

BIMCO SUPPLYTIME 2017: A modern update to an established form

SUPPLYTIME 2005, the standard form of charterparty for offshore vessels, has undergone an update to modernise and improve the form. At first glance, the revised 2017 form is very similar to its predecessor; however, it contains some important changes, some of which are more apparent than others.

The changes reflected in the revised 2017 form not only aim to provide a more balanced contract, from what has traditionally been seen as an owner friendly form, but also update the form to reflect modern practices and developments in case law. The overriding aim of the 2017 form is to "make it as appealing to Charterers as it is already to Owners"(Ian Perrott (Chairman of the SUPPLYTIME Revision Subcommittee) – "SUPPLYTIME 2017 - what can users expect to see in the new edition?"). This article looks at some of the key changes contained within the 2017 form.

Liability

Arguably the most significant change is to the "knock-for-knock" regime. The principle behind "knock-for-knock" is that each party bears responsibility for any damage or loss to its own property or accident or injury to its own staff, without making a claim against the other party, even if the other party is at fault. The principle provides the contracting parties and their insurers with some certainty.

The 2005 form, however, contains numerous exceptions (contained within 16 clauses) where the "knock-for-knock" regime is disapplied. Examples include (a) where damage or loss is incurred in circumstances where undeclared explosives or dangerous cargo are shipped by the Charterers on board the vessel and (b) in the event of pollution claims. These exceptions in the 2005 form water down the "knock-for-knock" regime, many of which favour owners.

The 2017 form removes the vast majority of the exceptions, strengthening the "knock-for-knock" regime; applying it in a truer/more balanced form, with the only remaining exceptions being for Owners' and Charterers' towing wires, limitation of liability at law, and salvage of Charterers' property.

The remit of the "knock-for-knock" regime has also been extended to capture a broader range of the contracting parties' interests, with a view to ensuring that it covers all entities working on the offshore site. This has been achieved by expanding the definition of "Charterers' Group" to now include Charterers' clients (of any tier), and also affiliates of the entities referred to within the definition. Similar changes have been applied to the definition of "Owners' Group".

The exclusion of consequential loss has been updated to bring it in line with the latest case law; the list of excluded losses is extended, and consequential and indirect loss is set out as a separate category.

The Owners' liability for the Vessel not working, which remains limited to the suspension of hire is, in the 2017 form, expressly stated to apply where caused by negligence on the part of a member of the Owners' Group. The Owners' limitation of liability is also now stated to apply whether or not the vessel is off-hire.

Delivery/redelivery survey

The clause dealing with delivery and redelivery surveys has been revised in the 2017 form. The role of the independent surveyor (jointly appointed) is now limited to determining and recording (i) the type and quantity of fuel (ii) the quantity of potable water on board and (iii) the cleanliness and condition of the cargo tanks. Charterers have the right in the 2017 form (with Owners' consent, not to be unreasonably withheld) to conduct a vessel audit, assessment, survey and inspection of the vessel in the period prior to delivery, providing Charterers with the opportunity to check that the Vessel is compliant with the terms of the charterparty.

Fuel

The provisions relating to payment for fuel (the term "fuel" replacing the word "bunkers") has been amended to reflect current industry practice. Under the 2005 form, Charterers purchase fuel remaining on board at the time of delivery, with Owners purchasing fuel remaining on board at redelivery at the price prevailing at the port of delivery and redelivery respectively.

The process in the 2017 form provides two alternatives, either (i) the parties account for the fuel as aforesaid but at a substantiated price paid by the Owners at the last loading of the fuel on board, or (ii) the difference in the quantity of fuel on board between delivery and redelivery by reference to delivery and redelivery surveys is paid, either at a pre-agreed rate or the substantiated price paid at the Vessel's last loading of fuel.

The 2017 form provides the chief engineer with a right to stop the loading of fuel if it is suspected that it is off-spec. This replaces the Charterers' indemnity for off-spec fuel that exists in the 2005 form.

Maintenance and dry docking

The maintenance provisions are more clearly stated in the 2017 form, including a definition for "Maintenance Days". Owners are no longer entitled to payment for unused Maintenance Days at redelivery, unless they have not been used at Charterers' request, when they would be payable on redelivery or earlier termination of the charterparty.

The regularity of the dry docking provisions in the 2017 form is now linked to Class society requirements (with Owners required to provide Vessel's Class dry-docking schedule at the start of the charter period). Additional provisions have also been added to the process, to remove ambiguity and ensure any dry dock location is reasonable, with regards to time and cost, for Owners and Charterers.

Termination

The rights to terminate for cause have been clarified in the 2017 form. Requisition, confiscation, loss of Vessel and force majeure are now stated to be events of termination giving either party the right of termination, whilst bankruptcy and Owners' failure to take out insurance only gives the non-defaulting party a right of termination.

The separate right of termination in the event of breakdown of the Vessel after a stipulated period of time which appears in the 2005 form has been removed in the 2017 form. Breakdown in the 2017 form now falls solely within the off-hire regime for which there is a clearer termination right

linked to prolonged off-hire for a single consecutive period or combined periods. The notification requirements for termination have also been clarified.

BIMCO clauses

The standard BIMCO clauses that are contained within the 2005 form have been updated in the 2017 form with the latest versions of the clauses included. These include the war risks clause and the dispute resolution clause. Additional standard BIMCO clauses have been included in the 2017 form to cover issues that contracting parties often look to address, namely the BIMCO infectious or contagious disease clause (clause 25), the BIMCO anti-corruption clause (clause 28), the MLC 2006 clause (clause 29), the BIMCO sanctions clause (clause 30) and the BIMCO designated entities clause (clause 31).

The both-to-blame and the general average clauses have been removed in the 2017 form, on grounds that the clauses are contrary to a pure "knock-for-knock" regime.

Final comment

The SUPPLYTIME form provides a framework of the key rights, obligations and liabilities for parties wishing to contract in the offshore sector. It is a document that is well understood in the offshore industry and as a result has been widely used, and its use has undoubtedly extended beyond the remit of what the original drafting committee of SUPPLYTIME would have anticipated.

Users of the form should be aware that whilst the revised SUPPLYTIME 2017 form is an improved version, and is welcomed, it remains a generic standard form charterparty. In its non-amended form, SUPPLYTIME does not cater for the specific needs of particular projects. For example, in the offshore wind farm sector the SUPPLYTIME form is often used for the charter of jack-up installation vessels. However SUPPLYTIME does not address specific issues that come with chartering a jack-up vessel e.g. risks relating to the planting of the vessel's legs which result in issues such as responsibility for ground risk and surveys for unexploded ordnance.

Where SUPPLYTIME is used to contract for floating accommodation (for offshore projects or otherwise), additional provisions need to be considered to cover such areas as the services to be provided to those using the accommodation and their rights of access to the vessel.

Caution should to be taken to ensure that it meets the needs for which it is being applied, and appropriate amendments are made to cover particular risks and issues that may apply to specific sectors and to align it to the needs of the parties.



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