Liabilities and Indemnities).

The Owners hereby agree to produce the original certificate(s) of insurance maintained hereunder to the Charterers or their appointed representatives when requested to do so.

**Notes – Insurance**

Closely related to the matters covered by Clause 22 (Liabilities and Indemnities) are the provisions concerning insurance laid down in Clause 26. Parties using the HEAVYCON 2007 Charter Party are advised to study carefully the provisions of both clauses.

**27. Himalaya Cargo Clause**

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

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

**Notes – Himalaya Cargo Clause**

The Clause protects the servants and agents of the Owners (including independent contractors) participating in the performance of the Transportation and is not limited to stevedores. It is designed to afford such servants or agents at least the same protection as the Owners have under Bills of Lading issued by them or on their behalf.

**28. Salvage**

The Owners shall waive their right to claim any award for salvage performed on property owned by or contracted to the Charterers, always provided such property was the object of the operation the Vessel was chartered for, and the Vessel shall remain on hire when rendering salvage services to such property. This waiver is without prejudice to any right the Vessel's Master, Officers and Crew may have under any title.

If the Owners render assistance to such property in distress on the basis of "no claim for salvage", then, notwithstanding any other provisions contained in this Charter Party and even in the event of neglect or default of the Owners, Master, Officers or Crew:

(a) The Charterers shall be responsible for and shall indemnify the Owners against payments made, under any legal rights, to the Master, Officers and Crew in relation to such assistance.

(b) The Charterers shall be responsible for and shall reimburse the Owners for any loss or damage sustained by the Vessel or her equipment by reason of giving such assistance and shall also pay the

Owners' additional expenses thereby incurred.

- (c) The Charterers shall be responsible for any actual or potential spill, seepage and/or emission of any pollutant howsoever caused occurring within the offshore site and any pollution resulting therefrom wheresoever it may occur and including but not limited to the cost of such measures as are reasonably necessary to prevent or mitigate pollution damage, and the Charterers shall indemnify the Owners against any liability, cost or expense arising by reason of such actual or potential spill, seepage and/or emission.
- (d) The Charterers shall indemnify the Owners against any liability, cost and/or expense whatsoever in respect of any loss of life, injury, damage or other loss to person or property howsoever arising from such assistance.

**Notes – Salvage**

This Clause is new and is taken from SUPPLYTIME to bring in a salvage waiver clause.

**29. Both-to-Blame Collision Clause**

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

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

**Notes – Both-to-Blame Collision Clause**

This is a standard Clause providing for the distribution of liabilities in case of collision between the Vessel and another vessel or object where both vessels are at fault.

**30. General Average and New Jason Clause**

General average shall be adjusted and settled in London unless otherwise stated in **Box 26**, according to the York/Antwerp Rules, 1994, but if, notwithstanding the provisions specified in **Box 26**, the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:

“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, Owners are not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with Owners in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods. If a salving vessel is owned or operated by Owners, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as Owners, or their agents, may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to Owners before delivery”.

**Notes – General Average and New Jason Clause**

The latest version of BIMCO's General Average standard clause is inserted in HEAVYCON 2007.

BIMCO has decided that all new and revised BIMCO charter parties will refer only to “York-Antwerp Rules 1994”. The previously used additional text to the effect of “or any subsequent modification thereto” will no longer be used. Although BIMCO considers the YAR 2004 to be a new set of Rules and not in anyway a modification or amendment of the 1994 Rules (a view shared by the authors of the new Rules), it is felt that the clarification of the text will help avoid any possible misinterpretation of BIMCO's position.

If adjustment is made in accordance with US law and practice the New Jason Clause will apply.

**31. War Risks (VOYWAR 2004)**

(a) For the purpose of this Clause, the words:

- (i) "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and
- (ii) "War Risks" shall include any actual, threatened or reported:

War; act of war; civil war; hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy; acts of terrorists; acts of hostility or malicious damage; 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.

(b) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Charter Party, or any part of it, may expose, or is likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Charter Party, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Charter Party provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterers the Vessel, her cargo, crew, or other persons onboard the Vessel may be exposed, or may be likely to be exposed, to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Charter Party if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.

(c) The Owners shall not be required to continue to load cargo for any voyage, or to sign Bills of Lading for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo (or any part thereof), crew or other persons on board the Vessel (or any one or more of them) may be, or are likely to be, exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Charter Party. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight.

(d) If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo, crew or other persons on board the Vessel may be, or are likely to be, exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.

(e)

- (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.
- (ii) If the Underwriters of such insurance should require payment of premiums and/or calls because, pursuant to the Charterers' orders, or in order to fulfil the Owners' obligation under this Charter Party, 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 within 14 days after receipt of the Owners' invoice. If the Vessel discharges all of her cargo within an area subject to additional premiums as herein set forth, the Charterers shall reimburse the Owners for the actual additional premiums paid which may accrue from completion of discharge until the Vessel leaves such area or areas referred to above. The Owners shall leave the area as soon as possible after completion of discharge.

- (f) The Vessel shall have liberty: -
- (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 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 which so requires, or any body or group acting with the power to compel compliance with their orders or directions;
  - (ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;
  - (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;
  - (iv) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;
  - (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;
  - (vi) where cargo has not been loaded or has been discharged by the Owners under any provisions of this Clause, to load other cargo for the Owners' own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the ordinary or customary route.
- (g) If in compliance with any of the provisions of sub-clauses (b) to (e) of this Clause anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Charter Party.

**Notes – War Risks (VOYWAR 2004)**

Clause 31 incorporates BIMCO's VOYWAR 2004, adopted by the Documentary Committee in November 2004. The clause makes reference to, *inter alia*, acts of terrorism. More information on this clause can be found in BIMCO Bulletin No. 6/2004 page 58. The Bulletin is available to members at [www.bimco.org](http://www.bimco.org).

**32. Limitation of Liability**

Any provisions of this Charter Party to the contrary notwithstanding, the Owners shall have the benefit of all limitations of, and exemptions from, liability accorded to the owners or chartered owners of vessels by any applicable statute or rule of law for the time being in force, and the same benefits to apply regardless of the form of signatures given to this Charter Party.

**Notes – Limitation of Liability**

The provisions of this Clause intend to cover, inter alia, the special problem of the American "Personal Contract Doctrine". Under this doctrine, claims arising out of the contracts binding on parties personally are not subject to limitation of liability. Clause 32 provides the Owners with the benefits of limitations of liability even though the Charter Party may be regarded as a "personal contract".

**33. Interest**

If any amounts due under this Charter Party are not paid when due, then interest at the rate of 1.5% per month or pro rata for part of a month shall be paid on all such amounts until payment is received.

**Notes – Interest**

The Clause gives a contractual right to claim interests if sums due are not paid when due.

**34. Agency**

The Vessel shall be addressed to Owners' agents at port(s) of loading and discharging.

**Notes – Agency**

This is a standard clause giving the Owners the right to appoint the agents at ports of loading and discharge.

**35. Brokerage**

The Owners shall pay a brokerage at the rate stated in **Box 28(i)** to the Broker(s) mentioned in **Box 28(ii)** on any freight, demurrage, mobilisation fee, demobilisation fee and/or termination fee paid under this Charter Party.

If the full amounts as aforesaid are not paid owing to breach of this Charter Party by either of the parties, the party liable therefor shall indemnify the Broker(s) against his or their loss of brokerage.

**Notes – Brokerage**

This is a fairly standard brokerage clause as found in many charter parties. The parties should identify the names of the broker or brokers in Box 28 in Part I along with the amount of commission payable to each.

**36. BIMCO ISPS/MTSA Clause for Voyage Charter Parties 2005**

(a)

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

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

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

(b)

(i) The Charterers shall provide the Owners and the Master with their full style contact details and, upon request, any other information the Owners require to comply with the ISPS Code/MTSA.

(ii) Loss, damages or expense (excluding consequential loss, damages or expense) caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account, except as otherwise provided in this Charter Party, and any delay caused by such failure shall

count as laytime or time on demurrage.

- (c) Provided that the delay is not caused by the Owners' failure to comply with their obligations under the ISPS Code/MTSA, the following shall apply:
  - (i) Notwithstanding anything to the contrary provided in this Charter Party, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code/MTSA.
  - (ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code/MTSA shall count as laytime or time on demurrage, unless such measures result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew or the identity of the Owners' managers.
- (d) Notwithstanding anything to the contrary provided in this Charter Party, any costs or expenses whatsoever solely 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, vessel escorts, security fees or taxes and inspections, shall be for the Charterers' account, unless such costs or expenses result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew or the identity of the Owners' managers. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.
- (e) 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.

**Notes – BIMCO ISPS/MTSA Clause for Voyage Charter Parties**

This clause is the BIMCO ISPS/MTSA Clause for Voyage Charter Parties 2005, adopted by the Documentary Committee in May 2005. More information on this clause can be found in BIMCO Bulletin No. 3/2005 page 30. The Bulletin is available to members at [www.bimco.org](http://www.bimco.org).

**37. Double Banking**

- (a) The Charterers shall have the right, where and when it is customary and safe for vessels of similar size and type to do so, to perform the loading and/or discharging operations while the Vessel lies or remains alongside another vessel or vessels of any size or description whatsoever or to order such vessels to come and remain alongside at such safe dock, wharf, anchorage or other place for transshipment, loading or discharging of the Cargo.
- (b) The Charterers shall pay for and provide such assistance and equipment as may be required to enable any of the operations mentioned in this clause safely to be completed and shall give the Owners such advance notice as they reasonably can of the details of any such operations.
- (c) Without prejudice to the generality of the Charterers' rights under (a) and (b), it is expressly agreed that the Master shall have the right to refuse to allow the Vessel to perform as provided in (a) and (b) if in his reasonable opinion it is not safe so to do.
- (d) The Owners shall be entitled to insure any deductible under the Vessel's hull policy and the Charterers shall reimburse the Owners any additional premium(s) stated in **Box 27(i)** required by the Vessel's Underwriters and/or the costs stated in **Box 27(ii)** of insuring any deductible under the Vessel's hull policy.

**Notes – Double Banking**

This Clause is new. The wording is based on the BIMCO Double Banking clause for time charters. The clause has been altered so that double banking is only for transshipment, loading or discharging of cargo and not for bunkering. Sub-clause (e) has been removed as it conflicts with the Knock for Knock regime of the HEAVYCON.

**38. Confidentiality**

All information or data provided or obtained in connection with the performance of this Charter Party is and shall remain confidential and not be disclosed without the prior written consent of the other party except as may be required by either party to comply with their obligations under this Charter Party. The parties shall use their best efforts to ensure that such information shall not be disclosed to any third party by any of their sub-contractors, employees and agents. This Clause shall not apply to any information or data that has already been published or is in the public domain.

All information and data provided by a party is and shall remain the property of that party.

**Notes – Confidentiality**

This clause addresses the issue of the confidentiality of information between the parties. It reflects that it is only information not already in the public domain which must be kept confidential. Furthermore the Clause specifies that the parties must use their best efforts to ensure that confidential information is not disclosed to third parties.

**39. BIMCO Dispute Resolution Clause**

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

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

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

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

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

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

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.

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

In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:

- (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.
- (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.

- (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.
- (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.
- (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.
- (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 expenses.
- (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.

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

If **Box 29** is not appropriately filled in, sub-clause (a) of this Clause shall apply. Sub-clause (d) shall apply in all cases.

\*Sub-clauses (a), (b) and (c) are alternatives; indicate alternative agreed in **Box 29**.

**Notes – BIMCO Dispute Resolution Clause**

This clause, previously the "Law and Arbitration Clause", is the latest edition of BIMCO's standard suite of dispute resolution provisions. In addition to BIMCO's Law and Arbitration Clause 1998, the provision incorporates a mediation clause. The mediation provision is designed to function in conjunction with the chosen arbitration option, whether that is English law, London arbitration; US law, New York arbitration; or law and arbitration as agreed. Mediation is a technique that is recognised as offering savings in costs and time over traditional methods of dispute resolution for certain types of disputes. BIMCO's mediation provision is only triggered once arbitration proceedings have commenced and then runs in parallel with those proceedings, if the parties so choose. This has been done to ensure that one party cannot invoke mediation as a delaying tactic. It also provides for the parties to mediate on all or just some of the issues being arbitrated.

For a fuller description of the BIMCO Standard Dispute Resolution Clause, please see BIMCO Bulletin No. 1/2002. The Bulletin is available to members at [www.bimco.org](http://www.bimco.org).

**40. BIMCO Notices Clause**

- (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.
- (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.

**Notes – BIMCO Notices Clause**

This is a new Clause in HEAVYCON but it is a standard BIMCO Clause to ensure that all notices are given in an acceptable written format. Verbal notices should be followed up as soon as practicable with a written confirmation.

**41. Entire Agreement**

This Charter Party, including all Annexes referenced herein and attached hereto, constitutes the entire agreement of the parties and no promise, undertaking, representation, warranty or statement by either party prior to the date of this Charter Party stated in **Box 1** shall affect this Charter Party. Any modifications of this Charter Party shall not be of any effect unless in writing signed by or on behalf of the parties.

**Notes – Entire Agreement**

This is a normal provision in English Law contracts to avoid disputes arising as to whether any other terms (for instance in accompanying correspondence, or verbal discussions) form part of the Contract.

**Annex A – Demarcation of Scope of Work**

A new Annex to HEAVYCON contains a checklist for various activities to be performed as part of the agreement. The parties should go through each activity in the list and designate which party will be responsible by ticking the appropriate box.