

NEWSLETTER, SEPTEMBER 2017

## SUPPLYTIME 2017 – a revision aiming to reflect the prevailing market practice

*A new revision of SUPPLYTIME, BIMCO's standard time charter party for chartering of offshore support vessels to the oil and gas exploration and production industry, was released earlier this summer. SUPPLYTIME, which appeared in its first version in 1975, is now revised to a fourth edition. The 2017 revision aims, first and foremost, to reflect contemporary practice and legal developments in the shipping industry, but also the current prevailing market practice and, arguably, the changed market conditions. The 2017 edition is thought to be more practical, balanced and equal for the Owner and Charterer.*

*The 2017 edition offers a full revision of the 2005 format; however, most of the concepts and structures in 2005 version remains unchanged albeit with amendments of a clarifying nature only. From a practical point of view, the market should, in particular, observe the changes to the knock for knock regime and insurance provisions, the off-hire system and the bunker clause.*

### **KNOCK FOR KNOCK AND INSURANCE PROVISIONS**

The definitions of the respective group of companies has been widened and thereby reducing the number of potential third party liabilities under the contract. Notably, contractors and subcontractors of any tier are now covered and, for vessels engaged with project support (whether development or work on existing infrastructure) the principles coincides and are aligned with the indemnification and liability scheme well established in the oil & gas industry. This is believed to reduce the need for case-by-case amendments as often necessary when working for head/main contractors.

In the insurance provisions the wording is imposing an obligation on the Charterers to obtain a waiver of subrogation in favour of Owners' Group if the Charterers carries insurance coverage for any of the liabilities it has assumed under the charter party. This may include CAR- insurance (construction all risk) or forms of Charterers' liability insurance.

In addition, certain carve-outs from the knock-for knock have been deleted making the risk allocation "cleaner". Most notable, is the fact that the Owners now are liable for any pollution emanating from the vessel (but not the cargo) regardless of any fault on the Charterers' end. Previously, the Owners were only liable for its own acts and omissions.

### **FUEL**

In the bunker clause the terminology has been changed and the word "bunker" has been replaced with "fuel". Apart from the linguistic modernisation, the clause largely remains unchanged except for an added sub-clause providing the parties with the possibility to agree on an alternative payment scheme of fuel on board at the time of delivery/redelivery. The 2005 edition obligated the Charterers to pay, and the Owners to repay, the value of the fuel on board at the time of delivery and redelivery respectively. If the alternative solution under the 2017 is elected, the fuel balance is settled at the end of the time charter. This is believed to be a practical and cash-flow friendly solution which is well suited for short-term fixtures.

## OFF-HIRE

Similarly to under the 2005 format, maintenance time will accrue on a monthly basis; however, in the 2017 format maintenance days are only payable at redelivery or earlier termination provided that Charterers have requested the Owners not to use the accrued maintenance time. Importantly, the 2017 edition relieves the Charterer of the obligation to pay for consumables, including fuel and water when the Owners are using maintenance time. Practically this is important, as it is no longer so that Charterers are obliged to pay for fuel while Owners are using maintenance days.

It should also be noted that Owners shall give reasonable notice of their intention to use maintenance days and how many. The provisions do not regulate explicitly the legal implication in the event the Owners do not provide a notification as stipulated. It can be argued that such breach would hinder Owners to use maintenance days. In particular, we expect scenarios where the Vessel requires immediate and sudden repair – and prior notice has not been rendered - would lead to discussions about the right to use maintenance days. Further, when scheduled for dry-dock the vessel is deemed to be delivered, and consequently off-hire, when placed at the Owners disposal. Notably the transit time spent to and from dry-docking is for the Owners' account under the 2017 edition, and it should further be observed that the Owners is now obligated to take due account of the Charterers' interest when determining the respective port for the dry-dock activities.

## OTHER CHANGES

While the 2017 format contains clarifications in respect of a number of other clauses such as termination and survey, audits and inspection, also some new elements are incorporated. Following the need to lay-up vessels, both cold and warm, a new clause detailing the parties' position in the event of a lay-up is developed. Several of the newer BIMCO standard clauses relating to, inter alia, anti-corruption, diseases and sanctions have been included as well.

## FINAL COMMENTS

In our view, the 2017 version addresses a number of practically important issues in a successful manner. Despite representing a shift and being less owner-friendly, we consider it to reflect best practice and current market conditions and without imposing additional risk on the owners which are unreasonable. Most, if not all, changes are within what the owners can control.

The 2017 edition does not address the tendency to impose a larger responsibility on owners for the work the offshore support vessels are performing. As in previous editions, the primary ambit of the SUPPLYTIME remains the clean vessel charters. A word of caution should therefore be added for where SUPPLYTIME is proposed as the contract format while the Owners at the same time is requested to assume a larger operational scope and responsibility than that which follows from conventional ship chartering and management. In these instances, other contracts format should be considered or, alternatively, the wording should be tailored to reflect the agreed risk allocation both in respect of commercial and technical matters.

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*Our offshore team has significant practical experience with both charter party related and operational matters, including drafting, negotiations and dispute resolution. Our team is available and ready to act should you have inquiries to the above or any other offshore shipping related matters.*



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