


	<b>NYK SHIPMANAGEMENT PTE LTD</b> Training Centre, No 25 Pandan Crescent #04-10 Tic Tech Centre, Singapore 128477	Original Date 15/05/12	Approved by NK	Edition: 1st May-2012	
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### Objective of the course :-

- **This course aims to introduce course participants to the essentials in business practices of the shipping industry and equip them with a fundamental understanding of the elements of shipping business.**
- **Participants can expect to be able to communicate / act more effectively with various stakeholders in the industry after this course.**
- **To highlight key point, which has led to extraordinary loss of revenue to the ship owner due to lack of knowledge or negligence from the Master's point of view.**

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## I. SHIP BUSINESS

### 1. UNDERSTANDING THE BUSINESS

#### 1.1 The Cargo

Cargo ships/freighters can be divided into three groups, according to the type of cargo they carry. These groups are:

1. General Cargo Vessels
2. Tankers
3. Dry-bulk Carriers

General Cargo Vessels carry packaged items like chemicals, foods, furniture, machinery, motor vehicles, footwear, garments, etc.

Tankers carry petroleum products or other liquid cargo.



Dry Bulk Carriers carry coal, grain, ore and other similar products in loose form.

Cargo ships fall into two further categories that reflect the services they offer to industry i.e liner and tramp services. Those on a fixed published schedule and fixed tariff rates are cargo liners. Tramp ships do not have fixed schedules. Users charter them to haul loads. Generally, the smaller shipping companies and private individuals operate tramp ships. Cargo liners run on fixed schedules published by the shipping companies. Each trip a liner takes is called a voyage. Liners mostly carry general cargo.

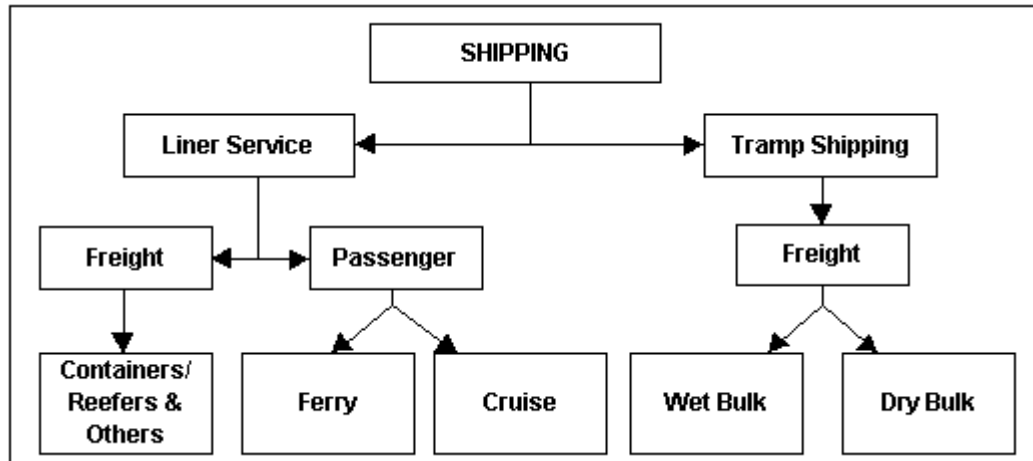
The words *cargo* and *freight* have become interchangeable in casual usage. Technically, "cargo" refers to the goods carried aboard the ship for hire, while "freight" refers to the compensation the ship or charterer receives for carrying the cargo.

Generally, the modern ocean shipping business is divided into two classes:

1. Liner business: typically (but not exclusively) container vessels (wherein "general cargo" is carried in 20 or 40-foot "boxes"), operating as "common carriers", calling a regularly published schedule of ports. A common carrier refers to a regulated service where any member of the public may book cargo for shipment, according to long-established and internationally agreed rules.
2. Tramp business: generally this is private business arranged between the shipper and receiver and facilitated by the vessel owners or operators, who offer their vessels for hire to carry bulk (dry or liquid) or break bulk (cargoes with individually handled pieces) to any suitable port(s) in the world, according to a specifically drawn contract, called a charter party.

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Larger cargo ships are generally operated by shipping lines: companies that specialize in the handling of cargo in general. Smaller vessels, such as coasters, are often owned by their operators.



## 1.2 Charterers



### Charter Party

Charter Party is a contract of affreightment in writing by which the owner of ship lets the whole or a part of her, to a merchant for the conveyance of goods, on a particular voyage, in consideration of the payment of the freight. If permitted to do so by the terms of the charter party, the charterer may enter into subcontracts with other shippers.

In some cases the ship owner will prefer to fix a contract of affreightment on basis of a fixed price per ton transported cargo without binding himself contractually to have to deliver a named ship. A ship owner who operates as entire fleet, generally prefers to be able to transfer the goods which he must carry, from one ship to the other to be able to realize the most profitable operation prospects of his ships against the lowest possible freight rates.



The main types of charter parties are Bareboat Charter Party, Time Charter Party and Voyage Charter Party. If the vessel is chartered, it is of utmost importance that the Master reads the charter party carefully, especially the added clauses, until it is thoroughly understood. It is advisable to have the officers read it as a matter of information and instruction and it will do no harm to discuss it with them, especially with the Chief Officer.

The important clauses should be check-marked for quick reference. If any refer to dates of notification of ETA to consignee or charterer's agent, the Master should make a note of the day the message is to be sent and be sure to send it.

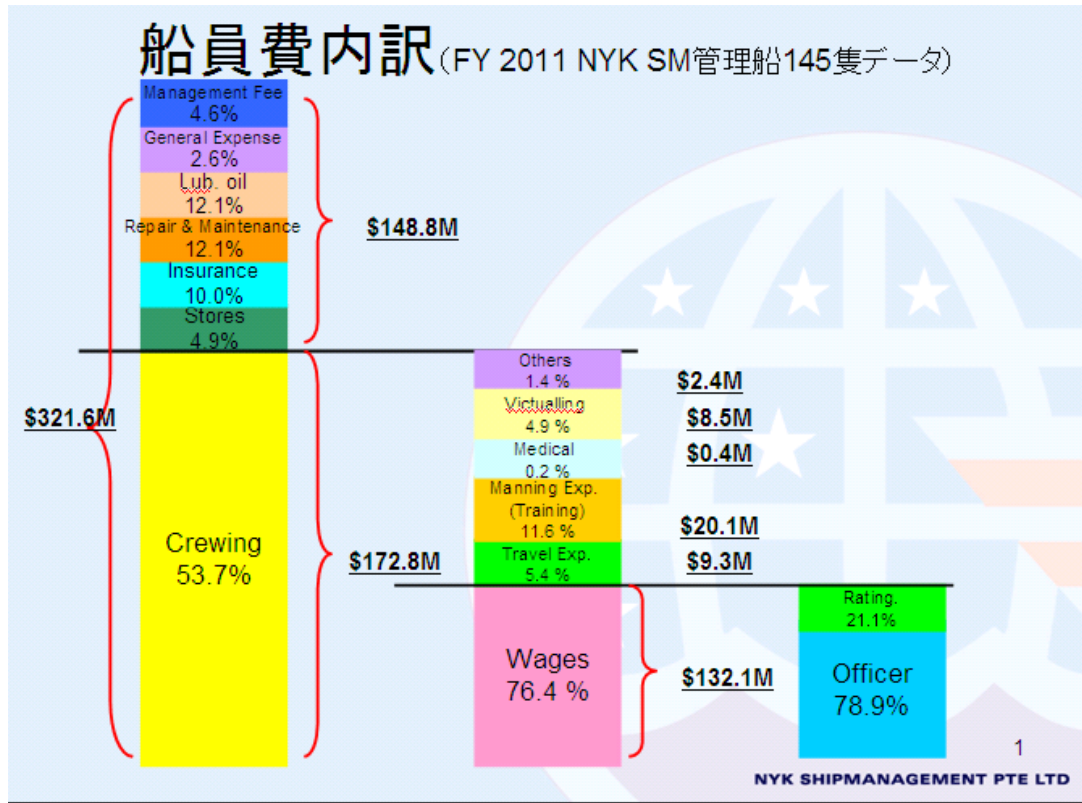
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### **Bareboat Charter Party**

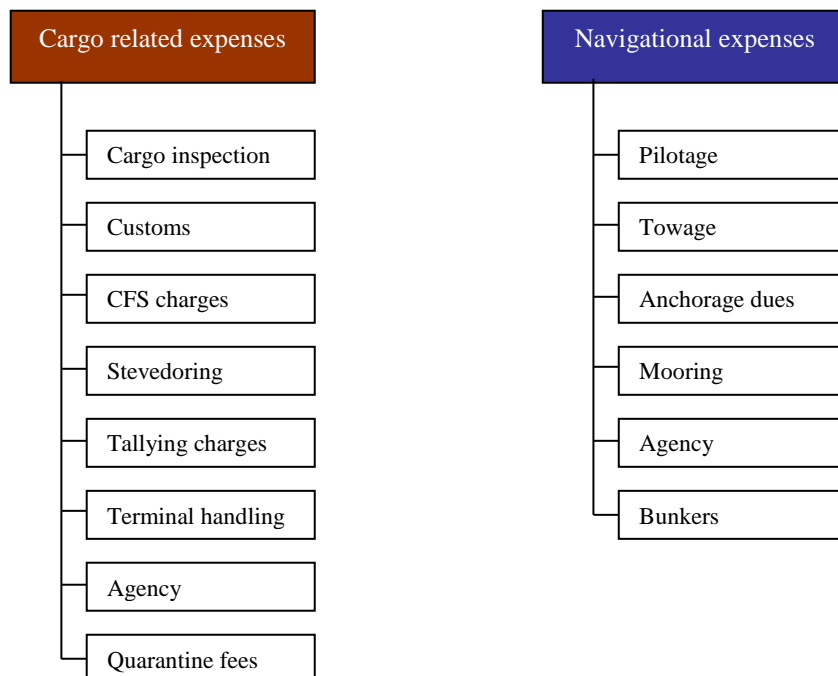
By this type of charter, the ship owner leases his entire vessel and the charterer has the responsibility of operating it as though it were his own vessel. As the name implies, the bare vessel is chartered. Under the bareboat charter the owner will bear the capital cost and possibly the insurance (its customary that the insurance is concluded by the owner but that the bonus is paid by the charterer) and classification of the ship. All the other running cost and certainly the variable cost are for the charterer. The charterer will equip and man the ship himself which gives him practically the complete control over the operation of the ship. There may be a clause in the charter party that the master and the chief engineer must be approved by the ship owner. Before delivery to the charterer, the vessel is surveyed by representatives of both parties and the same is done on redelivery. On redelivery, the owner's representatives may check the log books for information pertaining to groundings, striking objects and collisions.



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## Running Cost



## Variable Cost



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## Voyage Charter Party

It is a contract for carriage of a stated quantity and type of cargo by named vessel between named ports against an agreed freight. The charterer pays the vessel owner (or the Bareboat charterer) on a per-ton basis. Several possibilities can occur:-

- a. The entire ship is chartered for the transport of full cargo, and this is : -
  - For a well determined voyage
  - For a voyage to go and return
  - For a series of specific voyages
  - For a round trip within different harbors and the right for the charter to load and discharge
- b. Part of the ship is chartered for the transport of a certain shipment or part cargo.

Usually, under a voyage charter both the running cost and the variable cost are at the expenses of the ship owner. A statement to that effect will be included in the charter party. The master should be particularly concerned with voyage charter parties because of the “laytime, dispatch and demurrage” clauses and the necessity of tendering the “notice of readiness” to load or discharge.

In this type of charter, the charterer contracts to provide a cargo on that particular voyage and he must load and discharge the cargo at a given rate per day.



When the full capacity of the vessel is chartered, it must be loaded to full capacity or the charterer may be liable for dead freight. If the entire carrying capacity is to be used and is stipulated in number of tons, the stowage should be carefully watched to make certain that all available space is utilized and the cargo stowed properly. Otherwise, you may find that the vessel is full and there is still some cargo to be loaded, an evidence of poor stowage, for which the charterer may hold the vessel responsible.

A number of charter parties are not linked to a specific traffic and can be used for all types of cargoes and for any type of voyages. The most frequently used general voyage charter agreements, called “Uniform General Charter Parties” are : -

- The “Uniform General Charter”, GENCON (box type) published by BIMCO
- The “Multi-Purpose Charter Party”, MULTIFORM published by FONASBA
- The “Tanker Voyage Charter Party”, ASBA II, published by ASBA
- The “Tanker Voyage Charter Party”, INTERTANKVOY 76, published by INTERTANKO

### ➤ **Worldscale (New Worldwide Tanker Nominal Freight Scale)**

It is a unified system of establishing payment of freight for a given oil tanker’s cargo and also an index devised to allow comparison of freight rates for various size tanker routes. It also allows for comparison for similar sized ship’s on different voyages. The index is jointly issued by Worldscale Association, London Limited and Worldscale Association (NYC) Inc.

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The World scale concept works on two parts. The first part is the ‘flat-rate’ – which is the rate published by Worldscale – and represents a base rate for a voyage from point A to point B that allows for comparable returns for similar size performing near-similar voyages. Worldscale publishes these flat rates for thousands of possible voyages. The flat rate mostly changes once a year, but since the tanker market move up and down on a daily basis – the flat rate, on its own won’t allow Owners and charterers to agree on a rate that reflects the state of current market. This is where the Wordscale ‘multiplier’ comes in. When you see a rate quoted in a market report, lets say WS 175 – this means the rate per ton that the Owner will get paid is 175 of the flat rate or 1.75 times the flat rate. When the market gets hot, the Worldscale multiplier increaser. When the market goes cold, the multiplier decreases.

*The purpose of Worldscale is to allow for simplicity. When most cargos are fixed, the Charterer isn’t 100% sure where the cargo will load – and rarely knows with any sense of certainty where the cargo will discharge. In the meantime, the Charterer needs a lot of load and discharge options. So instead of agreeing to a rate for all the permutations involved with 3 load ports and 12 discharge ports – they agree on one Worldscale rate (which reflects the state of the current spot market). Once the load and discharge port(s) have been finalized, then the flat rate can be looked up in the Worldscale tables and multiplied by the “multiplier” – which gets you to the per-ton rate. This provides for a much more efficient market.*

From Yokohama to:	US\$/tonne	Miles
Adelaide	10.60	10,574
Aden	12.39	13,038
Chiba	2.90	50

} Flat Rate Example

#### ➤ **Cargo**

Except when loadable quantity has been specified; a difference of +/- 5% or +/- 10% is generally at the ship owner’s discretion. This limit is called tolerance.

#### ➤ **Laytime**

The period of time agreed between the parties during which the owner will make and keep the vessel available for loading or discharging without payment additional to the freight. Generally, the laytime is taken as 72, 84 and 96 hours as stipulated in the World Scale, but since the laytime is associated with freight, the contract for laytime and freight should be concluded simultaneously.



#### ➤ **Demurrage**

Means an agreed amount payable to the owner in respect of delay to the vessel beyond the laytime for which the owner is not responsible. Demurrage rate is clearly in accordance with World Scale requirements, but sometimes indicated as amount per day also. Currently, the lower limit is about \$30,000 for VLCC and about \$16,000 for AFRA. These figures may vary depending on the market situation. This is to allow the ship owner to negotiate so as to guarantee the ship’s operation cost when it is detained.

#### ➤ **Laydays / Cancelling Date**

If the ship has not reached the loading site by the canceling date or even if it has reached the site by the canceling date but the NOR cannot be submitted, then the charterer can cancel the contract without compensation, provided the charterer is not



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responsible for the delay. Generally, Laydays and Canceling Date are stipulated in hours.

#### ➤ **Warranty**

During the charter period, the ship's seaworthiness shall be guaranteed by the ship owner.

#### ➤ **Deadfreight**

A form of compensation payable by the charterer or shipper to the shipowner when the charterer is unable to load the cargo quantity agreed in the charterparty; the amount payable is the loss of freight equivalent to the cargo unavailable. In that case the charterer shall pay the same rate as the contractual freight for the difference from the agreed loadable quantity. Generally, the contractual weight is agreed upon in metric tons (MT). If the contractual weight cannot be loaded even if the tank capacity is full, the agreed freight shall have to be paid similarly. For instance, if the contractual weight is 250,000 MT and the charterer was able to arrange only for a cargo weight of 240,000 MT, or was able to load only 240,000 MT which was the upper limit of the tank capacity, then the freight shall be paid for 250,000 MT, as stated in the contract. Calculation of demurrage shall be made for the number of hours the stipulated Lay time has been exceeded. Generally, the demurrage for the detention time caused by waiting for tides, strikes by workers or rough weather is taken as half the demurrage.

#### ➤ **Despatch**

It is an agreed amount payable by the owners if the vessel completes loading or discharging before the laytime has expired.



#### ➤ **Notice of Readiness**

As soon as the ship enters port, the Notice of Readiness shall be tendered to the charterer or the charterer's agent complying with the Voyage Instructions. The start of laytime (start of count of demurrage) is mostly taken as 6 hours after N/R is tendered or after the ship is berthed, whichever is earlier.

With regard to this clause, there is also the C/P form that stipulates that the waiting time after N/R until berthing of the ship due to circumstances beyond the control of the charterer (waiting for tide or sunrise, etc., rough weather is generally half-demurrage) shall not be counted in Laytime.

Incase of any doubt w.r.t NOR tendering, Master must consult the Charterer, OR it may result in serious consequences if NOR tendered incorrectly. Master should not interpret or try to judge any points in the Voyage Orders, in case of any doubts.

The timing for tendering the N/R of the first loading port based on the Voyage Charter Party is generally specified by the charterer (the ship owner is obliged to arrange for the ship to be at the place and on the date required by the charterer). However, for the second loading port and later, the N/R shall be tendered on arrival, unless special instructions have been given otherwise. If this is not done, and if the ship is detained at the second loading port (if the voyage is on schedule but the ship is detained, the responsibility lies with the charterer) and the N/R is not tendered, then the laytime cannot be deemed to have started, the charterer need not pay the ship owner the

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demurrage. This results in an extremely disadvantageous contract for the ship owner. Accordingly, the charterer has to arrange the cargo for the second and later loading ports to prevent the circumstances mentioned above. In case of CVS, the N/R is tendered on arrival in principle, but if problems in calculations arise, sometimes N/R timings may be specified for different ports (due to demurrage calculations of the purchase contract between charterer and supplier), and the demurrage may be calculated from the arrival time using the Time Sheet forming part of a separate contract (demurrage calculations of charter contract between charterer and ship owner).

The Readiness of a vessel means **PHYSICAL & LEGAL** readiness of the vessel.

(For 3 loading ports sometimes, the Cargo Stem of each loading port may be specified considering V/O of the charterer. Cargo Stem is basically the date when the cargo is ready on the charterer's side. N/R is to be tendered at the arrival time irrespective of the Cargo Stem. However, in special cases, the person in charge on the ship owner's side may specify the date when the Cargo Stem cannot be adhered to when sending the V/O to the ship. When the date is not clear, it should be confirmed from the ship.)

\* If the N/R is tendered before the date of the Laydays, and when the date is not adhered to, it might lead to a problem in the purchase contract between charterer and supplier, and moreover, lead to a loss of the ship owner's trust. This may also lead to cancellation of the contract. If the date is not adhered to, although the ship owner may

not suffer losses directly, the contract may be canceled. In such a case, the ship owner will have to negotiate other contracts, resulting in further delays. The final result is that the ship owner may incur non-operating losses equivalent to a sizable amount.



\* In case of a Time Charter Party, problems arise in the purchase contract between charterer and supplier, therefore, the timing for tendering the N/R (when the Cargo Stem is not adhered to) needs to be confirmed from the charterer by the ship.

#### Notice of Readiness – **Case Study**

- Nov 2009, LNG carrier
- Voyage instructions stated, "Tender NOR on Arrival"
- Master arrived pilot station, and contacted the Port Control
- Port Control advised due to bad weather conditions, vessel cannot berth. Hence to stay at anchor or drift till weather becomes better
- Master acknowledged the instruction, and started drifting, BUT DID NOT TENDER NOR
- Next day, morning, NOR was tendered just prior berthing
- The counting of laycan begun from the time the NOR was tendered, hence causing loss of one day of laytime
- The charterer's claimed the owner USD 1,000,000 for the loss incurred and the contract was cancelled there after

So, What went Wrong ??

- Master did not read or understand the Voyage Orders clearly
- If he was not knowing the meaning of arrived, he should have clarified with the charterer's before getting in this particular situation.
- He should have tendered the NOR on arrival pilot station immaterial if the berth is

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in the condition to accept the vessel or not. Master should remember, he is declaring the readiness of the vessel not the terminal or the port. As far as he is vessel is concerned, she was completely ready in all respects to commence discharging.

Free Pratique / Notice of Readiness –

- 2009, Product carrier
- Voyage instructions stated, “Tender NOR on Arrival”
- Master had sent RPM prior arrival for the clearance of the vessel
- There were not response from the agents nor the terminal
- On arrival pilot station Master tender’s NOR
- Terminal does not accept the NOR stating the reason that was not fit clearance hence cannot commence the loading operations.
- Fir for Clearance - RPM was not received by the port.
- Vessel went off hire for a day (i.e till the time the vessel was cleared by the port)
- This resulted in a huge claim / loss of thousands of dollars to the ship owner

So, What went Wrong ??

- Master did not understand the meaning of NOR clearly. NOR means vessel should be ready is all respected that includes the physical and legal readiness of the vessel.
- Although, Free pratique was no granted, Master should have issued a Letter of Protest concerning the same./

#### ➤ **Hours for Loading and Discharging**

Laytime is stipulated as the time allowed for loading and discharging cargo. Delays due to the ship’s side or delays due to prohibition of cargo handling at night by the ship owner or the port authority, time required for shifting from anchorage to the berth, and time required for ballasting cannot be considered in Laytime. Laytime shall be considered as completed when the cargo hose is disconnected.



Note carefully that the range of start/end timings of Lay Time at the loading site (called “Lay Can”) is also fixed. (This is indicated by date, which does not imply that the time is 00:00 hours. The time may even be 0600, 1200 or 1600 hours.)

\* In a Voyage Charter Party, when the cargo work is completed at night time and the ship sails after sunrise, if the cargo hose is disconnected immediately after the completion of cargo work, the Lay Time will be treated as being completed, therefore the profitability will become worse.

However, not disconnecting the cargo hose immediately is also a safety problem. Although, this matter is to be negotiated with the berth master, in most cases, the decision made by the berth master has to be adhered to. Also, two to three hours of wait time for receipt of documents after disconnecting the cargo hose are generally considered in the calculation of Lay Time for normal C/P. In such cases, the Time Sheet should always be recorded so that the number of hours can be considered in the Lay Time.

#### ➤ **Pumping in and out**

The cargo shall be loaded on the ship under the responsibility and expenses of the charterer, and shall be discharged from the ship under the responsibility and expenses of the ship owner.

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➤ **Cargo Hose/Sea Terminal**

The cargo hoses for cargo handling shall be arranged for by the shore terminal. The connection and disconnection work shall be performed by the ship owner or the charterer.

➤ **Dues and Other Charges**

Dues and other charges imposed by loading cargo shall be borne by the charterer, while those imposed on the ship shall be borne by the ship owner.

➤ **Cleaning**

The ship owner shall ensure that the lines, pumps and cargo tanks are cleaned to the satisfaction of the charterer's inspector. Unless a mistake has been made on the ship owner's side, the ship owner shall not bear any responsibility whatsoever for mixing of two different grades of cargo, contamination of cargo with impurities or degradation of properties of the cargo.

➤ **Heating**

According to the charterer's instructions, the cargo shall be heated to a maximum of \_\_\_\_°F. The C/P form exists that clearly states that the ship owner is responsible for any delay occurring due to the violation of the charterer's instructions.

\* Always confirm that the specified heating temperature is suitable for the grade of cargo oil, and discuss with the charterer if necessary.

A high heating temperature may not always be good. If the temperature is too high, vapor lock may occur because of evaporation. Past records shall be examined and information acquired from the berth to overcome such problems.

➤ **Bill of Lading**

A bill of lading is a type of document that is used to acknowledge the receipt of a shipment of goods. A transportation company or carrier typically issues this document to a shipper. In addition to acknowledging the receipt of goods, the document indicates the particular vessel on which the goods have been placed, their intended destination and the terms for transporting the shipment to its final destination. It also includes a description of the goods that are being shipped, their weight and the other shipping details.



The master shall sign the specified BL as instructed by the charterer's. The charter party will remain in effect regardless of the BL. The charterer shall compensate the ship owner for any loss arising out of the inadequacy of documents under his responsibility after Master signs the BL. Following clauses will be detailed in the BL : -

- **Lien**

The ship owner shall have the lien upon the cargoes and freights for the pecuniary claims in the charter party. The charter shall have the lien on the vessel for money not earned and advances, and for claims for damages due to violation of the ship owners contract.

- **Clause Paramount**

The Bill of Lading shall remain in effect based on the laws and regulations of the "Unified Convention on Bill of Lading" established in Brussels on August 25, 1924.

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- General Average

The General Average shall be calculated according to the York-Antwerp Rules (established in 1974).

- New Jason Clause

The ship owner can claim part of the damage to the hull, equivalent to the General Average, from the shipper, regardless of whether the damage was due to a mistake or not.

- Both to Blame

If the ship collides with the other ship due to a mistake on the part of the other ship or mistake/negligence in management or operation on the part of the same ship, then the cargo owner shall compensate the transporter an amount that is equivalent to the amount that the other ship has to pay to the cargo owner but not more than the amount recovered by the freight forwarder from the other ship. E.g. If for instance, vessel A is found guilty for 20. the shippers of the goods on vessel B will only be able to claim 20% from the owners of vessel A.

- Exceptions

Unless a special contract is made in this Charter Party, the ship owner shall not bear any responsibility for damage that occurs due to any of the reasons stated below.



- a. Damage due to any action during operation or management excepting due to negligence or mistake made by the ship owner's side
- b. Fire not caused intentionally or not due to the mistakes made by the ship owner's personnel
- c. Collision, grounding
- d. Risks and accidents at sea
- e. Explosion, rupture of boiler, shaft breakage, other latent flaws in hull, equipment and machinery
- f. Force majeure, act of war, hostile act, seizure according to law, constraints due to quarantine, strike, riot, civil war, capture or detention by the ruler or by the people

Also, regardless of whether the pilot boards the ship, the ship shall be free to sail, tow a vessel in distress or head for its rescue, deviate from its route to rescue life or property, or go to the nearest port regardless of whether the port is on its route or not, for replenishing fuel.

- War Risk

The Master of a ship is not obliged to sign the BL of the destination which is a blockaded port or a port considered to be dangerous or impossible to enter, as determined by the Master or the ship owner.

The Master and Chief Officer shall double check the BL for each cargo for the correctness of the content. Master shall provide this checking work by using check sheet as evidence. Should there be any discrepancy between Voyage Order BL content except for acceptable tolerance (agreed by charterer) vessel must inform the charterer and his commercial operator.

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## Time Charter Party

The time charter is a contract for the hire of named vessel for a specified period of time, during which time he may use the vessel as he wishes (exceptions considered of course). The time during which the ship is chartered differed from the contract to contract and can amount to several calendar months or years i.e the “period time charter”; or only amount to the time that is necessary to undertake one complete voyage i.e the “trip time charter”. The charterer pays the vessel owner (or the Bareboat charterer) on a daily-hire basis.

Under the period time charter, the charterer can make as many trips during that period with the ship as he possibly can. Under the trip time charter, only single trip can be made just as under a voyage charter but at time charter conditions. The most frequently used general time charter agreements, called “General Time Charter Party” is GENTIME, published by BIMCO

Under a time charter, the ship owner is only responsible for the nautical and technical operations of the ship where as the charterer (infact the time charterer) is responsible for the commercial operation of the ship. It follows that under a time charter, the running cost of the ship are for the account of the owner and the variable cost are for the account of the time charter. The Owner has to deliver the vessel in a specific harbor (eg. Safe berth in a named port) or in any port in a safe area (eg. Antwerp/Hamburg Range, inclusive). In that case, the charter has to name the specific harbor of re delivery to the Owner at an agreed date.



A time charter party contains a clause known variously as the “*Off hire clause*,” the “breakdown clause,” or the “cesser of hire clause”. This clause stipulates that “ in the event of loss of time from deficiency of stores or crew, breakdown of machinery, stranding, fire or any damage preventing the working of the vessel for more than ”\_\_\_\_Hours”, the payment of hire shall cease until she is again in an efficient state to resume her service. The time allowed should be carefully read and remembered by the Master of the vessel to initiate necessary action. is usually 24 hours. Off hire also includes dry-docking, breakdown of boilers, machinery or winches in port or any other difficulty that prevents the working of the cargo or delays the sailing of the vessel.

If the vessel should develop engine trouble or other fault, making it necessary to deviate and proceed to the nearest port for repairs, she is usually taken off hire from the time of the breakdown to the time of her return to the geographical position where it occurred and from which the voyage will be resumed. The exact time and position of the point of deviation, as well as the amount of fuel on board at the time should be logged, and the home office notified in detail regarding the incident. If the charterer has an agent at the port of refuge he should also be notified, as well as your own, if one is in the port.

Logbooks, both deck and engine, should carry complete entries of the deviation, using both local time and GMT.

Charter Party is a document of contract by which a shipowner agrees to lease, and the charterer agrees to hire, a vessel or all the cargo space, or a part of it, on terms and



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conditions set forth in the charter party. If permitted to do so by the terms of the charter party, the charterer may enter into subcontracts with other shippers.

The important clauses should be check-marked for quick reference. If any refer to dates of notification of ETA to consignee or charterer's agent, the Master should make a note of the day the message is to be sent and be sure to send it.

### Example - Time Charter Party

Typical standard formats of Time Charter Party include "STB TIME," "SHELL TIME4" and "EXXONMOBIL TIME2000."

#### (1) Rate of Hire

Generally indicated as rate of hire per month per DWT or the charterage per day.

Example: For a 250,000 DWT ship with a rate of hire of \$2.50/DWT, the charterage per month becomes  $\$2.50 \times 250,000 \text{ DWT} = \$625,000$ .

#### (2) Guaranteed Speed and Fuel Consumption

Sometimes referred to as "Spicon" in Japanese.

The guaranteed speed is expressed in knots (OG) and the guaranteed fuel consumption as the consumption per day. The guaranteed and actual values are compared, and the charterage is calculated (performance calculation) based on the comparison.

(Some contracts may not include performance calculation; may include penalties only or bonuses only.)

It is also customary to make a note of exceptions related to speed guaranteed when the ship passes through narrow channels (Singapore, Malacca Straits, Uraga Channel, etc.).

Performance calculation (if required) shall be noted down in detail in the exceptional wind force range, and efforts made to improve the performance calculation. Even if it is not carried out, it is important to maintain the performance of the ship considering marketing aspects, and similar measures are necessary.

#### (3) Charter Period

It is customary for the charterer to arbitrarily approve the increase/decrease of a fixed number of days in the charter period (indicated by "About" in writing;  $\pm 1$  month,  $\pm 14$  days etc., are decided separately).

#### (4) Cargo

The properties of cargo (indicated by "Crude oil and/or its product) and number of grades of cargo oil that can be loaded simultaneously (usually three grades) shall be specified.

#### (5) Trading Limits

It is agreed that Trading Limits fall within the Institute Warranties (navigational warranties for use in policies restricting the ship's navigational areas to standard routes).

The contract may sometimes stipulate that the ship owner's authorization is required or the charterer may have to bear the extra insurance for the ship to ply outside the Trading Limits.

#### (6) Laydays/ Canceling Date



A fixed period can be set for the laydays and this period is usually restricted to about 5 to 7 days a month with an advance notice of one month.

#### (7) Delivery/Redelivery

The calculated price of fuel, the delivery/redelivery site are stipulated.

#### (8) Description / Condition of Ship

During the charter period, the ship owner guarantees the items mentioned in the list of

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ship's particulars attached to the contract and also guarantees to maintain the ship in satisfactory condition during the contractual period.

**(9) Payment of Hire**

Generally, an advanced payment of one month, after deducting an amount equivalent to the amount for off-hire and the payment for advances made to the ship owner, are approved.

In case of unpaid charterage, the ship owner shall have the right to withdraw the ship after notifying the charterer.

**(10) Expenses Borne by Owner (Owner Provides)= Ship Expenses**

Expenses required for all foodstuffs, drinking water, equipment and materials, provisions, daily necessities, ship's insurance, crew wages, and expenses for crew shall be borne by the ship owner.

**(11) Expenses Borne by the Charterer (Charterer Provides) = Operating Expenses**

Excluding the off-hire period, fuel oil, towing charges, pilotage, agency charges, miscellaneous expenses associated with cargo handling, and miscellaneous expenses other than expenses borne by ship owner shall be borne by the charterer.

**(12) Dry-docking**

The ship owner is obliged to dry-dock the ship at fixed intervals (generally 24 to 30 months), to bear the necessary costs (including time) for the same, and to maintain the ship in a satisfactory condition.

**(13) Off Hire**

The causes for the ship to be considered "Off Hire" are stated here.

(Shortage of crew or stores, repairs, damage to machinery or boiler, collision, stranding, accident or damage to the ship, and other causes that hinder work from being performed effectively on the ship, such as strikes by crew members, detention of ship, violation of orders, injuries and sickness)

However, stipulations also exist that do not treat the time within the stipulated hours in the contract as Off-Hire. In such cases, it should be noted that even if the stipulated time exceeds 1 minute, all the hours that have been delayed will become Off-Hire.

**(14) Duties of the Master**

It has been stipulated that the Master should start off on the voyage as early as possible, strive to cooperate rationally with the charterer using the ship's crew and equipment and adhere to the instructions of the charterer on matters related to operations of the ship.

**(15) Conduct of Vessel's Personnel**

If the charterer has reason to feel dissatisfied with the conduct of the vessel's personnel, the ship owner shall adequately examine the charterer's complaints, and if necessary, shall change the personnel.

**(16) Loading/ Discharging Location**

Cargo handling operation of the ship shall be performed in accordance with the charterer's instructions at any safe port, anchorage, pier, seabed oil pipeline, service ship, etc.



**(17) Ship's Documents**

The Master shall prepare an elaborate and accurate ship's log. If requested by the charterer, he shall submit documents such as copies of each log, cargo handling and voyage reports, and other documents.

**(18) Adjustment of Hire**

The difference between guaranteed speed and actual speed shall be adjusted using the rate of hire, and the difference between guaranteed fuel consumption and actual fuel consumption adjusted using a special price (performance calculation). The guaranteed hours



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and the guaranteed consumption shall also be set for discharging time and fuel consumption for heating, and the said quantities calculated using the rate of hire and the fuel cost.

(19) Bill of Lading

The Master shall sign the specified Bill of Lading as instructed by the charterer. The Charter Party shall remain in effect regardless of the Bill of Lading. The charterer shall compensate the ship owner for any loss arising out of the inadequacy of documents under his responsibility after the Master signs the Bill of Lading.

(20) Clause Paramount

The Bill of Lading shall remain in effect based on the laws and regulations of the “Unified Convention on Bill of Lading” established in Brussels on August 25, 1924.

- General Average
- The General Average shall be calculated according to the York-Antwerp Rules (established in 1974).
- New Jason Clause
- The ship owner can claim part of the damage to the hull, equivalent to the General Average, from the shipper, regardless of whether the damage was due to a mistake or not.
- Both to Blame
- If the ship collides with the other ship due to a mistake on the part of the other ship or mistake/negligence in management or operation on the part of the same ship, then the cargo owner shall compensate the transporter an amount that is equivalent to the amount that the other ship has to pay to the cargo owner but not more than the amount recovered by the freight forwarder from the other ship.
- Exceptions
- Unless a special contract is made in this Charter Party, the ship owner shall not bear any responsibility for damage that occurs due to any of the reasons stated below.

a. Damage due to any action during operation or management excepting due to negligence or mistake made by the ship owner’s side

b. Fire not caused intentionally or not due to the mistakes made by the ship owner’s personnel

c. Collision, grounding



d. Risks and accidents at sea

e. Explosion, rupture of boiler, shaft breakage, other latent flaws in hull, equipment and machinery



f. Force majeure, act of war, hostile act, seizure according to law, constraints due to quarantine, strike, riot, civil war, capture or detention by the ruler or by the people

Also, regardless of whether the pilot boards the ship, the ship shall be free to sail, tow a vessel in distress or head for its rescue, deviate from its route to rescue life or property, or go to the nearest port regardless of whether the port is on its route or not, for replenishing fuel.

- War Risks
- The Master of the ship is not obliged to sign the Bill of Lading of the destination which is a blockaded port or a port considered to be dangerous or impossible to enter, as determined by the Master or the ship owner.
- Also, if the loading/discharging site specified in the Bill of Lading or in the Charter Party is blockaded, or if the entry into port is determined to be impossible because of war, hostile action, action similar to war, civil war, revolution, or entry into force of an international law, then the ship is not required to enter the said port.

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- Also, if the ship is reassigned to ports or areas having the risk of war mentioned above, the increase in expenses (crew expenses, etc.) and the increase in insurance premium incurred as a result of the reassignment are to be borne by the charterer.
- Sub-Let
- The charterer can sub-let the ship provided that the rights and obligations of the Charter Party remain unchanged.
- Final Voyage
- If the date of payment of charterage is reached en route the final voyage to the redelivery port, the charterer can subtract the advances made to the ship owner and the fuel charges estimated at the time of redelivery from the charterage and then make the payment.
- When the ship continues the voyage at the completion of the charter period, charterage and conditions similar to the Charter Party shall be used for the extension period during which the ship makes the voyage to the redelivery port.
- Lay-up
- The charterer can lay-up the ship, and expenses that the ship owner saves as a result, can be deducted from the charterage.
- Loss of vessel
- If the vessel is lost or cannot be traced, the payment of hire stops until the loss (sometimes until the noon of the day of loss), or until the final news of the loss has been received (sometimes the noon of the day the final news is received). The part of the advance payment that is unused, is to be returned to the charterer.
- Lien
- The ship owner shall have a lien upon the cargoes and freights for the pecuniary claims in the Charter Party. The charterer shall have a lien on the vessel for money not earned and advances, and for claims for damages due to violation of the ship owner's contract.
- Requisition
- If the ship is requisitioned by the government (flag state), the ship will be Off-hire but the requisition period shall be regarded as a part of the charter period.
- If the ship is requisitioned, the typical standard format for Time Charter Party (STB Time) may be used.
- Space available to Charterers
- Except for appropriate and adequate space reserved for the crew members, the whole volume of the vessel, the decks and passenger facilities shall be at the charterer's disposal. The ship owner shall not exceed the weight of shipboard stores beyond the stipulated weight. Provided that the safety of the ship is not endangered, the charterer can remove stays, ladders, etc. The charterer is obliged to restore the original status at the time of redelivery.
- Advances
- If the Master claims advance payments from the charterer as part of routine expenses, the charterer shall pay the advances and claim handling charges (generally 2.5%) from the ship owner.
- Applicable Laws
- Applicable laws related to the Charter Party and rights and obligations of both concerned parties shall be stipulated.
- Arbitration
- Each of the concerned parties shall select one arbitrator, and each of these arbitrators in turn shall select one person. The judgment conferred by two out of three persons is generally considered as final judgment.
- \* If the arbitration site is London, then judicial precedents are given serious consideration, the results can be predicted to a certain extent. For this site, most

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of the precedents are generally from the standpoint of protection of the ship owner. If the arbitration site is New York, then the results differ vastly depending on the opinion of each arbitrator. Moreover, it should be noted carefully that in case of New York, a dispute for which an arbitration ruling has already been made, cannot be brought to court again.

- In case of Japan, no arbitration law has been established, therefore, stipulating only Tokyo as the arbitration site is inadequate. For instance, the clause “in accordance with the Japan Shipping Exchange, Inc.” should be clearly stated.
- 
- Summary of some expenses responsibility for Time / Voyage Charter Party
- (For reference only, please refer to CP for actual details)

	Expenses	Voyage Charter	Time Charter
Cargo Expenses	CFS Charges	Charterer	Charterer
	Measuring / Weighing	Charterer	Charterer
	Cargo Inspection	Charterer	Charterer
	Customs		Charterer
	DG Surcharge	Charterer	Charterer
	Refer Cargo (Pre trip inspection, pre-cooling, monitoring)	Charterer	Charterer
Terminal Expenses	Loading / Discharging	Charterer	Charterer
	Stevedore	Charterer	Charterer
	Cargo Gears	Charterer	Charterer
	Overtime surcharge	Charterer	Charterer
Navigation	Pilotage	Owner	Charterer
	Salvage	Owner	Owner + Charterer
	Port / Tonnage dues	Owner	Charterer
	Anchorage dues	Owner	Charterer
	Mooring / Unmooring	Owner	Charterer
	Canal fee	Owner	Charterer
	Agency	Owner	Charterer
	Bunkers		Charterer
Running Cost	Crew Expenses	Owner	Owner
	Stores / Spares	Owner	Owner
	Lubricants	Owner	Owner
	Fresh Water	Owner	Owner
	Statutory Surveys	Owner	Owner
	Compulsory garbage removal	Owner	Charterer
	Communication	Owner	Owner + Charterer
	Insurance	Owner	Owner

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### 1.3 Shipowners

A **shipowner** is the owner of a merchant vessel (commercial ship). In the commercial sense of the term, a shipowner is someone who equips and exploits a ship, usually for delivering cargo at a certain freight rate, either as a per freight rate (given price for the transport of a certain cargo between two given ports) or based on hire (a rate per day). Usually the shipowner is a organized company, but also people and investment funds can be ship owners. If owned by a ship company, the shipowner usually performs technical management of the vessel through the company, though this can also be outsourced or relayed onto the shipper through bareboat charter (also called as disponent owner).

### 1.4 Technical and Crew Managers/Operators

Ship management is the business of manning, equipping, provisioning and maintaining a ship. It covers the commercial, technical and crew management as well as administration of a ship:



- i. Commercial management:* The ship manager is in charge of securing the vessel's income by seeking and negotiating employment of the ship, and managing its various operating and voyage costs (Pre fixture and post fixture department).
- ii. Technical management:* This involves the organizing and managing of a ship's operations and functions, including the maintenance of the vessel in class and in seaworthy condition, and the supervision of procurement for all parts needed for the ship.
- iii. Crew management:* The recruitment, training and retention of all crew on board to ensure safe manning of the vessel is also one of the ship manager's obligations.
- iv. Administration:* The administration responsibilities of a ship manager include taking care of budgeting, legal and taxation matters to ensure that a ship is able to set sail. The marketing and advertising of a ship is also included in this category.

### 1.5 Instructions

#### ROUTINE CORRESPONDENCE

- a) All routine correspondence between office and ship shall be managed as per the instructions in the SMS. Routine correspondence shall include day to day correspondence between the office and ship via emails, fax, mail packets circulars from office & flag state.
- b) All e-mails / fax between office and ships shall be as per the format given below. In line with the company's environmental policy, e-mails of routine nature may not be filed on board but a back up of all the messages shall always be maintained on board as per the instructions of the IT department.

All messages to and fro from charterer's should be copied to the Ship manager.

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## 1.5.1 Sailing Instructions



### VOYAGE/SAILING INSTRUCTION

Sailing or voyage instruction - is a document of instruction given to the Master of the vessel for a certain voyage(s) issued by the charterer or any concerned interested parties which hired the vessel.

a) The instruction will consist of the following but not limited to: -

1. Name of loading, discharging (may be announced later) and bunkering ports (if any)
2. Agent's full style
3. BL make up consisting of details regarding Consignee, Consignor, Destination, Freight
4. Schedule of arrival and departure (Laycan)
5. Information about NOR
6. Tank / Hold preparation requirements
7. Speed requirement for the current voyage
8. Date and position of delivery and re-delivery
9. Cargo grade / nomination
10. Any special care for the cargo during the voyage
11. Drafts limitation (if any)
12. Instructions for issuing Letter of Protest
13. ETA notice requirements for load / discharge ports & reporting parties
14. Adoption of Early Departure Procedures

- b) Upon receipt of the voyage instruction, the Master must carefully read and understand its contents, and then reply with latest ETA, cargo stowage plan or any other information as requested. All messages to charterer's should copied to the ship management & its commercial dept. Any doubts w.r.t voyage instructions must be clarified from the charterers immediately and always copied to the commercial dept.

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- c) The voyage instruction must be strictly adhered to by the Master during the entire period of charter and should inform the commercial dept. first and then the charterer's incase unable to follow any of the instructions from the voyage orders.

## 1.5.2 Charterer's Instructions

The Master is particularly concerned with "voyage charter" because of the laytime, dispatch and demurrage clauses and the necessity to tender "Notice of Readiness". In the voyage charter, the charterer contracts to provide a cargo for a particular voyage and he must load and discharge the cargo at a given rate per day. The Charterer assumes no responsibility for the operation of the vessel but generally pays stevedoring expenses incurred while loading/discharging.

On a voyage charter, vessel must load the vessel to its full capacity when the full capacity of the vessel is chartered, otherwise the charterer may be liable for dead freight. If the entire carrying capacity is to be used, the stowage should be carefully watched to make certain that all available space is utilized and the cargo is stowed properly.

On a time charter there is no mention of laydays, dispatch or demurrage, unless the charterer makes a sub-charter to a shipper on a voyage basis. It's the Master's responsibility to see that the provisions of the sub-charter are complied with and his interests protected as long as they do not conflict with the interest of the ship owner's nor the time charterer's (incase the vsl is sub chartered to third party). Incase there is a conflict between the time charterer and the ship owner, Master should comply with the ship owner's requirements / policies.

As Master, you are responsible to your Company and/or the Shipowner whose interests you should protect, but you must also look out for the bests interests of the Charterer insofar as out-turn of cargo and quick dispatch are concerned.



### Instructions from Charterers

Aside from the Sailing Instructions, the Charterer of the vessel will give the Master their other instructions and additional requirements.

On a time charter, the Master may be requested to send the charterer the deck and engine room log abstracts, passage reports, port activity reports and periodic radio reports giving position, speed and weather. The Master must comply with such request.

A time charter usually calls for a certain speed or bunker consumption to be maintained. If, due to weather or any other reason, this cannot be accomplished, the reason should be noted in the logbook and the charterer's informed.

The instructions to Master will usually include a note on "stevedore damage" which will probably specify that the charterer is not responsible for such damage to the vessel unless notified in writing by the Master at the time the damage occurs; also that the Master is to cooperate with the Charterer and his agents by giving prompt written notice to the party causing such damage.

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### 1.5.3 Other Instructions

#### COMMUNICATION BETWEEN THE COMPANY AND SHIP DURING THE PERIOD OF CHARTER

At any moment, if the Master experiences a crisis situation, he should send a prompt report to the concerned parties and initiate subsequent communications. However, Master must not forget that, he is on behalf of the Ship owner and not the charterer. He must not take any action which may cause the ship owner any kind of loss.

During Company working hours.

1. Make first contact by telephone direct to a Person in charge (PIC) **(SHIP MANAGEMENT COMPANY – Commercial Dept)**.
2. Subsequently, when time becomes available, send a reports to the company by email or fax giving the details and nature of the incident / circumstances.

Outside Company working hours

1. In accordance with the contact numbers specified in voyage instruction make the report by telephone direct to the PIC's home.
2. When direct communications can not be made with the PIC, communicate with other persons concerned in accordance with the voyage instruction or as per the "Emergency Communication Diagram"
3. Subsequently, when time available, send a prompt report to the company by telex, e-mail or fax giving the details of the problem.



Report the nature of accident and /or incident in accordance mentioned in the procedure.

#### SHIP - SHORE REPORTING

- a) The routine and operational ship – shore reporting shall be carried out as described in this guideline.



Additionally, The Master shall timely and accurately inform company in cases of any incident, no matter how small it may seem, some e.g. but not limited to : -

- a. Damage to Cargo, Machinery and Equipment, Berth/Quay etc.
- b. Critical Machinery failure.
- c. Delays in cargo operation including any special terminal/port requirements.
- d. Stevedore damages and injury to stevedores.
- e. Matters related to delays in vessel schedule.
- f. Emergency situation including accidents, oil pollution, fire, grounding etc.

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- g. M/E stoppage at sea
- h. High-potential near misses
- i. Vessel experiencing heavy weather



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## 2. PROTESTS, NOTICES, LETTERS AND OTHER CERTIFICATE

### 2.1 Protests, Notices, Letters & Other Certificates

#### 2.1.1 Protests & SOF

##### Marine Note of Protest

It is a declaration or deposition by the Master under oath, before a Consulate General of the vessel's registered country, Notary Public or Magistrate, and giving full particulars regarding heavy weather or other incident which may have caused damage to the vessel and/or cargo, the extent of which damage may or may not be ascertained at the time; and stating that Master and crew performed their duties in protecting the vessel/cargo, and damage sustained was not due to any fault of the vessel, his officer or crew, but due to the circumstances beyond human control. This note of protest should be noted by the Master within 24 hours after arrival at the port or as soon as possible.

This Note of Protest is one of the essential official documents endorsed by the authority and required by the underwriters for the settlement of claims for the actual damages incurred, or may be found later when the vessel undergoes inspection.



The Master should make only formal protest in the event of serious damage, reserving the right to extend his protest on arrival at home port. This will enable the Master to be guided by the Company's legal advisers. Where the vessel is so seriously damaged that it is unlikely that she will be able to continue her voyage, formal protest should be noted only until instructions have been received from the Company. Always note protest after any accident, such as collision or grounding.

Always leave a copy of the protest for your agent, send one to your Company and keep one for your file on board.

##### Letter of Protests

The Master issues the Letter of protest to the parties whenever, there are some delays or non compliance with the CP, or international regulation. Some e.g

- Delay due to waiting for Cargo Documents
- Delay in Berthing
- Delay for granting Free Pratique
- Manifold restrictions
- Delay in start of loading / discharging operation
- Ullaging in open seas
- Cargo Discrepancy
- Slow loading rate
- Restricted discharging rate
- Short Loading
- Commingle of cargo

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- Crude Oil Washing not permitted
- Bunker Discrepancy
- Delay in bunkering

### Statement of Facts (SOF)

The Master of a vessel involved in any accident or marine casualty shall prepare the Statement of Facts to be submitted to the Company and other relevant parties. He shall obtain the signatures of the persons concerned and so from the witnesses too. The following must be mentioned in the SOF:

- a. The fact that there was a marine accident (including accident resulting in injury or death)
- b. The fact that there were damages (injuries) and the extent of the damages (injuries).

Should a vessel on charter encounter any accident, making it necessary to deviate, drift, or undertake repair etc. preventing the work of the vessel, she is usually taken “off hire” from the time, vessel stops performing till the time of return to the voyage intended.

At the point of ‘off-hire’ following should be logged and relevant parties notified : -

- Time
- Vessel’s position
- Bunker ROB (MGO, HFO)
- Fresh Water ROB

Like wise when vessel is back ‘on-hire’, the above details should be logged and notified to relevant parties. If any agents involved, he should be notified too and his signature should be obtained in the SOF.

## 2.1.2 Notices & Reports



### Communications

The Master will be requested by the Charterer to send periodic reports giving position, speed and weather. All of these should be sent as per the instructions including that of port arrival and departure reports as instructed.

It is important that the Master obtain a complete list of the Charterer’s agents and their cable addresses, for all ports the vessel is likely to call. Charterer’s instructions will state the procedures for sending timely ETA notice to agents, consignees & terminal.

### Documentation

1. Notice of Readiness. It is the Master’s responsibility to notify the charterer or his agent / terminal in writing, as soon as the vessel is in all respects ready to load or discharge her nominated cargo. This advice is called “NORT” (Notice of Readiness

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Tendered). The terminal / agents will in turn accept the NOR as per their terms and conditions. This will be called “NORA” (Notice of Readiness Accepted)

2. Statement of Facts. If the vessel goes “off-hire” due to a deficiency, casualty or breakdown, the Master should draw up a Statement of Facts covering the time the breakdown occurred and deviation commenced to the time the vessel returned to the point of deviation and the voyage resumed. This statement should be signed by the Master, C/E and the agents.
3. Arrival and Departure Condition Reports. Instructions from the charterer may indicate that the ship’s conditions on port arrival and departure be given to his agents.
4. Deck and Engine Room Log Abstracts. The Master should turn in these well accomplished reports on the completion of a voyage per their instructions.
5. Stevedore Damage Report. When such damage is discovered, or as soon thereafter as possible, the stevedore in charge (usually the foreman) should be notified in writing, and copies furnished to the charterer or his agent.

### **Reports to the Owners (Company)**

The Master shall report to the Company all the important occurrences on the vessel, cargo navigation, crew or persons on board and others on every occurrence of events mentioned and at the completion of a voyage.

### **Communications**

The Master of the vessel should keep good and timely communications with the Company so that the latter will be kept informed of the movements and operational conditions of the vessel. This way, the Company can give its necessary full support for the maintenance and upkeep of the vessel and her crew.



However, the Master shall clearly distinguish marine accident communications from other operational communications, and affix separate serial numbers on telex, fax, telephone and also e-mail messages. Messages which require emergency attention should be prefixed “URGENT”. Any matters arising about which the Company should be advised are to be transmitted by the quickest means available on board.

The Master, when the ship meets with a marine accident or other emergency situation, shall send a prompt report to the Company and make subsequent communications in accordance with the SMS procedure entitled “Channel of Communications Between the Company and the Ship in Emergency”. In accordance with the nature of the marine accident, the Master should report the emergency report items mentioned in the procedure.

## **2.1.3 Other Certificates**

### **Control of Certificates and other Official Documents**

The Master shall control certificates and official documents in accordance with the following.

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- a. He shall prepare a “Documents Control List” for the purpose of controlling the ship’s certificates and official documents. This list should be up to date at all times.
- b. The due date of certificates shall be checked in accordance with the “Documents Control List” and the Company shall be notified if surveys, etc. are coming due or When the Master is being relieved or before and after surveys or as required by the company.

### **Replacement of Certificates and Official Documents**

After a survey, when certificates or official documents are updated or newly issued, the date of issue, place of issue, due date, and the contents of the documents in question shall be checked and also the invalid and/or obsolete documents shall be replaced with the corresponding new documents without fail. The replaced documents should be sent back to the Company.

### **Retention of Certificates and Official Documents**

The certificates and official documents shall be filed and retained as much as possible together in one place and should be in the custody of the Master at all times.

### **Copies of Certificates and Official Documents**



When certificates and documents are necessary for quick reference at the respective departments, on board copies of them shall be supplied instead of the original ones. Those certificates and official documents that are required, by international conventions or flag state laws to be displayed on board the ship shall be properly displayed.

### **Lending of Certificates and Official Documents**

The Master, when lending the certificates and official documents to outside parties for the purpose of port clearance or port formalities or dry-docking, etc., a loan certificate listing the documents in question shall be prepared on which the signature of the party to whom the documents were handed over shall be obtained. When the necessary formalities are finished, the party to whom the certificates and official documents were on loan shall be made to return them without fail. A copy of the certificate lent should be always kept on board.

### **Handing Over of Certificates and Official Documents**

The Master, when he himself is to be relieved, he shall make a check of the certificates and official documents against the “Documents Control List” and hand over the control of these documents to his successor without fail.

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## Certificates and Records

The Master shall make preparations for landing certificates and other documents necessary for undergoing survey according to instructions given by the Fleet Upkeep Manager or Superintendent, and check such documents upon their return to the ship for necessary entries respectively.

He shall arrange and prepare drawings, data and records of operation and maintenance, including the operation history of the machinery, with which the vessel is required to be furnished, so that they may be readily presented when so instructed by a surveyor.

## 2.2 Liability of Concerned Parties

### ISSUANCE OF NOTICE OF LIABILITY AND CLAIM LETTER

#### Purpose of Issuance

##### a. Notice of Liability

Notice of liability – is a notice to be issued to the Master of other vessel, which made contact and damage your ship due to their own negligence.

In order to make it clear to the other party that they are completely responsible and liable for the accident and that there is intent to claim of the damages. It is a preparation to submit demands for compensation at a later date.

##### b. Claim Letter



Claim letter – is a letter to be issued to claimant in order to refuse any demands for compensation that the other party to the accident in question.

#### Timing of Issuance

As the original purpose may become difficult to achieve if the right opportunity for issuance is lost, it is preferable that notification be given to the other party as promptly as possible taking into consideration the following.

- Documents exchanged at the time of the occurrence of the accident between the two parties involved become clear evidence in later litigation.
- The party that has the right has the obligation to exercise that right at the earliest available opportunity.
- Generally, testimony or documentary evidence (prepared documents) is regarded as having a greater evidential power the closer they are to the time of the accident.

#### Method of Preparations

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The following five items must be the basis of the documents.

- a. The fact that there was an accident.
- b. The fact that there was damage and the extent of the damage.
- c. The fact that the master, the owner, and the agent of the other ship is responsible for the damage and loss incurred by the ship, the Company, and the organizations and groups that have a legal profit relationship with the Company (declaration of intent to claim compensation).
- d. Declaration of intent to carry out a joint survey.
- e. Obtaining of signature of receipt (consent).

When the other ship demands that a signature be affixed on a Notice of Liability, the following counter statement must be added.

**"RECEIVED ONLY, WITHOUT PREJUDICE"**

#### Method of Submission

- a. As a rule, from the Master to the Master of the other ship.
- b. From the Master to the owner or owner's agent of the other ship.
- c. When at sea, send the contents of the documents concerned to the master of the other ship by telex, etc. and then issue formal documents after entering harbor.
- d. When forwarding the documents, send them registered and request that copies of the documents be signed and returned.

### **PREPARATION OF STATEMENT OF FACTS**

When a marine accident occurs, the Master must immediately prepare a **statement of fact** of the accident and obtain the signatures of the persons concerned. When the Notice of Liability and Claim Letter are prepared, these will be considered the statement of fact and another one need not be prepared.



The following must be mentioned in the statement of fact.

- a) The fact that there was a marine accident (including accident resulting in injury or death)
- b) The fact that were damages (injuries) and the extent of the damages (injuries).

### **SUBMISSION OF REPORT CONTAINING FULL ACCOUNT OF ACCIDENT.**



The Master must submit to the Company without delay a report giving a full account of the accident. The report must contain the following details.

- a) A full account of what transpired from the time the marine accident occurred until actions taken at the scene were completed.
- b) Testimonies of the crew (give names and titles and obtain their signatures).
- c) Details of hearings (by government authorities, etc.).
- d) Evidence (photographs, nautical charts, ship and engine room log books, bell books, quartermaster's daily records, course recorder chart, telegraph logger

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recording chart, radar log, echo sounder recording chart, weather map, VHF recording, various reports by experts and surveyors, etc.).

- e) With regard to damages and losses (to hull, cargoes, fuel, etc.), it is preferable that they be clearly classified as P.A. (Partial Average), G.A. (General Average) or other (unknown).
- f) Other matters as instructed by the Company.

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### 3. MARINE INSURANCE

#### 3.1 Marine Insurance Revisited

##### 3.1.1 Insurance

The Marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, i.e. the losses incident to a marine adventure. The purpose of the marine insurance is called indemnity.

The Master shall completely familiarize himself with his ship's insurance policy cover. He should know what is required of him in circumstances or accidents which may give rise to claims on Hull and Machinery Insurance Policy and/or claims on Protection and Indemnity (P&I) Club insurance.

The Master should make sure that the conditions of the insurance of insurance policies are exactly complied with, whether it is material to the risk or not. If it is not so complied with, then subject to any express provision in the policy, the insurer is discharged from any liability as from the date of breach of warranty, but without prejudice to any liability incurred by him before that date. E.g. if an owner breaches a warranty that his vessel will trade "worldwide within the Institute Warranty Limits (IWL)", the fact that she does not suffer any loss or damage is a prohibited area outside IWL does not matter, there is a breach of warranty. When there is a breach of warranty, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.

#### Deviation can be one of the reason for the breach of Insurance Policy



##### Deviation – Case Study

###### ■ Sep 2013, Bulk carrier

A bulk carrier planned her voyage from Dandong (China) to Hong Kong such that the distance of this planned route resulted in an increase of approximately 290nm from the normal / customary route to be taken for such a voyage. The reason for this deviation was to avoid heavy traffic and fishing boat density in the South China Sea. The deviation resulted in significant financial loss due to consumption of excess bunkers (32MT), off hire claims etc.. and in addition resulted in customer dissatisfaction.

Since this route was planned initially as part of passage planning, it was not considered as a deviation by the Master. The passage plan was reported to Weather Routing (WNI) services and copied to company and charterers. This reporting to WNI is standard practice for any voyage and since there was nothing mentioned in message or route about increased distance or difference from normal route, it did not trigger any cause of concern at the company or charterers either



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### **Deviation Clause in Marine Insurance: -**

1. A deviation **without lawful excuse** from the voyage contemplated by a marine policy discharges the insurer from liability for any loss occurring on or after the time when the deviation occurs, regardless of the intention to deviate and whether or not the ship returns to its course of voyage before the loss occurs.
2. There is a deviation from the voyage contemplated by a marine policy where
  - a. the course of the voyage is specified by the policy and is departed from; or
  - b. the course of the voyage is not specified by the policy but the usual and customary course is departed from.
3. Where a marine policy specifies the ports of discharge, the ship may proceed to any or all of them, but if, in the absence of any usage or sufficient cause, the ship does not proceed to them, or such of them as it goes to, in the order specified, there is a deviation from the voyage contemplated by the policy
4. Where a marine policy specifies that the ports of discharge are within a given area and does not otherwise name them, the ship may proceed to any or all of them, but if, in the absence of any usage or sufficient cause, the ship does not proceed to them, or such of them as it goes to, in their geographical order, there is a deviation from the voyage contemplated by the policy.

### **Lawful Excuse for Deviation: -**

1. Authorized by any special term in the marine policy;
2. Caused by circumstances beyond the control of the master and the master's employer;
3. Reasonably necessary in order to comply with an express warranty or an implied warranty;
4. Reasonably necessary for the safety of the ship or subject-matter insured;
5. For the purpose of saving human life or aiding a ship in distress where human life may be in danger;
6. Reasonably necessary for the purpose of obtaining medical aid for any person on board the ship; or
7. Caused by the barratrous conduct of the master or crew, if barratry is one of the perils insured against.

**Refer to Annex 2 for more information about the case study of deviation**

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### 3.1.2 Hull and Machinery

The Master should understand that a Hull and Machinery insurance policy is precisely what its name indicates; a policy which insures a vessel's hull and machinery against damages occasioned by specified marine perils.

- Hull & Machinery covers :-
  - Cost of repairing / physical loss and damage to the vessel
  - Reimbursement following total loss of the vessel (Actual & Constructive)
  - Expenses to prevent loss (Sue and Labour, Salvage & GA Contribution)
  - Collision Liability
  - Expenses associated with claims (Survey fee etc).

Hull and Machinery (H&M) underwriters are not, generally speaking, concerned with the damage to or short delivery of cargo, they are not concerned with the crew matters (except indirectly where there has been a loss of life resulting from a collision) and they are not concerned with the third party liabilities except, where the vessel insured by them is partly or totally to blame for a collision. In short, unless there is physical or mechanical damage to the insured vessel, it is unlikely to be a claim on the H&M underwriters.

Although ship owner's have a wide choice of clauses with which they can cover their vessels, generally speaking, it is best for the Master to assume that his vessel has a full cover whereby any repair costs (apart from those relating to wear and tear or routine maintenance/ class requirements) in excess of the deductible will be recoverable. If the insurance cover is limited, and as a result of a specific damage will not result in a claim, the company will know and the Master can be informed accordingly.



Whenever a ship is involved in an accident whereby a claim on H&M underwriters is likely to ensue, the Master should immediately give details of the incident to the Company since they in turn are obliged to give immediate advice to their Underwriters. A full written report will be required from the Master as soon as practicable, and when the incident involves the vessel's machinery, the Chief Engineer's detailed written report will also be required.

There are two main accident situations where the Master is also required to give immediate notice to "third parties", and these are:

1. when the vessel sustains damage caused by stevedores
2. when the vessel is involved in a collision

In both cases, the Company will require copies of such letters/ notices written by the Master.

In cases where a claim on H&M underwriters might result, full copies of all log book entries covering both the accident and the repair period should be forwarded by Master to the Company at the first opportunity after the accident. In summary, whenever his vessel sustains damage of any sort and how so ever caused, the following steps should be taken by the Master.

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1. He should immediately inform the Company of the nature and the extent of the damage, so far as it can be ascertained, with an estimated repair cost whenever possible.
2. If there is a possibility that the repair cost might exceed the policy deductible,
  - a) Master and C/Engineer should prepare full written reports and submit them to the Company as soon as practicable.
  - b) Copies of all log book entries relating to the incident and the subsequent repair period, should be taken and submitted to the Company as soon as practicable.
3. If the damage was caused by the stevedores, Master should put them on written notice that they will be held liable, a copy of the letter should be sent to the Company as soon as practicable.
4. If the damaged is sustained as a result of a collision, the Master:
  - a) He must not admit liability
  - b) He must hold the other Master responsible for the collision. This should be done in writing and a copy of any letter should be sent to the Company as soon as practicable.



It should be understood that the cost of repairing any damages directly caused by “negligence of the vessel’s crew” is recoverable (to the extent of at least 90% of the net claim) on most H&M policies, accordingly it often arises that there is little to be gained and much to be lost by a stubborn refusal to accept that oversights or temporary thoughtlessness can occur. It should however be understood that the cost of repairing damages resulting from “incompetence” is rarely on H&M policies.

### 3.1.3 Protection and Indemnity (P & I)

The Master should know that when H&M underwriters limit their insurance cover almost entirely to physical damage to a vessel, many ship owner’s found it desirable to protect themselves against some of the many other risks associated with the operation of ocean going vessels.

The Shipowner’s have done this by bonding themselves together in P&I Clubs whereby they are mutually protected against certain additional risks. The P&I cover is divided into the two obvious categories, namely, *protection* on one hand and *indemnity* on the other.

- A) Protection cover include the following:
1. Personal injury and other crew liabilities
  2. Collision liabilities not covered under H&M policies
  3. Damage to piers and other objects
  4. Quarantine expenses
  5. Removal of wrecks
  6. Liabilities under towage contracts
  7. Damage to other vessels such as excessive wash, fire, explosion, or by the dropping of objects overboard

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B) Indemnity cover relates to the following:

1. Liability to cargo for pilferage, damage, non-delivery, over carriage, etc
2. Immigration and customs' fines arising from negligence of Master or crew

The Master should note that P&I insurance only covers shipowner's liabilities and expenses enumerated:

- a) Out of events occurring during the period of insurance
- b) In respect of the Owner's interest in the vessel
- c) Out of the operation by the Owner of the vessel

Therefore, there must be the liability of the owner, and so if Master denies liability of the accident in his report, it will not be covered by this type of insurance.

### 3.1.4 Actions by Ship Masters

The crew on board any ship usually lives a communal life everyday in the same surroundings and in a limited space, which is quite different from life on land. Works on board the vessel are quite complicated wherein duties must be performed accordingly. The Master, being the highest authority on board, shall exert his best efforts and care to ensure the safety of the lives of all crew members, the ship, her cargo, etc and protect the environment, and be responsible for doing so.



The leadership and management style of the Master will set the climate that will determine the working and living conditions of the crew, which in turn will greatly affect ship operations. He should bear in mind that, safety in all aspects can be better achieved by the harmonious relationships of all personnel on board.

#### Regular Meeting On Board

*The Master shall be responsible for supervising the Shipboard Management Team, and hold Shipboard Management Meetings in a timely manner such as the beginning of a voyage, and coordinate among departments or give appropriate instructions as necessary on the basis of a full understanding of the maintenance work plan for the voyage concerned.*

The Master shall hold an Onboard Safety and Sanitary Committee meeting every month with all crewmembers that are available to attend. The following matters shall be discussed in this meeting:

- a. Illness/Injury to crew members
- b. Safety equipment/gears
- c. Recent near-misses
- d. Drills
- e. Other matters

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If the Master receives information about a bomb plot by terrorists or other unlawful conducts, he shall report to the Company in accordance with the SMS procedure entitled “Channel of Communications in Emergency” and also deal with the matter in accordance with this procedure.

1. The Master shall muster all the Department Heads and notify the crew of the receipt of information of an unlawful act.
2. The Master shall check the particulars of the “Bomb Threat Message Check List” and carry out a search of the ship.
3. When making a search of the ship, give consideration to secure the evacuation routes and safe operations. First carry out a search of the following:
  - a) The Lifeboats and boat deck
  - b) The Bridge, Radio Room and Engine Room

When the ship is berthed in port, consider receiving help from shore. Also, if the ship is engaged in cargo operations, discuss the matter with the responsible persons of the terminal and other shore facilities and then temporarily suspend the cargo operations until safety is confirmed.

4. When, as a result of the search, a suspicious object is found, request assistance from shore.

### **Major Critical Machinery Failure**



When the Master receives notification from the officer of the watch, or becomes aware, of a major critical machinery failure, shall immediately proceed to the bridge and direct the following measures to be taken.

1. As occasion demands, keep proper lookout by increasing the number of lookouts, or by radar, VHF and other appropriate means.
2. Check the surrounding weather and sea conditions as well as grasp the direction in which the ship is drifting and the speed.
3. When the ship is in danger of being driven against the shore, avoid running aground by taking soundings and paying out an appropriate length of anchor chain.

### **Repairs**

The Master, based on the report of the Chief Engineer or the Chief Officer, shall judge when to repair the critical machinery as follows.

1. When the failure can be easily recovered and, judging from the surrounding circumstances and the extent of congestion of other ships, when the area is safe to make repairs, shall immediately have the repairs carried out.
2. When judging from the surrounding circumstances that immediate repairs are not possible, and that temporary measures can be taken, shall have those measures taken, proceed to a safe sea zone and then have the repairs made.

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### 3.1.5 Request for Salvage

The Master must know that “Salvage Contract” is a very big claim and his call is very important w.r.t this matter. The master, when entering into a salvage contract by himself, shall take the following into consideration:

- When requesting salvage, enter into what is believed to be best salvage contract for the conditions prevailing at that time, since the subsequent salvage fees will be greatly affected by the contents of the contract;
- Remember, though, that by taking up too much time in pursuit of the economical terms of the contract, the right opportunity may be lost and result in the accident developing into a major disaster.

#### Determining of Salvage Contract Form

The master, when entering into a salvage contract, shall check beforehand with the salvage contractor whether it is to be a towing contract or salvage contract (a towing contract is better so far as circumstances permit) and decide on the best salvage contract depending on the circumstances prevailing at the time from the following salvage methods:

NO CURE NO PAY Method

Lloyd's Standard Form of Salvage Agreement, No Cure No Pay (Lloyd's Open Form, 2000)

The Japan Shipping Exchange, Inc. Form

OR

Fixed Remuneration Method



- Lump sum method
- Daily-hire method

#### Clarification and Confirmation of Contract Terms



Clarification shall be particularly made of the place where salvage ends.

The first request for salvage is often made verbally because of time limitations, but in such a case, always advise the salvage contractor of the contract terms and obtain his agreement.

When there are any blank spaces in the contract form that are not filled, draw diagonal lines across them and have them initialed.

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When the contract form is not available at the scene, prepare a contract paper clearly stating that it is in accordance with "XXXX Form" and have it signed by the ship and the salvage contractor.

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### Conclusion after the course :-

- **The Master should be able to demonstrate proficiency in the essentials of business practices of the shipping industry and have fundamental understanding of the elements of shipping business.**
- **Master should be able to communicate / act more effectively with various stakeholders in the industry after this course.**
- **Avoid any kind of loss of revenue to the ship owner within the capability of the Master.**