

## Comparison between BIMCHEMVOY 2008 and ASBATANKVOY (incl. ASBACHEMVOY)

Text of BIMCHEMVOY 2008	Text of ASBATANKVOY (with references to the text of ASBACHEMVOY)	COMMENTS
<p><b>Definitions</b> For the purposes of this Charter Party: “Owners” means the party stated in Box 3. “Charterers” means the party stated in Box 4. “Vessel” means the vessel stated in Box 5. “Cargo” means the cargo described in Box 13.</p>	<p>No equivalent</p>	<p>In line with other recent BIMCO standard charter parties a definitions section has been included in BIMCHEMVOY 2008. The simple purpose behind it is to define the most important, recurring terms of the charter party, cross-referenced back to the information added by the user in the Part I box layout.</p>
<p><b>Preamble</b> It is agreed between the Owners and the Charterers that:</p> <p><b>1. Condition of Vessel</b> The Owners warrant that the Vessel is as described in Boxes 5, 6, 7, 8, 9, 10, 11, 26, 27 and 28 and that throughout the currency of this Charter Party the Vessel and her Master and crew shall comply with all safety, health and other applicable laws and regulations of the Vessel’s flag State and of the places where she trades necessary to secure the safe and unhindered loading of the cargo, performance of the voyage and discharging of the cargo.</p> <p>(a) The Owners shall exercise due diligence throughout the currency of this Charter Party to make the Vessel seaworthy and in every</p>	<p><b>1. Warranty-Voyage-Cargo.</b> The vessel, classed as specified in Part I hereof, and to be so maintained during the currency of this Charter, shall, with all convenient dispatch, proceed as ordered to Loading Port(s) named in accordance with Clause 4 hereof, or so near thereunto as she may safely get (always afloat), and being seaworthy, and having all pipes, pumps and heater coils in good working order, and being in every respect fitted for the voyage, so far as the foregoing conditions can be attained by the exercise of due diligence, perils of the sea and any other cause of whatsoever kind beyond the Owner’s and/or Master’s control excepted, shall load (always afloat) from the factors of the Charterer a full and complete cargo of petroleum and/or its products in bulk, not exceeding what she can reasonably stow</p>	<p>Under Clause 1 of BIMCHEMVOY 2008 the description of the vessel in the boxes as referred to is an intermediate term, i.e., if the charterers have been deprived of substantially the whole benefit of the contract they may terminate the charter party in addition to claiming damages for losses incurred as a result of the owners’ breach. Otherwise the charterers will only be entitled to damages for losses.</p> <p>The same goes for the obligation of the vessel/master/crew to comply with the enumerated laws and regulations of the vessel’s flag state and places where it trades.</p> <p>In respect of sub-clause (a) making the vessel seaworthy throughout the currency of the charter party the obligation is one of due diligence. While this extends the equivalent obligation under the Hague/Hague-Visby Rules, Article II, it is customary in the chemical parcel trade.</p>

way fit for the voyage and in the trade for which the Vessel is employed;

(b) The Vessel shall be:

(i) classed and the Owners warrant that this class shall be maintained throughout the currency of this Charter Party;

(ii) fully insured in respect of loss or damage to the cargo by a Protection and Indemnity Club or liability underwriter and the Owners shall provide, on request, evidence of such insurance;

(iii) insured for Hull and Machinery and basic War Risks purposes.

and carry over and above her bunker fuel, consumable stores, boiler feed, culinary and drinking water, and complement and their effects (sufficient space to be left in the tanks to provide for the expansion of the cargo), and being so loaded shall forthwith proceed, as ordered on signing Bills of Lading, direct to the Discharging Port(s), or so near thereunto as she may safely get (always afloat), and deliver said cargo. If heating of the cargo is requested by the Charterer, the Owner shall exercise due diligence to maintain the temperatures requested.

In sub-clause (b) it is a condition that the vessel is classed throughout the currency of the contract, that it has P&I insurance in respect of cargo and that it has hull and machinery insurance as well as basic war risks insurance in place. The owners are required, if requested by the charterers, to provide evidence of P&I cover, such as a Certificate of Entry.

ASBATANKVOY and ASBACHEMVOY also require the vessel to be classed throughout the currency of the charter party but make no reference to insurance cover.

*Note: In ASBACHEMVOY the reference to Clause 4 is changed to "stipulated in Part I C" and after the reference to full cargo the words "or part cargo as the case may be" are added. Furthermore, "petroleum and/or its" is deleted and after "products" is added "as described in Part I E". Finally, after "Discharging Port(s) it has been added "or proceed as allowed in Clause 4".*

## 2. Condition of Cargo

The Charterers warrant that the Cargo shall be as specified in Box 13.

*See Clause 1 above*

Under this clause the charterers undertake to provide the cargo as specified in Part I of the document. Neither ASBATANKVOY nor ASBACHEMVOY refer to the condition of the cargo. Box 13 of Part I of BIMCHEMVOY 2008 requires the parties to provide specific details about the cargo and loading requirements.

## 3. Voyage, Loading and Discharging Ports

The Vessel shall proceed with due despatch to a safe port, berth, dock, anchorage, submarine line, alongside vessels or lighters or any other safe place whatsoever usual for loading the cargo, as ordered by the Charterers within the limits specified in Box 14 or so near thereto as she may safely get, lie at and depart from, always afloat, and there load the cargo as

*See Clause 1 above*

This provision sets out the basis of the contract, namely that the owners should proceed with due despatch to a loading place which is warranted safe by the charterers and upon having been loaded and bills of lading signed proceed to the discharging place, which should also be safe, to deliver the cargo.

described in Box 13 and being so loaded shall proceed as ordered on signing Bills of Lading to a safe port, berth, dock, anchorage, submarine line(s), alongside vessels or lighters or any other safe place whatsoever usual for discharging the cargo, as ordered by the Charterers within the limits specified in Box 15, or so near thereto as she may safely get, lie at and depart from, always afloat, and there deliver the cargo.

The equivalent provision in ASBATANKVOY and ASBACHEMVOY is found in Clause 1 except that it does not include a safe port warranty.

#### **4. Stowage**

The cargo shall be carried in tanks as specified in Box 13 (Column 4) or, in the Owners' option, in stainless steel tanks.

*No equivalent*

This clause gives the owners the possibility to upgrade to stainless steel tanks, but not to downgrade to a coated tank if stainless steel stowage is specified.

#### **5. Laydays Commencement**

The commencement of laydays shall be the date stated in Box 16. If the Vessel tenders notice of readiness prior to the first layday the Charterers shall have the option to accept the earlier loading date.

#### **5. Laydays**

Laytime shall not commence before the date stipulated in Part I, except with the Charterer's sanction. Should the Vessel not be ready to load by 4:00 o'clock P.M. (local time) on the cancelling date stipulated in Part I, the Charterer shall have the option of cancelling this Charter by giving Owner notice of such cancellation within twenty-four (24) hours after such cancellation date; otherwise this Charter to remain in full force and effect.

Clause 5 (Laydays Commencement) establishes the first layday and provides for the possibility of starting to load earlier than the agreed opening layday if the charterers so choose. The ASBATANKVOY clause has the same effect.

#### **6. Charterers' Option of Cancelling**

(a) If the Vessel has not tendered a valid notice of readiness as provided for in Clause 10 (Notice of Readiness) by 12 midnight local time on the cancelling date specified in Box 17 the Charterers shall have the option of cancelling this Charter Party within 24 hours

*See Clause 5 (Laydays) above*

BIMCHEMVOY's cancelling clause gives the charterers the right to cancel the charter party at the passing of the cancelling date which the parties have to stipulate in Part I. To ensure that the charterers do not keep the vessel waiting for a decision in respect of cancellation, the charterers are obliged to exercise their option to cancel within 24 hours of the cancelling date. If the charterers fail to cancel the late arriving vessel within 24 hours after the

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after such cancelling date, otherwise this Charter Party to remain in full force and effect.

(b) If the Owners anticipate that, despite the exercise of due diligence, the Vessel will be delayed beyond the cancelling date, the Owners shall, as soon as possible, give written notice and use best endeavours to give verbal notice thereof to the Charterers as per the contact information stated in Box 4 giving a new readiness date and asking whether they will exercise their option of cancelling. This option must then be declared within forty-eight (48) hours of receipt of the written notice by the Charterers. If the Charterers do not then exercise their option of cancelling, the new readiness date stated in the Owners' notice shall be regarded as the new cancelling date for the purpose of this Clause.

(c) Should the Vessel's tanks, pipes and pumps not be clean to the satisfaction of the Charterers' Inspector within the cancelling date or in any other way not ready to load within the provisions of this Charter Party, then the Charterers shall have the option to cancel this Charter Party which shall then be null and void.

cancelling date, the charterers will be deemed to have chosen not to exercise their option to cancel. In such circumstances the charter party will continue with full force and effect as if the vessel had not arrived late. Similar provision is made in ASBATANKVOY (see Clause 5 Laydays).

Sub-clause (b) of BIMCHEMVOY contains the so-called "interpellation" provision common to many BIMCO standard voyage charter parties. This is an important provision, since the basic position under English law is that unless there is a relevant clause in the governing charter party the charterers can wait until after a late arriving vessel tenders its notice of readiness before they decide whether or not to cancel, thus obliging the owners to make a potentially useless ballast voyage.

If the owners anticipate with reasonable certainty that the vessel will not be ready to load by the agreed cancelling date then the owners can demand that the charterers declare whether they wish to maintain or cancel the charter party. The charterers will have to declare their option within 48 hours after the owners have given the notice. If the charterers choose to cancel, the owners may save considerable costs by not bringing the vessel to the delivery port and may be able to fix the vessel on another charter at an earlier time. Similarly, the charterers will benefit from advance warning that alternative tonnage may be required to lift the cargo. If the charterers choose not to cancel the new cancelling date will be the new readiness date that the owners have stated in their notification.

Worth noting is that the wording of the notifications procedure in sub-clause 6(b) is slightly different to the usual wording found in BIMCO forms. Commonly, the owners have to "bring to the charterers' attention" the fact that the vessel is delayed beyond her cancelling date. In

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this version there is an obligation on the owners to give the charterers written notice of the delay which is to be followed up, if possible, by a verbal notice. This means in practical terms that the owners should send the charterers a written notice by, for example, e-mail and then also try to get hold of the charterers by phone as a double-check. If the delay occurs at a weekend then it may not be possible to reach the charterers by phone, but the owners must use best endeavours in their attempt. The notices have to be sent to the party identified in Part I so it is important that proper contact details including out of hours phone numbers are included. It should also be noted that the charterers are obliged to act on receipt of the written notice only, just in case the owners have been unable to reach them by phone.

There is no equivalent interpellation provision in ASBATANKVOY or ASBACHEMVOY. Charterers have to wait until the cancelling date before taking action – and the owners have potentially have to make long ballast voyages only to face cancellation on arrival.

Sub-clause (c) gives the charterers the right to cancel if the vessel's tanks, pipes and pumps are not clean within the cancelling date.

### **7. Freight**

(a) The freight at the rate per metric ton as stated in Box 18, to be calculated on the Bill of Lading quantity of cargo or, if agreed, at the lumpsum freight stated in Box 18 shall be paid by the Charterers without discount at the time and in the manner prescribed in Box 19.

(b) The freight shall be considered earned on loading, Vessel and/or cargo lost or not lost.

### **2. Freight**

Freight shall be at the rate stipulated in Part I and shall be computed on intake quantity (except deadfreight as per Clause 3) as shown on the Inspector's Certificate of Inspection. Payment of freight shall be made by Charterer without discount upon delivery of cargo at destination, less any disbursements or advances made to the Master or

Clause 7 (Freight) covers the freight rate and freight payment procedures. The calculation of the freight is based on the bill of lading quantity rather than the intaken quantity of cargo, unless a lumpsum freight has been agreed. This is an important point and is consistent with industry practice where disputes often arise in respect of intaken quantity.

The calculation in ASBATANKVOY and ASBACHEMVOY however is based on the intaken quantity.

Owner's agents at ports of loading and/or discharge and cost of insurance thereon. No deduction of freight shall be made for water and/or sediment contained in the cargo. The services of the Petroleum Inspector shall be arranged and paid for by the Charterer who shall furnish the Owner with a copy of the Inspector's Certificate.

### 8. Deadfreight

Unless lumpsum has been agreed, if the Charterers fail to supply the full cargo quantity, deadfreight shall be payable in the manner specified for freight payment in Box 19 on the difference between the Bill of Lading quantity and the quantity nominated in accordance with Box 13, column 3.

### 3. Deadfreight

Should the Charterer fail to supply a full cargo, the Vessel may, at the Master's option, and shall, upon request of the Charterer, proceed on her voyage, provided that the tanks in which cargo is loaded are sufficiently filled to put her in seaworthy condition. In that event, however, deadfreight shall be paid at the rate specified in Part I hereof on the difference between the intake quantity and the quantity the Vessel would have carried if loaded to her minimum permissible freeboard for the voyage.

Similar to the freight provision, the calculation of deadfreight under BIMCHEMVOY 2008 should be based on the difference between the bill of lading quantity and the nominated quantity, unless a lumpsum has been agreed.

Again, ASBATANKVOY and ASBACHEMVOY calculates the deadfreight based on the intaken quantity.

### 9. ETA Notices

(a) The Owners shall in accordance with Box 12 keep the Charterers closely advised of the estimated time of arrival (ETA) at loading/discharge port or place as well as any subsequent changes thereof.

(b) Upon arrival in the loading/discharge port or place the Owners shall keep the Charterers closely advised of the estimated time of readiness to load/discharge the cargo as well as any subsequent changes thereof.

*No equivalent*

Clause 9 (ETA Notices) describes the owners' obligation to give notices of estimated time of arrival at both the loading and the discharging ports, and of their estimated time of readiness to start loading or discharging.

Particular attention should be paid to sub-clause 9(c) when part cargoes are involved. It is in the nature of the chemical parcel trade that cargoes loaded and/or discharged for other charterers may result in a change to the vessel's port/berth rotation which may affect the estimated time of arrival given to the charterers under this charter party. In this respect the sub-clause emphasises that the owners

(c) When the cargo is described as a part cargo, an ETA given is without prejudice to Owners right under Clause 18 (Completion/ Rotation). Whether the cargo is a part or a full cargo, it is agreed and understood that any ETA given under this Charter Party is an estimate only and not an undertaking that the vessel will arrive on the estimated date or any revision of that date.

have the right load cargoes for other charterers and that any ETA given is given in good faith but is not binding.

#### **10. Notice of Readiness**

(a) Upon Vessel's arrival at the customary anchorage or port or if the Vessel is already within the port area, at each port or place of loading and discharge, the Master or his agents shall give the Charterers or their agents notice that the Vessel is ready to load or discharge cargo, whether in berth or not, and laytime, as hereinafter provided, shall commence upon the expiration of six (6) hours after receipt of such notice, or immediately upon completion of mooring at the loading/discharging place), whichever first occurs.

(b) If after tendering notice of readiness the Vessel is found not to be ready to load or discharge, then when the Master again deems the Vessel ready to load or discharge, the Master or his agent shall give notice of readiness to the Charterers or their agents and laytime or time on demurrage shall resume at such time.

#### **6. Notice Of Readiness**

Upon arrival at customary anchorage at each port of loading or discharge, the Master or his agent shall give the Charterer or his agent notice by letter, telegraph, wireless or telephone that the Vessel is ready to load or discharge cargo, berth or no berth, and laytime, as hereinafter provided, shall commence upon the expiration of six (6) hours after receipt of such notice, or upon the Vessel's arrival in berth (i.e., finished mooring when at a sealoading or discharging terminal and all fast when loading or discharging alongside a wharf), whichever first occurs. However, where delay is caused to Vessel getting into berth after giving notice of readiness for any reason over which Charterer has no control, such delay shall not count as used laytime.

BIMCHEMVOY 2008 is a port charter party under which laytime will start six hours after, depending on which occur first, charterers have received notice of readiness or completion of mooring.

Sub-clause (b) makes it clear that after an invalid notice of readiness the master or agent has to tender a second, valid notice of readiness once the vessel is again ready in order to start laytime or time on demurrage.

The notice of readiness provision of ASBATANKVOY and ASBACHEMVOY has the same effect. However, it further provides that delay in getting into berth which is not due to the charterers will not trigger laytime to start counting.

#### **11. Laytime**

(a) The total laytime in running hours as stipulated in Box 21(i) is allowed the

#### **7. Hours For Loading And Discharging**

The number of running hours specified as laytime in Part I shall be permitted the

To achieve a clear and logical structure the laytime and demurrage provisions of BIMCHEMVOY 2008 have been divided into four different clauses; one providing for when

Charterers for the loading and discharging of the cargo and other Charterers' purposes connected therewith, Sundays and holidays included.

(b) If the Charterers, shippers or consignee prohibits loading or discharging of the Cargo at night, time so lost shall count as laytime or, if the Vessel is on demurrage, as demurrage.

(c) Unless preventing or delaying cargo operation, time used for bunkering and/or ballast/deballast operation shall count as laytime or, if the Vessel is on demurrage, as demurrage.

(d) Laytime or, if the Vessel is on demurrage, time on demurrage shall continue until all Cargo hoses and, if used, nitrogen hoses have been completely disconnected upon the final termination of the loading or discharging operation. Disconnection of all such hoses shall be promptly effected. If the Vessel is delayed in excess of two (2) hours after such disconnection solely for the Charterers' purposes, laytime or, if the Vessel is on demurrage, time on demurrage shall resume after the expiration of such two hours, until such delay has ended.

(e) All time lost waiting for berth shall be prorated between all charterers loading and/or discharging at that berth in proportion to the size of each charterer's cargo.

(f) Notwithstanding Box 21(i), 21(ii) and 21(iii) and Sub-clauses 17(b) and 17(e) or unless

Charterer as laytime for loading and discharging cargo; but any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to load or discharge cargo within the time allowed shall not count as used laytime. If regulations of the Owner or port authorities prohibit loading or discharging of the cargo at night, time so lost shall not count as used laytime; if the Charterer, shipper or consignee prohibits loading or discharging at night, time so lost shall count as used laytime. Time consumed by the vessel in moving from loading or discharge port anchorage to her loading or discharge berth, discharging ballast water or slops, will not count as used laytime.

laytime counts in full, one for demurrage counting in full, then an exceptions to laytime and demurrage clause and finally a clause for half time counting. Care has been taken to structure all four clauses consistent with each other. This way BIMCHEMVOY 2008 provides for time counting in a much more comprehensive and easy to read compared to ASBATANKVOY and ASBACHEMVOY.



otherwise agreed, laytime shall always be reversible.

### 12. Demurrage

(a) The Charterers shall pay demurrage per day or pro rata thereof at the rate specified in Box 22 after the expiry of the laytime specified in Box 21(i) for all time by which the loading and discharging time and all time otherwise allowed as laytime exceeds the allowed laytime as specified in Box 21(i). Payment of demurrage to be made by the method and to the place of payment and to the beneficiaries stated in Box 19. Demurrage is payable on receipt of the Owners' invoice by the Charterers.

(b) Time Bar - Demurrage claims, if any, shall be presented not later than ninety (90) days after completion of voyage with available supporting documents. Any claim for demurrage received later than ninety (90) days after completion shall be considered null and void by both parties.

### 8. Demurrage

Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. If, however, demurrage shall be incurred at ports of loading and/or discharge by reason of fire, explosion, storm or by a strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo, the rate of demurrage shall be reduced one-half of the amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by strike, lockout, stoppage or restraint of labor for Master, officers and crew of the Vessel or tugboat or pilots.

An important addition to Clause 12 (Demurrage) is the time bar provision which prohibits claims for demurrage submitted later than 90 days after completion of the voyage.

Owners should take careful note of this provision to ensure that demurrage claims are submitted promptly.

### 13. Laytime/Demurrage Exceptions

Time shall not count as laytime or demurrage only if lost for any of the following reasons:

(a) Due to the Vessel moving from anchorage, place or berth to her loading or discharging berth.

*No equivalent*

To avoid difficulties with the "reachable upon arrival" provision frequently found in other voyage charter parties, BIMCHEMVOY 2008 contains an extensive exceptions to laytime provision. All are common exceptions to laytime and demurrage but the parties should read the Clause carefully.

The exceptions to laytime primarily cover events over which the charterer has no control such as deficiencies in

(b) Due to breakdown, deficiency, repairs or any other conditions attributable to the Vessel, Master, crew and/or Owners;

(c) Due to delay caused by strike, lockout, stoppage or restraint of labour of the Master, officers or crew of the Vessel.

(d) Due to delay caused by strike, lockout, stoppage or restraint of labour of tugs and/or pilots if required by the Owners or mandatory.

(e) Due to the terms or conditions of employment of the Owners' servants; or employment, trades or cargoes of the Vessel other than under this Charter Party;

(f) Due to restraint or interference of the Vessel's operation by any governmental authority in connection with the ownership, registration or obligations of the Owners or the Vessel, or in connection with stowaways or with smuggling or other prohibited activities of the Owners' servants, unless such restraint or interference involves the cargo under this Charter Party, or the Charterers, or the shippers or receivers of the cargo and their servants and agents under this Charter Party;

(g) Due to the Vessel's failure to have on board a certificate, record, or other document required for trading to the loading and discharging ports, unless due to fault by the Charterers.

the vessel or strikes by the vessel's crew or other vessel labour related issues.

(h) Due to regulations of the Owners or port authorities prohibiting loading or discharging of the cargo at night.

(i) Due to shore facilities being occupied with loading and/or discharging other cargoes on this Vessel.

(j) Due to the Vessel not being ready after tendering notice of readiness, until such time as the Vessel is once again ready in accordance with the notice provisions of Clause 10 (Notice of Readiness).

#### **14. Half Laytime Counting**

Time shall count as half laytime only if lost for any of the following reasons:

(a) Due to delays in berthing for loading or discharging and any delays after berthing which are due to weather, fog or sea conditions.

(b) Due to any time lost after disconnection of hoses in excess of the two (2) hours stipulated in Clause 11 (Laytime) due to the requirement to re-measure the cargo quantity loaded on board the vessel due to measurement discrepancy.

(c) Due to quarantine coming into force at the nominated port.

(d) Due to delays to the Vessel at ports or places of loading or discharging by reason of strike or lockout preventing or delaying the Vessel from entering the port or place of

*No equivalent*

Clause 14 contains all events in respect of which half time should count in respect of laytime. The provision covers events for which neither party can reasonably exercise control, such as weather conditions or fog preventing berthing.

It should be noted that in respect of sub-clause (b), the charterers are granted 2 hours after disconnection of hoses for the charterers' purposes (such as cargo-related paperwork). If the vessel is delayed beyond the 2 hours then laytime will resume unless the cause of the further delay is due to a cargo measurement discrepancy. In this event the responsibility for the time lost is shared equally between the owners and the charterers. However, in the event the vessel is already on demurrage when the 2 hours lapse, then the full demurrage rate will apply.

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loading or discharging or from loading or discharging the cargo, or by reason of fire or explosion or breakdown of the shore machinery of the Charterers or their agents, unless due to negligence on their part or on the part of their servants or agents.

(e) If such delay described in Sub-clauses (a) to (d) commences on or occurs after expiry of the laytime the full demurrage rate shall apply.

### **15. Cleaning**

(a) The Owners shall clean the Vessel's tanks, pumps and pipes to the Charterers' Inspector's satisfaction. Should wall-wash testing of the tank(s) be required for the cargo, the results of such tests shall meet the criteria as described in Box 23(i).

(b) The acceptance of the Vessel by the Charterers' Inspector shall not affect the liability which the Owners might otherwise have for cargo being contaminated by the Vessel.

(c) Upon acceptance of tanks, the Charterers' Inspector shall provide the Vessel with a "Clean Tank" Certificate.

### **18. Cleaning**

The Owner shall clean the tanks, pipes and pumps of the Vessel to the satisfaction of the Charterer's Inspector. The Vessel shall not be responsible for any admixture if more than one quality of oil is shipped, nor for leakage, contamination or deterioration in quality of the cargo unless the admixture, leakage, contamination or deterioration results from (a) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (b) error or fault of the servants of the Owner in the loading, care or discharge of the cargo.

Clause 15 (Cleaning) is a very important provision. BIMCHEMVOY 2008 provides for wall-wash testing of the tanks – a feature absent from ASBATANKVOY and ASBACHEMVOY. The parties must establish in advance what the wall-wash test criteria should be and this information is to be clearly stated in Box 23(i).

The Clause also clarifies that the owners are still liable for cargo contamination by the vessel despite the issue of a "clean tank" certificate by the charterers' inspector.

In ASBACHEMVOY, Clause 18 is renamed "Cleaning and Segregation" and the second sentence is deleted and replaced with "When the cargo in Part I E is described as a part cargo or consists of more than one quality of products, the owner shall keep each of Charterer's products completely segregated from each other and from all other cargo carried on board the vessel.

### **16. Inspection of Cargo Tanks**

The Charterers' Inspector's inspection of tanks, pipes and pumps nominated for the cargo as specified in Box 13 shall take place as soon as possible after the Vessel tenders notice of readiness.

*No equivalent*

The purpose of Clause 16 is to get the inspection to take place as soon as possible after the notice of readiness is tendered. This is done simply to encourage the charterers to act promptly to get the vessel accepted.

It has been clarified that it is the charterers' independent inspector that should be appointed for inspections.

### **17. Loading and Discharging**

(a) The Charterers shall provide hoses and/or connections and/or loading and discharging installations always with suitable and adequate facilities allowing the loading and discharging of the contracted cargo. Hoses and/or connections for these operations shall be connected and disconnected by the Charterers or at the option of the Owners, by the Owners at the Charterers' risk and expense.

(b) The cargo shall be pumped into the Vessel at the Charterers' risk and expense. The Charterers' risk ends when the cargo passes the Vessel's permanent manifold connections.

(c) The cargo shall be pumped out of the Vessel at the Owners' risk and expense. The Owners' risk ends when the cargo passes the Vessel's permanent manifold connections.

(d) Subject to recognised industry practice, the Owners warrant that the Vessel is capable of receiving the quantity to be loaded within the percentage of the allowed laytime as stated in Box 21(ii).

(e) Subject to recognised industry practice, the Owners warrant that the pumping capacity is sufficient to discharge the loaded quantity within the percentage of the allowed laytime as stated in Box 21(iii) excluding start up and stripping or that the vessel shall maintain a pressure at the manifold of the minimum bar

### **11. Hoses: Mooring At Sea Terminals**

Hoses for loading and discharging shall be furnished by the Charterer and shall be connected and disconnected by the Charterer, or, at the option of the Owner, by the Owner at the Charterer's risk and expense. Laytime shall continue until the hoses have been disconnected. When Vessel loads or discharges at a sea terminal, the Vessel shall be properly equipped at Owner's expense for loading or discharging at such place, including suitable ground tackle, mooring lines and equipment for handling submarine hoses.

### **10. Pumping In And Out**

The cargo shall be pumped into the Vessel at the expense, risk and peril of the Charterer, and shall be pumped out of the Vessel at the expense of the Vessel, but at the risk and peril of the Vessel only so far as the Vessel's permanent hose connections, where delivery of the cargo shall be taken by the Charterer or its consignee. If required by Charterer, Vessel after discharging is to clear shore pipe lines of cargo by pumping water through them and time consumed for this purpose shall apply against allowed laytime. The Vessel shall supply her pumps and the necessary power for discharging in all ports, as well as necessary hands. However, should the Vessel be prevented from supplying such power by reason of regulations prohibiting fires on board, the Charterer or consignee shall supply, at its expense, all power necessary for

Clause 17 sets out the parties' obligations in respect of loading and discharging and when the risk in the cargo passes. As per industry practice the charterers' liability ends on loading when the cargo passes the vessel's permanent manifold. Similarly, the owners' risk ends when the cargo passes the permanent manifold on discharging.

Sub-clauses (d) and (e) contain important warranties by the owners in respect of the vessel's capability to receive and discharge the cargo within the agreed percentage margin of the laytime.

Clause (f) deals with the cargo handling features of the vessel and whether simultaneous loading and discharging of a number of different grades of cargo can be effected.

as stated in Box 24 provided shore facilities permit. The Owners shall instruct the Master to state by letter of protest or remark in the time sheet, counter-signed, if possible, by the cargo receivers or the Charterers, whenever pumping time exceeds the warranted period giving the reason for such excess.

(f) Owners warrant that the vessel can load and discharge simultaneously the number of grades stated in Boxes 27 and 28 respectively but always subject to the Master's discretion for stress and stability.

discharging as well as loading, but the Owner shall pay for power supplied to the Vessel for other purposes. If cargo is loaded from lighters, the Vessel shall furnish steam at Charterer's expense for pumping cargo into the Vessel, if requested by the Charterer, providing the Vessel has facilities for generating steam and is permitted to have fires on board. All overtime of officers and crew incurred in loading and/or discharging shall be for account of the Vessel.

#### **18. Completion/Rotation**

(a) In the event that this Charter Party is for part cargo as described in Box 13, the Owners shall have the liberty of loading and/or discharging other part cargo for the account of other charterers or shippers from/to port or ports en route or not en route. The rotation of loading and discharging ports or berths in those ports shall be in the Owners' option.

(b) When the Owners exercise their option this shall in no way constitute a deviation, notwithstanding anything else contained in this Charter Party. The Charterers shall procure that the Owners' option as provided for in this Clause shall be duly incorporated in Bills of Lading issued under this Charter Party.

#### **4. Completion/Rotation Clause**

When the cargo in Part I E is described as a part cargo, the Owner has the option of loading cargo(es) at the same or other loading port(s) for discharge at the same or other discharge port(s) for other Charterer(s). The vessel's rotation of loading and discharging port(s) is at Owner's option.

The Completion/Rotation provisions of Clause 18 are an important issue in respect of the chemical parcel trades. Like ASBATANKVOY, BIMCHEMVOY 2008 gives the owners the liberty to carry other part cargoes for other charterers from and to other ports. Sub-clause (a) makes it clear that the choice of the rotation of loading and discharging ports is in the owners' option.

Sub-clause (b) provides an important feature missing from other standard forms used in the trade – it provides that when the vessel loads other part cargoes for other charterers under other charters, this does not constitute a deviation under the charter party. To ensure that this protection afforded to the owners is carried through to bill of lading holders the charterers are obliged to ensure that this clause is incorporated into all bills of lading issued under the charter party. The BIMCHEMVOYBILL 2008 that accompanies BIMCHEMVOY includes clear words of incorporations for all the terms, conditions, liberties and exceptions of the charter party.

### 19. Segregation

The Owners shall keep the Charterers' grades of cargo segregated from each other and from any other charterers' grades/cargo during loading, transit and discharge.

*ASBACHEMVOY Clause 18, second sentence: Cleaning and Segregation*  
*When the cargo in Part I E is described as a part cargo or consists of more than one quality of products, the owner shall keep each of Charterer's products completely segregated from each other and from all other cargo carried on board the vessel.*

Because the charterers can ship different grades of cargo that may contaminate each other, the cargo has to be separated, not only from other charterers' cargo, but also from the charterers' different grades of cargo. The same is provided for in ASBATANKVOY and ASBACHEMVOY.

### 20. Shifting

(a) Shifting between agreed berths and/or places at the ports or places as stated in Boxes 14 and 15 shall be for the Owners' account.

(b) In the event the Vessel is required to vacate a berth and then re-berth due to weather or sea conditions, all shifting expenses so incurred shall be shared equally between the Owners and the Charterers.

### 9. Safe Berthing-Shifting

The vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters reachable on her arrival, which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the Charterer. The Charterer shall have the right of shifting the Vessel at ports of loading and/or discharge from one safe berth to another on payment of all towage and pilotage shifting to next berth, charges for running lines on arrival at and leaving that berth, additional agency charges and expense, customs overtime and fees, and any other extra port charges or port expenses incurred by reason of using more than one berth. Time consumed on account of shifting shall count as used laytime except as otherwise provided in Clause 15.

*In ASBACHEMVOY the reference to Clause 15 is deleted.*

This Clause makes it clear that shifting costs between agreed berths or places at the designated ports are for the owners' account.

However, costs for shifting necessary due to weather conditions are to be shared equally between the parties.

By contrast, the shifting clause in ASBATANKVOY gives the charterers the right of shifting at their own cost and in their own time.

### 21. Ship to ship transfer

*No equivalent*

The ability to load and/or discharge cargo from or to another vessel is an important part of the chemical parcel

(a) The Charterers shall have the right to load and/or discharge the cargo to and from other vessels and/or barges at their time, risk and expense. Any such operation shall be effected only at a place or places as stated in Boxes 14 and 15 where the Vessel can continuously lie safely and always afloat. The Charterers shall at their expense and to the satisfaction of the Vessel's Master provide fenders, hoses, connections and other equipment necessary for this operation. Hoses and/or connections for this operation shall be connected and disconnected by the Charterers or at the option of the Owners, by the Owners at the Charterers' risk and expense.

(b) Such operation to be carried out in conformity with the provisions of the latest edition of the OCIMF/ICS Ship to Ship Transfer Guide but in any case such operation always to be at the discretion of the Vessel's Master and if the Master, at any time considers that such operation is or will become unsafe, then he may order it to be discontinued. Notwithstanding the provisions of Clause 12 (Demurrage) and Clause 13 (Laytime/Demurrage Exceptions) all time used/lost for such operation, whether or not it is discontinued, shall count as laytime or time on demurrage.

(c) The Charterers shall be responsible for and shall obtain any and all relevant permissions from proper authorities to perform such operation and all expenses in this connection shall be for the Charterers' account.

trade. The Ship to ship transfer Clause has been developed specifically to suit the needs of the trade and provides an essential operational provision all too often missing from other standard forms. All such operations are to be conducted in conformity with OCIMF Guidelines designed for tankers.

Time lost in connection with any ship to ship transfers will count notwithstanding anything contained in the exceptions to laytime clause or the laytime/demurrage half counting clause.



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## 22. Cargo Temperature

The Charterers shall load the cargo at the temperature stated in Box 13 and the Owners shall maintain the cargo at such temperature. Any specific requirements by the Charterers for increasing/decreasing the cargo temperature should be specified in Box 13.

*No equivalent*

This clause sets out the charterers' obligation to load the cargo at the agreed temperature and the owners' obligation to maintain that temperature during the voyage and at discharge. Should the charterers not fulfil their obligation in relation to cargo temperature on loading, the owners will be able to refuse to load the cargo.

If the charterers require the cargo to be heated or cooled during transit prior to discharge then this must be agreed in advance and the details recorded in Part I of the form. Again, this is a feature missing from other standard forms which can often lead to disputes.

## 23. Nitrogen

If nitrogen is required in accordance with Box 25 or is mandatory according to regulations prior to loading, the initial nitrogen shall be supplied by the Charterers at the loading berth and the Owners shall maintain the tanks under positive nitrogen pressure throughout the laden passage. Nitrogen, if required, for discharge shall be supplied by the Charterers.

*ASBECHEMVOY first part of Clause 15 (Nitrogen)*

*If required for the safety or the integrity of the cargo and/or the vessel, the Owner shall exercise due diligence to maintain the tanks under positive nitrogen pressure throughout the voyage, the Charterer having supplied the initially necessary nitrogen at the load port.*

Since nitrogen is required for the purpose of protecting the cargo the cost for providing the initial nitrogen is put on the charterers. While the owners have the duty to maintain the nitrogen pressure for the duration of the voyage, it is for the charterers account if it should be needed in order to discharge.

The equivalent clause of ASBACHEMVOY deals with nitrogen in a similar way; except that it is silent as to which party should supply nitrogen necessary for the discharge operation.

## 24. Inhibitor

If the cargo is exposed to the risk of polymerization or self-reaction during the voyage such cargo shall be sufficiently inhibited by the Charterers before or during the loading. Additional inhibitor and instructions for emergency purposes shall be provided and paid for by the Charterers. The Charterers shall provide the Vessel with an IMO inhibitor certificate. The Vessel shall comply with the requirements of the certificate.

*ASBACHEMVOY second part of Clause 15 (Cargo Inhibitor)*

*If required for the safety or the integrity of the cargo and/or the vessel, the Charterer shall properly inhibit the cargo for the voyage set forth in Part I and shall inform the vessel of quantity and type of the inhibitor, duration of effectiveness, temperature limits and time of adding inhibitor. Emergency instructions shall be given to the vessel together with extra inhibitor to be used in accordance with the*

This clause deals with the provision of chemical inhibitor to prevent the cargo from solidifying or self igniting.

Emergency inhibitor carried in the event of delay to the vessel is to be provided and paid for by the charterers.

There are no major differences in the purposes and effects of the equivalent clause found in ASBACHEMVOY.

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*instructions upon discovery of cargo polymerizing.*

**25. Foot Sampling**

(a) If agreed in Box 23(ii) and (iii), the Charterers shall have the option to part load cargo/product on the Vessel as foot samples for cleanliness testing.

(b) To the extent caused by the Vessel, the Owners shall be responsible for any loss or damage (off-specification) to and lawful disposal, if necessary, of such product/foot samples, which shall be treated as Cargo.

(c) To the extent caused by shore, Charterers shall be responsible for any loss or damage (off-specification) to and lawful disposal, if necessary, of such product/foot samples, which shall be treated as Cargo.

(d) The Vessel shall not be deemed ready to load under this Charter Party until such time as all cleaning tests are passed to the satisfaction of the Charterers inspector in accordance with Clause 15 (Cleaning).

*No equivalent*

Foot sampling is an issue that is common a source of dispute in the chemical parcel trade. BIMCHEMVOY addresses this important issue with a clause that has been developed with close P&I Club input in respect of cargo liability issues. If the sample is found to be contaminated once on board the vessel it has to be determined whether the contamination came from the shore lines or as a result of the sample mixing with contaminants in the ship's tanks.

The difficulty lies in how any contaminated/damaged samples are disposed of. Although the samples are cargo, no bill of lading has been issued – which presents a problem for the owners if the vessel is responsible for the cargo damage. P&I insurance will normally cover liability for this type of operation but only where the sample is deemed to be cargo.

This clause allocates the liabilities between the owners and the charterers for foot samples, including disposal, and when samples should be regarded as cargo.

There is no equivalent in ASBATANKVOY or ASBACHEMVOY.

**26. Sampling**

The Charterers shall arrange for proper samples to be drawn, sealed and marked in the presence of an officer of the Vessel. One set of the samples shall be given free of charge to the Vessel as the Owners' property if requested by the Vessel prior to sampling. The Owners' samples shall be properly stored

*No equivalent*

This Clause provides for cargo sampling methods and arrangements. One important aspect is the safe disposal of samples and this Clause provides for the charterers to request a particular method of disposal if so required provided the charterers bear all related costs.

There is no equivalent sampling provision in ASBATANKVOY or ASBACHEMVOY.

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and disposed of in a safe manner. The Charterers may request a particular disposal procedure against covering all related expenses.

**27. Closed Loading**

(a) Owners undertake that the Vessel complies with, and shall be operated for the duration of this Charter Party in accordance with, the recommendations regarding closed loading and closed discharging and vapour return operations as set out in the 1996 Edition of ISGOTT as amended from time to time.

(b) If the Vessel has closed sampling equipment, such equipment shall be used when appropriate, during this Charter Party.

(c) If stated affirmatively in Box 26, the owners warrant the Vessel can provide a closed loading system with vapours returning to shore, for the grades of cargo requiring such under this Charter Party.

*No equivalent*

This safety related provision governs closed loading operations conducted in accordance with ISGOTT recommended procedures – to which the owners agree to be bound.

**28. MSDS**

Owners, master, crew is familiar with the characteristics and handling of the Cargo and the Master shall be provided with and sign for the receipt of an MSDS prior commencement of loading.

*No equivalent*

It is essential that the vessel is provided with the correct cargo information documents prior to loading and that the information provided by the local shipper matches that given by the owners to the vessel. This Clause also warrants that the vessel's master and crew have the requisite skills and experience to handle the cargo.

**29. Empty Tank Certificate**

The Charterers shall provide the Vessel with an empty tank certificate upon completion of discharging.

No equivalent

This is a standard provision in a chemical tanker charter and is a self-explanatory obligation on the charterers.

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**30. Dues, Taxes and Charges**

(a) On the Vessel - The Owners shall pay all dues, duties, taxes and other charges customarily levied on the Vessel, howsoever the amount thereof may be assessed.

(b) On the cargo - The Charterers shall pay all dues, duties, taxes and charges levied on the cargo at the port of loading/discharging, howsoever the amount thereof may be assessed.

(c) On the freight – Unless otherwise agreed in Box 20 taxes levied on the freight shall be paid by the Charterers.

**12. Dues-Taxes-Wharfage**

The Charterer shall pay all taxes, dues and other charges on the cargo, including but not limited to Customs overtime on the cargo, Venezuelan Habilitation Tax, C.I.M. Taxes at Le Havre and Portuguese Imposto de Comercio Maritime. The Charterer shall also pay all taxes on freight at loading or discharging ports and any unusual taxes, assessments and governmental charges which are not presently in effect but which may be imposed in the future on the Vessel or freight. The Owner shall pay all dues and other charges on the Vessel (whether or not such dues or charges are assessed on the basis of quantity of cargo), including but not limited to French droits de quai and Spanish derramas taxes. The Vessel shall be free of charges for the use of any wharf, dock, place or mooring facility arranged by the Charterer for the purpose of loading or discharging cargo; however, the Owner shall be responsible for charges for such berth when used solely for Vessel's purposes, such as awaiting Owner's orders, tank cleaning, repairs, etc. before, during or after loading or discharging.

In three sub-clauses BIMCHEMVOY 2008 clarifies who pays the taxes and dues on the vessel, cargo and freight.

Even though the equivalent clause in ASBATANKVOY and ASBACHEMVOY is longer it basically deals with the same types of dues, taxes and charges in the same way as the BIMCHEMVOY clause.

It should be noted that in sub-clause (c), taxes on freight are payable by the charterers unless otherwise agreed and stated in Part I of the form.

**31. Liberty**

The Vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress, to call at any port or place for bunkers, and to deviate for the purpose of saving life or property, or for any other reasonable purpose whatsoever.

**20. (c) (vii) Deviation Clause**

The Vessel shall have liberty to call at any ports in any order, to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or of landing any ill or injured person on board, and to call for fuel at any port or ports in or out of the

Under the Liberty Clause in BIMCHEMVOY 2008 the owners have the usual customary right to deviate to assist vessels in distress, to bunker, to save life and property and for other reasonable purposes.

One should bear in mind that under English law the courts apply the principle of *contra preferentem* to liberty to deviate clauses and will give them a very restrictive interpretation.

regular course of the voyage. Any salvage shall be for the sole benefit of the Owner.

However, they have been given full effect subject only to the restriction that the essential purpose of the voyage must not be frustrated (see also Clause 18 (Completion/Rotation)).

The deviation clause in ASBATANKVOY and ASBACHEMVOY has the same purpose and effect.

### **32. Agency**

The Owners shall nominate and appoint agents at port(s) or place(s) of loading and of discharging.

### **22. Agents**

The Owner shall appoint Vessel's agents at all ports.

The vessel should be consigned to agents at the loading and discharging ports as nominated by the owners. There is no major difference between the clauses of the different documents.

### **33. Lien**

The Owners shall have a lien on the cargo and all sub-freights payable in respect of the cargo for freight, deadfreight, demurrage, claims for damages, and for all other amounts due under this Charter Party and all costs of recovering same, including legal fees.

### **21. Lien**

The Owner shall have an absolute lien on the cargo for all freight, deadfreight, demurrage and costs, including attorney fees, of recovering the same, which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any Bills of Lading covering the same or of any storageman.

Under BIMCHEMVOY's lien clause the owners have a lien on the cargo, certain enumerated sub-freights and other amounts due under the charter party. Thereby the owners have the right to retain possession of the cargo at the port of discharge as security for the payment of the enumerated items in the clause.

The owners should be aware that they can only exercise their lien if the cargo remains in their possession; the right is lost as soon as the cargo comes into the hands of a consignee. Further, the lien is only enforceable against the charterer and not against others who are not a party to the charter party.

The lien clause in ASBATANKVOY and ASBACHEMVOY attempts to extend the lien to after delivery of the cargo. This provision may provide a false sense of security to the owners since the type of lien in question is a possessory lien which would be lost when the cargo is no more in possession of the lien holder.

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### 34. Protective Clauses

The following clauses shall apply to all Bills of Lading issued under this Charter Party and to this Charter Party:

#### (a) BIMCO General Clause Paramount

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.

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, compulsorily applicable to shipments, in which case the provisions of such Rules shall apply.

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.

#### 20 (b) (i) Clause Paramount

This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Acts of the United States, approved April 16, 1936, except that if this Bill of Lading is issued at a place where any other Act, ordinance or legislation gives statutory effect to the International Convention for the Unification of Certain Rules relating to Bills of Lading at Brussels, August 1924, then this Bill of Lading shall have effect, subject to the provisions of such Act, ordinance or legislation. The applicable Act, ordinance or legislation (hereinafter called the "Act") shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the Owner of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the Act. If any term of this Bill of Lading be repugnant to the Act to any extent, such term shall be void to that extent but no further.

#### 20 (b) (iv) Both To Blame

If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Owner in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder shall indemnify the Owner against all loss or liability to the other or non-carrying ship 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 said cargo, paid or payable by the other or recovered by the other or non-carrying ship or

This clause in BIMCHEMVOY 2008 lists a number of protective clauses that will apply to the charter party and to any bills of lading issued under the charter.

Sub-clause (a) is BIMCO's general clause paramount which makes the Hague-Visby Rules applicable to the charter party and the bills of lading.

Sub-clause (b) contains the both-to-blame collision clause. It will be relevant only in a situation where the liability for a collision in which the vessel has been involved during the currency of the charter party is to be resolved under US law. The clause protects the owners from cargo claims for which it would not be liable for anyway under the Hague-Visby Rules because of art. IV, r.2 (a), (the error in navigation defence).

The charterers' position in a collision situation is that they cannot claim for loss of or damage to its cargo directly from the owners. The charterers can however claim against the other vessel involved in the collision.

As there are few collisions where only one vessel has contributed to the accident it is normal for courts to apportion the blame. For example 70% fault on the cargo carrying vessel and 30% fault on the other vessel. In such circumstances the non-carrying vessel may claim from the carrying vessel their portion of blame i.e., 30% of the cargo owner's (the charterers) claim. As the charterers have obtained the entire claim for their losses from the non-carrying vessel they are required under the clause to indemnify the owners of the carrying vessel for the 30% claimed by the non-carrying vessel. The end result is that the owners of the carrying vessel are not indirectly exposed to claims for cargo damage for which they are not liable under the Hague Rules (error in navigation defence).

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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) Both-to-Blame Collision Clause**

If the liability for any collision in which the Vessel is involved while performing this Contract falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"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 the 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.

her owners as part of their claim against the carrying ship or Owner. The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or object are at fault in respect of a collision or contact.

**20 (b) (iii) General Average**

General Average shall be adjusted, stated and settled according to York/Antwerp Rules 1950 and, as to matters not provided for by those rules, according to the laws and usages at the port of New York or at the port of London, whichever place is specified in Part I of this Charter. If a General Average statement is required, it shall be prepared at such port or place in the United States or United Kingdom, whichever country is specified in Part I of this Charter, as may be selected by the Owner, unless otherwise mutually agreed, by an Adjuster appointed by the Owner and approved by the Charterer. Such Adjuster shall attend to the settlement and the collection of the General Average, subject to customary charges. General Average Agreements and/or security shall be furnished by Owner and/or Charterer, and/or Owner and/or Consignee of cargo, if requested. Any cash deposit being made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared.

Sub-clause (c) contains a general average clause and the New Jason clause. In accordance with BIMCO's recommendations regarding general average, unless the parties to the contract have agreed otherwise, general average should be adjusted according to the York/Antwerp Rules 1994.

The New Jason clause is relevant only when general average is to be adjusted in accordance with US law. This clause allows the owners to claim a contribution for general average even if the event that created the general average situation was due to negligence on part of the owners. The clause will apply to both the charter party and any bills of lading issued there under, thereby the owners bind all cargo owners directly.

In sub-clause (d) BIMCO's standard war risks clause for voyage chartering is found. It starts with defining "owners" and "war risks" for the purpose of the clause. In the following three paragraphs (b-d) it deals with the owners rights in war risk situations before and during loading as well as during the voyage. Paragraph (e) deals with the insurance aspect and states that the owners may take out war risk insurances with their hull underwriters and P&I underwriters at their own cost. If the charterers' orders the vessel into additional premium areas the charterers must reimburse the owners of such additional premiums. Paragraph (f) gives the owners the liberty to comply with directions etc given by the vessel's flag state, other governmental bodies, war risks underwriters, security council of the UN and other supranational bodies. Furthermore, the owners have the liberty to deviate for certain enumerated reasons and it should not be considered a deviation when the vessel complies with something mentioned in the clause.

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**(c) General Average and New Jason Clause**

General average shall be adjusted and settled in London unless otherwise agreed and stated in Box 26 according to the York/Antwerp Rules, 1994.

If General Average is to be adjusted 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, the Owner are not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the 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 the Owners, salvage shall be paid for a fully as if the said salving Vessel or vessels belonged to strangers.

Such deposit as the Owners, or their agents, may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Owners before delivery."

*In ASBACHEMVOY, the reference to the York/Antwerp Rules 1950 is changed to the York/Antwerp Rules 1994.*

**20 (b) (ii) Jason Clause**

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owner is not responsible, by statute, contract or otherwise, the cargo shippers, consignees or owners of the cargo shall contribute with the Owner 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 cargo. If a salving ship is owned or operated by the Owner, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Owner or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery.

**20 (b) (vi) War Risks**

(a) If any port of loading or of discharge named in this Charter Party or to which the Vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or  
(b) If owing to any war, hostilities, warlike operations, civil war, civil commotions,

Sub-clause (e) 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 the bill of lading issued by them or on their behalf.

ASBATANKVOY and ASBACHEMVOY include equivalent clauses except for the Himalaya Cargo Clause.



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**(d) War Risks (VOYWAR 2004)**

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

(1) "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

(2) "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.

(ii) 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 Contract, 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 Contract, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo,

revolutions or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the Vessel to reach any such port of loading or discharge- the Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports respectively established under the provisions of the Charter Party (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owner's discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charterers within 48 hours after they or their agents have received from the Owners a request for the nomination of a substitute port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of the Charter Party or not) and such discharge shall be deemed to be due fulfilment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the

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crew or other persons on board the Vessel to War Risks; provided always that if this Contract 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 Contract if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.

(iii) 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

provisions of the Charter Party, the Charter Party shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. In the event, however, that the Vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of the Charter Party, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and or discharging the cargo thereat shall be paid by the Charterers or Cargo Owners. In the latter event the Owners shall have a lien on the cargo for all such extra expenses.

(c) The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the government of the nations under whose flag the Vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation. If by reason of or in compliance with any such direction or recommendation the Vessel does not proceed to the port or ports of discharge originally designated or to

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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 Contract. 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.

(iv) 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.

which she may have been ordered pursuant to the terms of the Bills of Lading, the Vessel may proceed to any safe port of discharge which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfilment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge has been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterers and/or Cargo Owners and the Owners shall have a lien on the cargo for freight and all such expenses.

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(v)

(1) 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.

(2) 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 Contract, 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.

(vi) The Vessel shall have liberty:-

(1) to comply with all orders, directions, recommendations or advice as to departure,

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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;

(2) 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;

(3) 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;

(4) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;

(5) 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;

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(6) 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.

(vii) If in compliance with any of the provisions of sub-clauses (ii) to (vi) 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 Contract.

(e) 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 his part while acting in the course of or in connection with his 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

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purpose of all the foregoing provisions of this Clause the Owners are or shall be deemed to be acting as agents or trustees 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 contract.

(f) 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 therefor) 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.

### **35. Exceptions**

Save to the extent otherwise in this Charter Party expressly provided, neither party shall be responsible for any loss or damage or delay or failure in performance hereunder resulting from Act of God, act of terrorism, war, civil commotion, quarantine, strikes, lock-out, arrest or restraint of Princes, Rulers or people or any other event whatsoever which cannot be avoided or guarded against.

### **19. General Exceptions Clause**

The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage, or delay or failure in performing hereunder, arising or resulting from:- any act, neglect, default or barratry of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of

The mutual exceptions clause in BIMCHEMVOY 2008 relieves the parties from responsibility for certain enumerated risks, including terrorism. It is wide enough to encompass all the risks spelled out in the exceptions clause of ASBATANKVOY and ASBACHEMVOY by way of including any other unavoidable event.

the cargo; any act or omission of the Charterer or Owner, shipper or consignee of the cargo, their agents or representatives; insufficiency of packing; insufficiency or inadequacy or marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of the Owner. And neither the Vessel nor Master or Owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from:- Act of God; act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people; or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.

**36. MARPOL Prewash clause**

(a) If a mandatory prewash of cargo tanks, in accordance with requirements as per MARPOL 73/78 ANNEX II, is necessary, it is to be performed in direct continuation upon completion of discharging the cargo, in conformity with the Vessel's "Procedures and

*No equivalent*

This post-discharge washing and waste disposal clause deals with mandatory pre-wash of cargo tanks under MARPOL regulations. It states how such pre-wash should be performed and allocates the risk of time between the parties as well as any costs for shifting and delay in connection with this operation.



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Arrangements Manual" and in accordance with local port regulations.

Time used for such mandatory prewash shall be for the Owners' account. Time used for disposal of waste shall be for the Charterers' account.

(b) The Charterers shall provide suitable, adequate and approved facilities which shall be immediately available and accessible to the Vessel upon completion of discharge for the reception of such washing water/cargo residue mixture originating from cargo carried under this Charter Party and respective Bill(s) of Lading. A suitable cleaning agent shall be provided and paid for by the Charterers if water cannot be used.

(c) The costs for the use of above facilities and responsibility for ultimate disposal of the cargo residue mixture shall be for the Charterers' account.

(d) In the event that the Vessel is ordered to vacate the discharging berth to perform the mandatory prewash, as provided under paragraph (a) above, any shifting expenses and additional bunker costs to be for the Charterers' account.

Time from the vessel's readiness to perform the prewash including shifting time until prewashing commences shall count as laytime or if the Vessel is on demurrage, as time on demurrage.

Furthermore, it places the responsibility to arrange, provide and pay for reception and disposal of the hold washing and cargo residues following tank pre-washing.

There is no equivalent provision in ASBATANKVOY or ASBACHEMVOY.

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Any delay in providing the necessary reception facilities and time used for discharging cargo residues mixture shall count as laytime or, if the Vessel is on demurrage, as time on demurrage.

(e) Any action or lack of action taken under this Clause shall not prejudice any other rights or obligations of the parties.

### **37. Pollution**

The Owners shall not be responsible for pollution or the consequences thereof resulting from the escape and/or leakage and/or discharge of cargo howsoever occurring beyond the Vessel's manifold or permanent connection or from the act, neglect or default of the Charterers or their servants or agents.

*No equivalent*

The pollution clause in BIMCHEMVOY 2008 has been updated to remove the now defunct TOVALOP scheme provisions.

There is no equivalent clause in ASBATANKVOY or ASBACHEMVOY.

### **38. Oil Pollution Prevention**

(a) Owners undertake

(i) that the Vessel will throughout the period of this Charter Party be owned by a member of the International Tanker Owners Pollution Federation Limited, and

(ii) that they will provide a Certificate of Entry in a P&I Club for production on board the vessel if required under applicable law or by the relevant authorities.

(b) When there is an actual or threatened escape or discharge of Oil from the vessel which causes Pollution Damage or which creates a grave and imminent danger of such Damage, Charterers shall upon notice to the

### **26. Oil Pollution Clause (ASBATANKVOY)**

Owner agrees to participate in Charterer's program covering oil pollution avoidance. Such program prohibits discharge overboard of all oily water, oily ballast or oil in any form of a persistent nature, except under extreme circumstances whereby the safety of the vessel, cargo or life at sea would be imperilled. Upon notice being given to the Owner that Oil Pollution Avoidance controls are required, the Owner will instruct the Master to retain on board the vessel all oily residues from consolidated tank washings, dirty ballast, etc., in one compartment, after separation of all possible water has taken place. All water separated to be discharged overboard. If the Charterer requires that

The oil pollution prevention clause in BIMCHEMVOY 2008 is a standard P&I Club wording (the Post-TOVALOP Clause). The vessel is required to be a member of the International Tanker Owners' Pollution Federation Limited (ITOPF) throughout the charter party period.

Furthermore, it contains an option for the charterers at their own risk, and subject to owners' approval and applicable law, to participate in the prevention of or minimization of pollution damage.

The equivalent clause in ASBATANKVOY requires the owners to take part in the charterers' oil pollution prevention program and sets out various obligations in that respect, whereas the pollution clause in ASBACHEMVOY requires both the owners and the charterers to comply with relevant parts of MARPOL.

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Owners or Master have the right (but not the obligation) if permitted under applicable law and by the relevant authorities, to

(i) place a representative on board the Vessel to observe the measures being taken to prevent or minimise Pollution Damage, and

(ii) provide advice, equipment or manpower and undertake such other measures as are reasonably necessary to prevent or minimise such Pollution Damage, at Charterers' risk and expense and subject to the approval of the Owners (which shall not be unreasonably withheld).

(c) Nothing in this clause shall prejudice Owners' or Charterers' rights to claim compensation under any applicable law.

(d) For the purposes of this Clause, the meaning of the terms "Oil" and "Pollution Damage" shall be as defined in the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992, except where Pollution Damage takes place within the territory of a state which is party to CLC 1969, when the meaning shall be as defined in CLC 1969.

demulsifiers shall be used for the separation of oil/water, such demulsifiers shall be obtained by the Owner and paid for by Charterer. The oil residues will be pumped ashore at the loading or discharging terminal, either as segregated oil, dirty ballast or co-mingled with cargo as it is possible for Charterers to arrange. If it is necessary to retain the residue on board co-mingled with or segregated from the cargo to be loaded, Charterers shall pay for any deadfreight so incurred. Should it be determined that the residue is to be co-mingled or segregated on board, the Master shall arrange that the quantity of tank washings be measured in conjunction with cargo suppliers and a note of the quantity measured made in the vessel's ullage record. The Charterer agrees to pay freight as per the terms of the Charter Party on any consolidated tank washings, dirty ballast, etc., retained on board under Charterer's instructions during the loaded portion of the voyage up to a maximum of 1% of the total deadweight of the vessel that could be legally carried for such voyage. Any extra expenses incurred by the vessel at loading or discharging port in pumping ashore oil residues shall be for Charterer's account, and extra time, if any, consumed for this operation shall count as used laytime.

*The above Clause has been deleted from ASBACHEMVOY and replaced with the "Pollution Clause":*

*"The Owner and the Charterer agree to comply with the International Convention for the Prevention of Pollution (MARPOL) issued*

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*by the International Maritime Organization (IMO) as it stands at the time of this voyage and as relevant to cargo(es) carried and the voyage performed under this Charter.”*

**39. STOPIA/TOPIA Charter Party Clause**

The Owners warrant that they are a Participating Owner and that the vessel is entered in the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) or the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006) and shall so remain during the currency of this Charter Party, provided always that

(a) the Vessel is and remains a Relevant Ship as defined in cl. III of STOPIA/TOPIA 2006.

(b) STOPIA/TOPIA 2006 is not terminated in accordance with cl. IX of that Agreement.

*No equivalent*

This clause, which is drafted to be consistent with the International Group’s standard clause on this issue, has been inserted to deal with the owners’ responsibilities in respect of the STOPIA and TOPIA regimes.

No provision for STOPIA/TOPIA is included in ASBATANKVOY or ASBACHEMVOY.

**40. Drug and Alcohol Policy**

The Owners warrant that they have a policy on Drug and Alcohol Abuse ("Policy") applicable to the Vessel which meets or exceeds the standards in the Oil Companies International Marine Forum Guidelines for the Control of Drugs and Alcohol Onboard Ship. Under the Policy, alcohol impairment shall be defined as a blood alcohol content of 40 mg/100 ml or greater; the appropriate seafarers to be tested shall be all Vessel officers and the drug/alcohol testing and screening shall include unannounced testing in addition to routine medical examinations. An objective of the Policy should be that the frequency of the

*No equivalent*

Clause 40 (Drug and Alcohol Policy) is based on a standard clause by OCIMF and puts an obligation on the owners to have a Drug and Alcohol Policy on board.

ASBATANKVOY and ASBACHEMVOY are both silent on this issue.

unannounced testing be adequate to act as an effective abuse deterrent, and that officers be tested at least once a year through a combined programme of unannounced testing and routine medical examinations. Owners further warrant that the Policy will remain in effect during the term of this Charter Party and that Owners shall exercise due diligence to ensure that the Policy is complied with. It is understood that an actual impairment, or any test finding of impairment, shall not in and of itself mean the Owners have failed to exercise due diligence.

**41. ISGOTT/ICS Tanker Safety Guide (Chemicals)**

The Master shall, throughout the period of this Charter Party, as far as possible, comply with the recommendations set out in the latest edition of International Safety Guide for Oil Tankers and Terminals (ISGOTT) and/or ICS Tanker Safety Guide (Chemicals).

*No equivalent*

This clause obliges the master to comply with the recommendations of the latest edition of the International Safety Guide for Oil Tankers and Terminals and ICS Tanker Safety Guide. This is standard industry procedure.

Again, ASBATANKVOY and ASBACHEMVOY are silent on this issue.

**42. Incident Reporting**

The Master and/or the Owners shall comply with incident reporting requirements provided by the Charterers unless such requirements conflict with the Owners' own incident reporting system.

*No equivalent*

This Clause is necessary to ensure a direct link to the terms under which incidents are to be reported.

Importantly, the charterers' incident reporting requirements must not conflict with the owners' own reporting system – the latter taking priority in any incident.

**43. Ice Clause for Parcel Tankers**

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.

**14. Ice**

(a) In case port of loading or discharge should be inaccessible owing to ice, the Vessel shall direct her course according to Master's judgment, notifying by telegraph or radio, if available, the Charterers, shipper or

This is an ice clause specially designed for parcel tankers, based on BIMCO's standard ice clause, dealing with the parties' rights and obligations in areas where ice affecting shipping prevails.

(a) Port of Loading

(i) If at any time after the fixture of this Charter Party there is a significant deterioration in the ice condition such as to impede the Vessel's passage 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 contract 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.

consignee, who is bound to telegraph or radio orders for another port, which is free from ice and where there are facilities for the loading or reception of the cargo in bulk. The whole of the time occupied from the time the Vessel is diverted by reason of the ice until her arrival at an ice-free port of loading or discharge, as the case may be, shall be paid for by the Charterer at the demurrage rate stipulated in Part I.

(b) If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging place for fear of the Vessel being frozen in or damaged, the Master shall communicate by telegraph or radio, if available, with the Charterer, shipper or consignee of the cargo, who shall telegraph or radio him in reply, giving orders to proceed to another port as per Clause 14 (a) where there is no danger of ice and where there are the necessary facilities for the loading or reception of the cargo in bulk, or to remain at the original port at their risk, and in either case Charterer to pay for the time that the Vessel may be delayed, at the demurrage rate stipulated in Part I.

The standard clause has been amended because the drafters felt that the commonly used reference to "the approach voyage" in Sub-clause (a) (i) was more applicable to dry bulk cargoes where it is normal for the vessel to sail to the port of loading in ballast. In the chemical trade, however, the vessels are never in ballast.

There was concern that if the vessel was carrying other cargoes on route to the loading port, a court might consider that the approach voyage was just the last leg of the route when it might be too late for the owners to request the charterers to nominate an alternative port.

In order to overcome this problem Sub-clause (a)(i) was amended to refer to "at any time after the fixture". The drafters felt that this amendment to the BIMCO Ice Clause was necessary due to the specific characteristics of the chemical trade.

(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.

On delivery of the cargo other than at the port(s) named in the contract, 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.

**44. ISPS/MTSA Clause for Parcel Tankers**

*No equivalent*

(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”

This is an ISPS/MTSA Clause for Parcel Tankers which provides for the compliance with the ISPS Code and the MTSA Act. The Clause has been adapted from BIMCO’s standard ISPS/MTSA Clause to make it suitable for the chemical tanker trade.

The ISPS Code aims to detect security threats to ships and port facilities, and to take preventive measures against such threats.

The MTSA Act is the U.S. equivalent of the ISPS Code and is developed to protect U.S. ports and waterways from terrorist attacks.

Sub-clause (a) (i) set out the fundamental requirement that the owners have to comply with the requirements of the ISPS Code, and with the MTSA Act if trading within the U.S.A. Upon the charterers request the owners have to provide them with evidence of compliance with the Code and the Act (sub-clause (a) (ii)).

Furthermore, sub-clause (a) (iii) states that except as otherwise provided in the contract, any losses, apart from consequential losses, caused by the owners’ failure to comply with the Code or the Act will be for the owners account.



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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

Amongst the measures imposed by the Code and the Act are requirements which the owner can only meet with the cooperation of the charterers such as providing information about the contact details of the charterers. Therefore, under sub-clause (b) (i) the charterers are obliged to provide the owners and master with their full contact details and any other information that the owners may need in order to comply with the Code or the Act. The charterers will be accountable for failure to comply with this clause, and as under sub-clause (a) (iii) consequential losses are excluded.

Sub-clause (c) purports to allocate the risks of delay due to compliance with the Code or Act in a fair and balanced way which reflects current commercial practice.

Sub-clause (d) is where this ISPS/MTSA clause differs from the standard BIMCO ISPS/MTSA clause. This was felt necessary if this clause is to be accepted by the tanker parcel trade where unforeseen costs are divided on a 50/50 basis between the parties. Therefore, this clause provides that costs and expenses arising from compliance with the Code or Act should be shared equally between the parties unless they result 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. To flag the fact that this is not BIMCO's standard ISPS/MTSA clause it has been renamed ISPS/MTSA clause for parcel tankers.

Sub-clause (e) contains an indemnity provision that secures that payments made in respect of the clause will be covered by the responsible party under the clause.

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count as half laytime or half 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. If the delay occurs before laytime has started or after laytime or time on demurrage has ceased to count, it shall be compensated by the Charterers at one-half the demurrage rate.

(iii) In case of part cargo all time lost or expenses incurred shall be prorated between all Charterers loading or discharging at the same port in proportion to the size of each Charterers' cargo. However, where the time lost or expenses incurred results from the act of any specific charterer, shipper or receiver, the total time lost or expenses incurred shall be for that charterers' account.

(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 shared equally between Owners and Charterers', 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

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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.

**45. BIMCO AMS Clause for Voyage Charter Parties**

*No equivalent*

(a) If the Vessel loads or carries cargo destined for the US or passing through US ports in transit, the Owners shall comply with the current US Customs regulations (19 CFR 4.7) or any subsequent amendments thereto and shall undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and expense:

(i) Have in place a SCAC (Standard Carrier Alpha Code);

(ii) Have in place an ICB (International Carrier Bond); and

(iii) Submit a cargo declaration by AMS (Automated Manifest System) to the US Customs.

(b) The Charterers shall provide all necessary information to the Owners and/or their agents to enable the Owners to submit a timely and accurate cargo declaration.

The Charterers shall assume liability for and shall indemnify, defend and hold harmless the Owners against any loss and/or damage

BIMCO's standard AMS clause for voyage charter parties provides for the compliance with US customs regulations in the event the vessel should visit the United States. The party who fails to comply with the requirements of the clause will assume liability for such failure and also indemnify the other party for any losses in this respect. Any time lost because of failure of compliance will be at the risk of the failing party.

The owner will be regarded as carrier under this clause; however that will not affect the identity of the carrier in other respects.

ASBATANKVOY and ASBACHEMVOY contain no equivalent provision.

whatsoever (including consequential loss and/or damage) and/or any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Charterers' failure to comply with any of the provisions of this sub-clause. Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall count as laytime or, if the Vessel is already on demurrage, time on demurrage.

(c) The Owners shall assume liability for and shall indemnify, defend and hold harmless the Charterers against any loss and/or damage whatsoever (including consequential loss and/or damage) and any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Owners' failure to comply with any of the provisions of sub-clause (a). Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall not count as laytime or, if the Vessel is already on demurrage, time on demurrage.

(d) The assumption of the role of carrier by the Owners pursuant to this Clause and for the purpose of the US Customs Regulations (19 CFR 4.7) shall be without prejudice to the identity of carrier under any bill of lading, other contract, law or regulation.

#### **46. Quarantine**

In the event of severe epidemic, plague or infectious diseases, or outbreaks of a similar

#### **17. Quarantine**

(a) Should the Charterer send the Vessel to any port or place where a quarantine exists,

While the quarantine clause in ASBATANKVOY and ASBACHEMVOY only deals with this issue in respect of whether time should count as laytime or not, BIMCO's

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nature as a consequence of which quarantine is imposed the following terms apply:

(a) 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 Contract of Carriage, 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 such outbreaks, the Owners may give notice to the Charterers cancelling this Contract of Carriage, 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 such outbreaks; provided always that if this Contract of Carriage 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 such outbreaks, 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 Contract of Carriage if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.

(b) 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

any delay thereby caused to the Vessel shall count as used laytime; but should the quarantine not be declared until the Vessel is on passage to such port, the Charterer shall not be liable for any resulting delay.

quarantine clause is very comprehensive by way of providing for the responsibilities and liabilities at various stages during the contract.

For all three stages there are three criteria to take into consideration when establishing the parties' rights and obligations.

First, the master or owners are required to exercise their discretion honestly, in good faith after proper consideration and after having made necessary enquiries. This is a protection for the charterers who should not be left to the whims of the owners.

Second, there has to be a real prospective risk that the vessel will be exposed to quarantine.

Third, the quarantine situation should not have been there at the time of the contract. If it was then the owners can not invoke the Clause to their benefit since they can be said to have accepted the risk of quarantine.

If the above three criteria are fulfilled sub-clauses (a) to (c) may be invoked depending on which stage of the contract the vessel is.

Sub-clause (a) applies before loading and gives the owners the right to terminate the contract, or refuse to perform the part of the voyage which may expose the vessel to quarantine.

If the contract provide for loading and discharging within a certain range of ports the owners must first ask the charterers to nominate a safe port within that range and the right to terminate only arise 48 hours after the charterers received the request for an alternative safe port if such port has not been nominated.

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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 such outbreaks. 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 Contract of Carriage. 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.

(c) 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

Sub-clause (b) applies during loading and the owners may ask the charterers to nominate a safe discharge port. If the charterers still have not nominated such a port after 48 hours of receipt of such request, the owners may discharge the cargo at any safe port of their choice. Such discharge should count as proper discharge by the owners in accordance with the contract.

Furthermore, the charterers will be liable to pay to the owners all extra costs and expenses incurred by such discharge, and pay full freight. Additional freight will be payable if the extra distance to the discharge port exceeds 100 miles.

Sub-clause (c) applies during the voyage, after loading and entitles the owners to deviate from the customary route and take a longer route to the discharging port. The charterers will be liable to pay additional freight if the route exceeds 100 miles more than the original route.

The final sub-clause, (d), deals with the situation where there is an outbreak on board the vessel which causes quarantine. In such cases the charterers will have to pay for time lost at half the agreed demurrage rate.

cargo, crew or other persons on board the Vessel may be, or are likely to be, exposed to such outbreaks 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.

(d) If the Authorities at any time during the currency of this Charter party impose quarantine on the vessel or the crew, any time thereby lost shall be paid for by the Charterers at half the demurrage rate specified in Box X.

#### **47. Bills of Lading**

(a) Bills of Lading shall be presented to and signed by the Master as per the "BIMCHEMVOYBILL 2008" Bill of Lading form without prejudice to this Charter Party, or by Agents provided written authority has been given by the Owners to the Agents, a copy of which is to be furnished to the Charterers.

(b) The Charterers shall indemnify the Owners against all liabilities that may arise from the signing of Bills of Lading as presented to the extent that the terms or contents of such Bills of Lading impose or result in the imposition of more onerous liabilities upon the Owners than

#### **20. Issuance And Terms Of Bills Of Lading**

(a) The Master shall, upon request, sign Bills of Lading in the form appearing below for all cargo shipped but without prejudice to the rights of the Owner and Charterer under the terms of this Charter. The Master shall not be required to sign Bills of Lading for any port which, the Vessel cannot enter, remain at and leave in safety and always afloat nor for any blockaded port.

(b) The carriage of cargo under this Charter Party and under all Bills of Lading issued for the cargo shall be subject to the statutory provisions and other terms set forth or specified in sub-paragraphs (i) through (vii) of

Similar to ASBATANKVOY and ASBACHEMVOY which refer to their own respective pre-printed bills of lading, a new bill of lading with the codename BIMCHEMVOYBILL 2008 has been drafted to be used together with BIMCHEMVOY 2008.

Both clauses give the charterers the right to issue such bills of lading which will be binding on the owners who will be regarded as the carrier against whom cargo claims can be made. If the charterers issues other forms of bills of lading and the owners suffers loss they would be entitled to recover their losses by way of damages for breach of contract.

those assumed by the Owners under the terms of this Charter Party.

this clause and such terms shall be incorporated verbatim or be deemed incorporated by the reference in any such Bill of Lading. In such sub-paragraphs and in any Act referred to therein, the word "carrier" shall include the Owner and the Chartered Owner of the Vessel.

Furthermore, both clauses contain the "without prejudice" provision under which the master is neither bound nor authorised to sign bills of lading containing terms that differ from the terms of the charter party and that should the master do so anyway the charter party will prevail as the governing contract between the owner and the charterer.

In addition, BIMCHEMVOY 2008 incorporates a safety mechanism whereby it expressly states that the charterers should indemnify the owners for losses caused by signed bills of lading imposing on the owners more onerous obligations or less extensive rights than the charter party.

#### **48. Subletting/Assigning**

Subject to the Owners' approval, which shall not be unreasonably withheld, the Charterers shall have the liberty of subletting or assigning this Charter Party to any individual or Company, but Charterers shall always remain responsible for the due fulfilment of all terms and conditions of this Charter Party.

#### **25. Sublet**

Charterer shall have the right to sublet the Vessel. However, Charterer shall always remain responsible for the fulfilment of this Charter in all its terms and conditions.

Apart from the difference that under BIMCHEMVOY 2008 the charterers' right to sublet is subject to the owners' approval, the clauses in ASBATANKVOY and ASBACHEMVOY are the same in that they put the responsibility of fulfilment of the contract on the charterers in the event of a sublet.

#### **49. 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

#### **24. Arbitration**

Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of this charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by

Whereas BIMCO's standard dispute resolution clause provide the parties with three options: London arbitration and English law, New York arbitration and U.S. law, or the laws of another jurisdiction as chosen by the parties, ASBATANKVOY and ASBACHEMVOY only give the parties a choice between London and New York arbitration in accordance with the laws applicable there.

Sub-clause (d) of BIMCHEMVOY 2008, which provides for the possibility to refer the dispute to mediation, will always apply no matter what choice of law and jurisdiction the parties made.



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

service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator has been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either arbitrator may apply to a Judge of any court of maritime jurisdiction in the city above-mentioned for the appointment of a third arbitrator, and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees, and judgement may be entered upon any award

There is no reference to mediation in ASBATANKVOY and ASBACHEMVOY.

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.

Another difference between the BIMCO Clause and the ASBATANKVOY/ASBACHEMVOY Clause is that it is only BIMCO's that have a reference to small claims procedures.

For a fuller description of the BIMCO Standard Dispute Resolution Clause, please see BIMCO Bulletin No 1/2002 or Special Circular No. 1, 16 January 2002, which can be found on BIMCO's website.

Should the parties wish to avail themselves of the LMAA's Intermediate Claims Procedure, additional wording designed to be incorporated into the Dispute Resolution Clause is available to download from the Clauses section of the BIMCO website ([www.bimco.org](http://www.bimco.org)).

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, judgement 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.

made hereunder in any Court having jurisdiction in the premises.

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.)*

(e) If Box 30 is not filled in, sub-clause (a) of this Clause shall apply.

*\*) (a), (b) and (c) are alternatives; indicate alternative agreed in Box 30. Sub-clause (d) shall apply in all cases.*

## **50. 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 but may be given

*No equivalent*

What constitutes an acceptable notice is often an area of dispute under many charter parties. BIMCHEMVOY 2008 clarifies the issue with a specific clause dealing with notices. All notices must be in writing in a readable and understandable way and capable of being a record. Notices may be given verbally as well provided only that

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verbally provided that it is confirmed in writing as soon as possible.

(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 fax, e-mail, registered or recorded mail, or by personal service.

the verbal notice is confirmed in writing as soon as possible.

No equivalent clause regarding the way notices must be given is found in ASBATANKVOY or ASBACHEMVOY.

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