



**Fortescue Metals Group Limited  
Standard Form Voyage Charterparty (2012)**

**Date:**

**Place:** Geneva

**Part I**

<b>1. Owner / Address</b>	<b>2. Charterer / Address</b>
<b>3. Contract duration/Description</b>	
<b>4. Cargo description / Size</b>	
<b>5. Cargo Nominations/Laycan</b>	
<b>6. Vessel Nominations</b>	
<b>7. Vessel Requirements</b>	
<b>8. Load Port(s)</b>	
<b>9. Discharge Port(s)</b>	
<b>10. Freight Rate(s)</b>	
<b>11. Demurrage / Despatch</b>	
<b>12. Load Rate(s)</b>	
<b>13. Load Port(s) Turntime</b>	
<b>14. Load Port(s) NOR</b>	

<b>15. Discharge Rate(s)</b>
<b>16. Discharge Port(s) Turntime</b>
<b>17. Discharge Port(s) NOR</b>
<b>18. Charterer's agents</b>
<b>19. Commission</b>

It is mutually agreed that this contract will be performed subject to the terms and conditions contained in Parts I and II of this charterparty form. In the event of an inconsistency between the provision of Part I and Part II, the provisions of Part I will prevail over those in Part II to the extent of the inconsistency.

<b>Signature (Owner)</b>	<b>Signature (Charterer)</b>
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**Part II**

It is this day mutually agreed between the party mentioned in Box 1 as Owner/Disponent Owner/Time Charterer ("Owner") of the Vessel(s) "to be nominated" as per Box 6 and the party mentioned in Box 2 as Charterer ("Charterer") that:

**1. Vessel requirements**

- (a) The Owner warrants the Vessel(s) "to be nominated" as per Box 6 must be classed Lloyds 100 A1 (or equivalent at a Classification Society that is a member of the International Association of Classification Societies) and must be as described in Box 7 and as further detailed per Appendix A and must be modern, non overage, single deck, self trimming, with engine/accommodation aft, each without longitudinal centre line bulkheads.

**2. Carriage of cargo**

- (a) The said Vessel being warranted tight, staunch, strong and in every way fitted for the voyage with holds strengthened and classed for carriage of iron ore in bulk, must after delivery of her previous cargo, proceed with all reasonable speed to the loading port(s) or place(s) stated in Box 8 and there load, always afloat, as directed by the Charterer or its designated representatives but always under the supervision and responsibility of the Master and Owner, cargo as stated in Box 4, not exceeding what she can safely stow and carry. Being so loaded, the Vessel must with all reasonable speed proceed to the discharging port(s) or place(s) stated in Box 9 and there deliver the cargo, always afloat, as directed by the Charterer or its designated representatives but always under the supervision and responsibility of the Master and Owner.
- (b) The Charterer may, any time before arrival at discharge port, change the discharge port in consideration for paying freight which gives the Owner an equivalent time charter return to the base freight rate set out in Box 10. The freight calculation in respect of a changed discharge port must be conducted on an open book basis.
- (c) Cargo must always be loaded, carried and discharged in accordance with the rules and requirements of the IMO. Vessel must at all times be suitable for the loading, carriage and discharge of cargoes nominated under this charterparty. The Charterer may, in its discretion, terminate this charterparty in the event of breach of either of these requirements.

**3. Vessel Nomination**

- (a) The Owner must nominate the performing Vessel by no later than the time specified in Part I together with a full and complete itinerary and vetting questionnaire as per Appendix A. The Owner's failure to nominate in accordance with this clause entitles the Charterer in its discretion to cancel the voyage and fix a vessel against the Owner, in which event the Owner must pay the Charterer any increased cost incurred as a result.
- (b) The Owner must provide at the time of nomination the estimated intake basis available draft.
- (c) The Charterer has the right to reject any Vessel nominated under this charterparty in its discretion under any circumstance.
- (d) Approval of the nominated Vessel is to be given in writing by the Charterer to the Owner subject always to the Charterer's/receiver's/Rightship approval.
- (e) Approval or rejection of the Vessel is to be given in writing within 24 hours of the Charterer receiving the Vessel's nomination (Saturdays, Sundays and holidays excluded).
- (f) If the Vessel's nomination is rejected, the Owner must nominate a substitute vessel within 24 hours after the Charterer's written advice of the rejected nomination.
- (g) If the arrival of any nominated Vessel is anticipated to be delayed outside the agreed laycan, the Charterer may reject the Vessel in its discretion. If rejected, the Owner must substitute the nominated Vessel with another vessel of similar cargo lift, with an ETA within the agreed laycan.
- (h) Nomination of a substitute vessel must be made in accordance with and will be subject to the same terms as the nomination of the originally nominated Vessel, as set out in this charterparty.

**4. Vessel Substitution**

- (a) The Owner has the option to provide a substitute vessel up to 15 days prior to the commencement of the agreed laycan. The substitute vessel must provide the same approximate cargo lift and have expected readiness at the leadport in the same approximate ETA as the nominated Vessel.
- (b) Nomination of the substitute vessel must be made in accordance with and will be subject to the same terms as the nomination of the originally nominated Vessel, as set out in this charterparty.
- (c) If the Charterer rejects the substitute vessel the original Vessel nomination must be maintained.

**5. Freight Rate**

- (a) Freight, inclusive of all port charges, pilotage, light dues, port agents' fees and all other taxes and dues usually paid by Vessel, will be paid at the rate stated in Box 10.

**6. Freight Payment**

- (a) The Charterer will pay 90% of freight on Bill of Lading weight in United States Dollars to the Owner's account within eight (8) banking days after signing and releasing bills of lading marked "Freight Payable as per Charter Party" but in any event before breaking bulk.

- (b) Should "Freight Pre-Paid" bills of lading be required then the Charterer will pay 100% freight prior to the release of the bills of lading.
- (c) The balance of freight, together with settlement of despatch or demurrage (if applicable) and freight differential (if applicable) will be paid within thirty (30) days after delivery of the cargo and tender of time sheets, Statement of Facts and signed Notice of Readiness with Owner's calculations of any demurrage or despatch incurred at the loading and discharging ports.
- (d) Freight will be deemed to be paid when the Charterer gives its bank written instructions to make the payment. The Owner acknowledges and agrees that any delay in transfer of the payment after the Charterer gives those instructions to its bank is outside the control and responsibility of the Charterer.

## 7. Loading Terms

- (a) The Vessel must present at the loading port with all cargo holds, compartments open and closed trunk-ways (where applicable) free of flammable or toxic gases.
- (b) The cargo will be loaded FIOST to the Master's satisfaction in respect of seaworthiness at the average rate stated in Box 12 per weather working day of 24 consecutive hours. Any additional trimming and/or leveling required by the Master or Owner will be for the Owner's account and any time lost as a result of additional trimming and/or leveling will not count as laytime or time on demurrage, even if the Vessel is on demurrage.
- (c) Laytime for loading will be calculated on the basis of bill of lading weight determined as per clause 16.
- (d) Time will not count for opening and closing of hatches at commencement and completion of loading at each port nor for any situations listed in Clause 37 whether Force Majeure is declared or not, even if the Vessel is on demurrage.
- (e) The Owner acknowledges and agrees that the load rate stated in Box 12 was calculated on the basis of all hatches being available for loading when required and should all hatches not be available for loading when required, variation to the load rate may be necessary. If such variation is required, the laycan will be extended proportionately to the variation in load rate.
- (f) The Owner and Master must at all times during loading ensure that the Vessel complies with the requirements of the relevant Port Terminal Handbook.
- (g) If required, the Vessel's crew will operate, at no expense to Charterer, the Vessel's cargo gear (if fitted) to load and unload mechanical equipment used in bulk cargo operations. If Charterer requests and local regulations permit, crew will carry out cargo handling operations.
- (h) If, due to inefficiency or any other cause attributable to the Owners, the Vessel, her Master or crew, loading of the Vessel is hindered or impossible, the Charterer has the right to order the Vessel to vacate the berth. In such circumstances, the time and cost of shifting away from the berth and back to the berth will be for the Owners' account.
- (i) The Owner acknowledges and agrees that the Charterer may have contractual commitments to other vessel owners and operators using the load port and may be directed by the load port Port Authority to allocate berths and cargo at the load port. The Charterer is not required to give precedence to the Owner over any other vessel, owner or operator.

## 8. Tendering of Notice of Readiness at Load Port(s)

- (a) Notice of Readiness (NOR) at load port will be tendered in writing by facsimile, email or courier, to the Charterer/Charterer's agent as per Box 18 after the Vessel has arrived at loading berth or anchorage and is in all respects ready to load and in free pratique. If the loading berth or anchorage is unavailable on arrival the Vessel may tender NOR from the normal recognised waiting place designated by the Port Authority, even if outside the normal port limits and whether or not the Vessel has been cleared by customs and/or quarantine authorities.
- (b) At load port, the Owner/Master is not to tender, nor is the Charterer obliged to accept, Vessel's NOR prior to commencement of laycan, unless otherwise previously agreed. Time for loading will count as stated in Box 13 after NOR has been tendered and accepted by the Charterer.
- (c) Time will not count:
  - (i) Unless used, in which case only time actually used will count.
  - (ii) During bad weather or sea conditions which prevent or hinder the Vessel's loading or discharging.
  - (iii) Nor as time on demurrage, even if the Vessel is on demurrage, while the Vessel is proceeding from waiting place to loading berth or anchorage and making ready for loading (including obtaining customs clearance and pratique), until the Vessel is all fast at the designated loading or discharging berth.
  - (iv) Nor as time on demurrage, even if the Vessel is already on demurrage, when used before berthing (after tendering NOR) due to delay or deficiency of the Vessel, weather, tidal conditions, strikes or availability of tugs or pilots or regulations applicable to the Vessel.
  - (v) Nor as time on demurrage, even if the Vessel is already on demurrage, when lost due to inefficiency or any other cause attributable to the Vessel, the Master or crew.
- (d) In the event that the Charterer or Shipper arranges to load before time commences to count, the Master will allow work to be done, in which case half actual time used to count.
- (e) Laytime is non-reversible.

## 9. Discharging Terms

- (a) The Vessel must present at the discharge port with all cargo holds and compartments open and with closed trunk-ways (where applicable) free of flammable or toxic gases.
- (b) The cargo will be discharged FIOST to the Master's satisfaction in respect of seaworthiness at the average rate stated in Box 15 per weather working day of 24 consecutive hours.

- (c) Laytime for discharging will be calculated on the basis of bill of lading weight determined as per clause 16.
- (d) Time will not count for opening and closing of hatches at commencement and completion of discharge at each port, nor for any situations listed in Clause 36 whether Force Majeure is declared or not, even if the Vessel is on demurrage.

#### **10. Tendering Notice of Readiness at Discharging Port(s)**

- (a) Notice of Readiness (NOR) at discharge port must be tendered in writing by fax, email or courier, to the Charterer/ Charterer's agent only as per Box 18 after the Vessel has arrived at discharging berth or anchorage and is in all respects ready and in free pratique.
- (b) If the discharging berth or anchorage is unavailable on arrival the Vessel may tender NOR from the normally recognised waiting place designated by the Port Authority, even if outside the normal port limits and whether or not the Vessel has been cleared by customs and/or quarantine authorities.
- (c) Time for discharging will count as per Box 16 after NOR has been tendered and accepted by the Charterer. In the event that the Charterer or Shipper arranges to discharge before time commences to count, the Master will allow work to be done in which case half actual time used will count.
- (d) Time used by the Vessel in proceeding from waiting place or anchorage to discharging berth or anchorage and making ready for discharging (including obtaining customs clearance and pratique) and any time lost before berthing (after tendering NOR) due to delay to the Vessel, will not count as laytime or time on demurrage (even if Vessel is on demurrage) unless the delay is directly caused by an act of the Charterer.
- (e) Laytime is non-reversible.

#### **11. Laytime at Additional Ports**

- (a) Time will stop counting on the completion of loading/discharging. If required by the Charterer, the Vessel will leave the berth as soon as possible after completion of loading/discharging, failing which the Charterer will be entitled to proved damages.
- (b) At the second (and subsequent) loading or discharging port the Vessel will tender NOR and laytime or time on demurrage will resume counting as per Clauses 8 and 10. Time counting at the second (and subsequent) loading and/or discharging port(s) will always be subject to the exceptions specified in Clauses 7 and 9.
- (c) Shifting from anchorage to berth at the second and subsequent will not count as laytime.

#### **12. Shifting Cost and Time**

- (a) If more than one berth at any one loading/discharging port has been agreed, shifting costs including bunkers consumed will be for the Owner's account and time used will not count as laytime or time on demurrage.
- (b) If more than one anchorage has been agreed or is customarily used in order for the Vessel to reach the loading/discharging berth, shifting costs including bunkers consumed will be for the Owner's account and time used will not count as laytime or time on demurrage. If more than one anchorage point has not been agreed or if the shifting between anchorage points does not bring the Vessel geographically closer to the loading/discharging berth, the exclusions in this subclause will not apply. If the Owner, Master or Port Authority orders the Vessel out anchorage for any reason, time will stop counting, even if the Vessel is on demurrage, at the time of the order until the Vessel is again at anchorage and all costs associated with the shift shall be for Owners' account *and shall be additional to and shall not form part of any capped port da*.
- (c) The Vessel must be in seaworthy trim for shifting between berths and ports.
- (d) If the Owner, Master or Port Authority orders the Vessel out of a berth for any reason, time will stop counting, even if the Vessel is on demurrage, at the time of the cessation of loading/discharging until the Vessel is again in berth and ready to resume loading/discharging and all costs associated with the shift shall be for Owners' account *and shall be additional to and shall not form part of any capped port da*.

#### **13. Warping**

- (a) The Vessel will move along any one berth or installation, as instructed by the Charterer or Terminal Operator, solely for the purpose of making any hatch or hatches available to the loading or discharging facilities at the berth or installation.
- (b) All costs associated with warping including bunkers will be for the Owner's account.
- (c) Time used for warping will not count as laytime or time on demurrage.
- (d) Warping will be done by the Vessel's crew where local regulations permit, failing which the Charterer will engage shore labour at its time and expense.

#### **14. Hold Cleanliness**

- (a) Upon arrival at the first loading port the Vessel's holds must be suitable in all respects (which will include a gas-free certificate if the Vessel is a combination carrier) to receive the cargo to be loaded under this charterparty to the satisfaction of an independent surveyor and/or such recognised local authority as the regulations or shipper may require.

- (b) If the Vessel's holds are found to be unsuitable, any time lost until the Vessel is accepted and is ready in all respects as if the Vessel's holds had not originally been rejected, will not count as laytime or as time on demurrage. Any expenses incurred as a result of the rejection including but not limited to standby of trucks, labour and mechanical equipment will be for Owner's account.
- (c) The Charterer has the right (but not obligation) to effect intermediate hold cleaning. If the Charterer effects intermediate hold cleaning, the Vessel's crew must provide all necessary and reasonable assistance.

#### **15. Part Cargo**

- (a) There will be no part cargoes without the Charterer's written permission. Any part cargo must not be injurious to, stowed in same hold or worked at the same time as the Charterer's cargo.
- (b) If part cargo is permitted, the Owner may tender Notice of Readiness in accordance with the provisions of this charterparty notwithstanding that other part cargo(es) may be loaded or discharged first.
- (c) Time used for the loading or discharging of other part cargo(es) will not count as laytime nor as time on demurrage under this charterparty.
- (d) Any time used in shifting between berths for loading or discharging of part cargo(es) will not count as laytime or as time on demurrage.
- (e) Any time used in shifting between berths for loading or discharging of part cargo(es) will not count as laytime or time on demurrage.

#### **16. Bills of Lading**

- (a) The Master will authorise the agents at load port to sign and release on his behalf three negotiable Bills of Lading (or non-negotiable Sea Waybills) unless otherwise requested by the Charterer.
- (b) Shipper's weights to be determined by draft survey at the loading port and will be accepted as tonnage shipped and Mate's Receipts will be drawn up accordingly. The Master must ensure that the Mate's Receipts accurately describe the cargo's apparent order and condition. Bills of Lading must always be drawn up in conformity with the Mate's Receipts.
- (c) Upon completion of loading the Owner will release three negotiable Bills of Lading claused "Freight Payable as per Charter Party" or at the Charterer's option "Freight Pre-Paid", to the shipper or its representatives.

#### **17. Laydays and Cancellation**

- (a) Time for loading will not commence before 0001 hours on the first day of the nominated laycan (as per Box 5) without prior consent from the Charterer. If consent is given then time counting will commence as if the Vessel were loading in laycan.
- (b) The Charterer has the right, in its discretion, to cancel this charterparty or the voyage in question should:
  - (i) There be any misrepresentation by the Owner regarding the Vessel's particulars, the Vessel's suitability to perform the voyage, the Vessel's position and/or itinerary.
  - (ii) The Vessel fail to be ready in all respects to load at the time she arrives at the load port or should she fail to comply with any one or more of the requirements set out in this charterparty. For the purposes of this subclause, the term "arrive" does not require that the Vessel is an arrived ship.
  - (iii) The Vessel not have tendered Notice of Readiness in accordance with Clause 8 on or before 2359 hours of the last day of the nominated laycan (as per Box 5).
  - (iv) The Owner notify the Charterer at the time that the Vessel is leaving her last port of call (whether or not a discharge port) that the Vessel will not reach the loading port on or before the cancelling date.
- (c) Should the Vessel arrive and present NOR after 2359 hours local time on the last day of the nominated laycan, the Charterer is entitled at its option and in its discretion to cancel either this charterparty or the voyage in question. The Charterer must notify the Owner within 24 hours of the Vessel presenting NOR whether or not it wishes to cancel the charterparty or the voyage.
- (d) A cancellation pursuant to this clause is without prejudice to any other remedy the Charterer may have at law and is without prejudice to the Owner's obligations under this charterparty.

#### **18. Demurrage and Despatch**

- (a) Demurrage at the rate specified in Box 11 for laytime exceeded in loading and/or discharging must be paid by the Charterer.
- (b) Despatch at the rate specified in Box 11 for laytime saved in loading and/or discharging must be paid by Owner.
- (c) Settlement of demurrage and dispatch will be in accordance with Clause 7(c).

#### **19. Overtime**

- (a) All overtime expenses at loading and discharging port(s) will be for the account of the party ordering the overtime.
- (b) If overtime is ordered by port authorities or the party controlling the loading or discharging terminal or facility, overtime expenses will be shared equally between the Owner and the Charterer.
- (c) Overtime pay/expenses of the Vessel's officers and crew will always be for the Owner's account.

**20. Stevedoring**

- (a) Stevedores at loading and discharge port will be appointed and paid for by the Charterer, Shipper or Receiver but will be the Owner's agents.
- (b) Loading and discharge of the cargo will always be under the direction, supervision and responsibility of the Master and Owner.

**21. Lighterage**

- (a) Subject to the provision of sufficient fenders and protection paid for by the Charterer and always to the Master's satisfaction, the Charterer has the option to double bank or lighten the Vessel.
- (b) The Vessel must lie safely alongside the other vessel, coaster or lighter at a safe wharf, safe dock or safe anchorage for the purpose of loading, discharging or bunkering.
- (c) The Master has the liberty of ordering the other vessel, coaster or lighter away from his own with time to count should he, in his reasonable opinion, deem the operations unsafe.
- (d) The Owner is not responsible for loss or damage to cargo by reason of loading/discharging pursuant to this clause, save for any loss or damage which arises by reason or consequence of negligence or misconduct on the part of the Owner, Master or crew.
- (e) If lightening of the Vessel is necessary because the Owner or Master has permitted the Vessel to be loaded such that upon arrival at the discharge port, the Vessel has a draft in excess of the permissible entry draft, the Charterer (or its consignee or agent) may direct the Vessel to proceed to a port or any other place for the purpose of lightening the Vessel. In such cases, any time lost or additional cost incurred (including without limitation the cost of on-carriage of the cargo to the nominated port, stockpiling charges or deterioration of the cargo) as a result of the diversion or lighterage will be for the Owner's account.

**22. Hold Accessibility**

- (a) Vessel's holds and tank tops must be suitable for the utilisation of grabs and any other mechanical equipment used in loading and discharging operations. No cargo may be loaded in any space which is inaccessible or unsuitable for such equipment.
- (b) Owner will maintain Vessel's cranes and grabs, if fitted, in good working order. Time lost by reason of breakdown of the Vessel's handling gear will not count as laytime or time on demurrage.

**23. Lighting**

The Vessel will give, free of expense to the Charterer, full use of her lighting on deck and in the cargo compartments which must be adequate for all cargo operations.

**24. Opening and Closing Hatchcovers**

- (a) Vessel's crew to open and close hatchcovers. The Owner must ensure that the Vessel's Master and crew give all necessary assistance to expedite the loading and discharging of the Vessel.
- (b) The Master must close the hatchcover of each hold immediately following completion of loading into that hold.
- (c) In the event of inclement or wet weather, the Master must have all hatches closed when loading or discharging (as the case may be) is completed for the day.
- (d) During rain, snow or high wind, the Master must cover all hatches into or from which loading or discharging is not in progress.

**25. Vessel Deficiencies**

- (a) In the event of a loss of time during loading or discharging operations due to a defect, deficiency or default of the Vessel or its equipment, or attributable to the fault of the Vessel's Master or crew, any time lost will not count as laytime or time on demurrage, even if Vessel is on demurrage.
- (b) All costs and expenses incurred as a result of any such defect, deficiency or default will be for Owner's account.

**26. Trading Certificates**

The Owner warrants as a condition that throughout the term of this charterparty the Vessel will be in all respects eligible under all applicable Conventions, laws and regulations for trading/entry to the ports and places as specified in this charterparty and that at all times the Vessel will have on board for inspection by the appropriate authorities all certificates, reports, records, compliance letters and other documents required for such services, including but not limited to certificates of financial responsibility for pollution.

**27. International & Local Regulations**

- (a) The Vessel and Owner must comply with all applicable Conventions, laws and regulations, at any port of call under this charterparty. The Charterer has the option to cancel this charterparty due to the Vessel or Owner's non compliance with this clause.
- (b) Any time lost by reason of a relevant authority (which term includes port and terminal operators) declaring the Vessel to be in non-compliance with any applicable Convention, law or regulation will not count as laytime or time on demurrage (even if the Vessel is on

demurrage) and any expenses attributable to the non-compliance, including but not limited to standby of trucks, labour and mechanical equipment, will be for Owner's account.

#### **28. Restrictions, Routing & Rotation**

- (a) Unless otherwise agreed, the Vessel must proceed to the first (or only) discharging port via the most direct route. Loading and discharging port(s) rotation will be in the *Charterers' Owner's option*, unless otherwise agreed.
- (b) The Master and/or Owner are responsible for determining the applicable size, draft, length, beam and air draft limitations and any other restrictions prior to the Vessel's arrival at the loading and discharging port(s).
- (c) ~~With Owner's permission, which the Owner must not unreasonably withhold, the Charterer has the option to order the Vessel to the discharge port(s) via the Suez Canal.~~
- (d) ~~If the Vessel proceeds to the discharge port(s) via the Suez Canal, the freight will be adjusted to take Suez transit into account using the proforma Vessel description so as to give Owner the same daily return.~~

#### **29. Transfer**

- (a) The Owner may not transfer any part of this charterparty or change ownership during the term of this charterparty without the Charterer's prior written consent.
- (b) The Charterer has the option of cancelling this charterparty should the Owner fail to comply with subclause (a).
- (c) The Charterer has the option to transfer all or part of this charterparty and of sub-chartering the Vessel to another party. Should the Charterer sub-charter the Vessel, the Charterer will remain responsible to the Owner for fulfilment of this charterparty.

#### **30. Notices**

- (a) The Owner or Master will tender 15/10/7 days approximate notices, followed by 5/3/2/1 days and 12 hour definite notices of the Vessel's expected time of arrival (ETA) at the loading port(s) to the agents and the Charterer.
- (b) Owner or Master will tender 15/10/7 days approximate notices, followed by 5/3/2/1 days and 12 hour definite notices of the Vessel's expected time of arrival (ETA) at the discharge port(s) to the agents and the Charterer.
- (c) The Owner/Master must keep the Charterer advised of any alteration in the Vessel's expected readiness to load or discharge.
- (d) Should the Owner and/or Master fail to give any one or more of the definite notices required under this clause, 24 hours will be added to the allowed laytime for each failure by the Owner and the Master to do so.

#### **31. Agents**

- (a) The Vessel will be consigned to the Charterer's nominated agents as specified in Box 18 at load and discharge ports, with the Owner paying customary fees.
- (b) Prior to the Vessel's arrival at load and discharge port, the Owner will provide the nominated agents with sufficient funds to cover the Vessel's disbursements.

#### **32. Draft Survey**

- (a) The Charterer or receiver will appoint and pay for a draft surveyor. Time used for the draft survey will neither count as laytime nor time on demurrage, even if the Vessel is on demurrage.
- (b) While the surveyor is taking draft readings and/or tank soundings the:
  - (i) Master must not to take on board or pump ballast without obtaining permission from the Charterer; and
  - (ii) Vessel is not to take on, release or switch from one tank or other compartments to another any ballast, fresh water or fuel oil.

#### **33. Non-presentation of Bills of Lading**

- (a) If requested by the Charterer, and if, prior to discharge, the Charterer provides to the Owner a Letter of Indemnity (LOI) as per the Owner's P&I club form but without a bank guarantee, the Master will release all or part of the cargo at the discharging port(s) without presentation of original Bills of Lading.
- (b) An LOI provided pursuant to this clause will automatically become void and must be promptly returned to the Charterer upon presentation of the original Bills of Lading to the Owner or Master. An electronic copy of the original LOI will be acceptable to the Owner with the Charterer to post the original in due course.

#### **34. ITF and Boycott**

- (a) The Owner warrants that the present terms and conditions of employment of the Vessel's crew comply with an ITF agreement or a bona fide Trade Union agreement that is acceptable to the ITF and their representatives and will remain so for the duration of this charterparty.
- (b) The Charterer has the option in its discretion to cancel any voyage in respect of which the Vessel does not comply with this clause.

- (c) Should the Vessel fail to comply with this clause on more than one occasion, the Charterer has the option, in its discretion to terminate the charterparty.
- (d) The Owner fully indemnifies the Charterer in respect of any consequences of the Vessel's failure to comply with this clause.
- (e) In the event of loss of time and/or extra expenses incurred due to boycott of the Vessel (whether actual or threatened) and/or dispute with labour because of the Vessel's flag or nationality of the Owner, Master, Officers or crew or conditions under which the same are employed, such time will neither count as laytime nor time on demurrage and any expenses will be for the Owner's account.
- (f) Charterers request Owners' support in their efforts to end slavery by putting in place all necessary processes, procedures, investigations and compliance systems to ensure that Owners' organization and direct supply chains do not include, condone or allow for slavery or forced labour.

### 35. Strike Clause

- (a) Time lost in loading and/or discharging by reason of any of the following causes will neither count as laytime nor time on demurrage, even if the Vessel is on demurrage: strikes, lockouts, stoppages or other labour difficulty connected with mining, production, port or facility services or any transport and/or handling of the cargo whether inland or at the port or facility. The Charterer, shipper(s) and/or receiver(s) will not be liable or otherwise responsible for any delays in loading and/or discharging the Vessel if prevented by any of the causes listed.
- (b) If there is a strike, lockout, stoppage or other labour difficulty as described in subclause (a) at the loading port or facility prior to the Vessel's arrival there, the Owner may request from the Charterer a declaration as to whether the Charterer agrees to maintain the voyage, calculating laytime as if there were no strike, lockout or stoppages. If the Charterer has not made its declaration within 48 hours (Saturday, Sunday and holidays excluded) of the request, the Owner has the option of cancelling the voyage without any liability to the Owner or the Charterer.
- (c) The Owner has the liberty to sail from a loading port or loading facility affected by strike, lockout, stoppage or other labour difficulty as described in subclause (a) without the cargo or to sail with any cargo forming part of the intended shipment on expiry of 48 hours notice of the Owner's intention to do so. The Owner must not provide such a notice until at least 72 hours have elapsed since the Vessel's arrival at or off the affected port or facility. The Owner's 48-hour notice will be invalidated by the cessation of the strike, lockout or stoppage within the 48 hour notice period.
- (d) If, pursuant to this clause, the Vessel sails with part of the intended shipment, the Charterer is required to pay freight only on the cargo quantity actually loaded.
- (e) If, on or after Vessel's arrival at a port of discharge, there is a strike, lockout, stoppage or other labour difficulty as described in subclause (a) which affects discharge of the cargo and it is not settled within 48 hours of the Vessel's arrival, the Charterer may keep the Vessel waiting until the strike, lockout, stoppage or other labour difficulty is at an end or may order the Vessel to another port for discharge. Delivery of the cargo to the alternative port will be bound by the same terms and conditions of this charterparty including freight.
- (f) Where the strike, lockout, stoppage or other labour difficulty directly involves the Charterer or the Owner, the settlement of such difficulty is entirely within the discretion of the affected party, and the affected party may settle these events in their time, and on the terms and conditions they choose. No delay in making the settlement deprives the affected party of benefit this clause.

### 36. Force Majeure

- (a) Subject to the Ice Clause and to any provision to the contrary in this charterparty, a party is not liable to the other for any delay or failure to perform any obligation under this charterparty, nor will laytime count or any other time lost count against the Charterer, even where the Vessel is on demurrage, where such is caused by the occurrence of a Force Majeure Event.
- (b) For the purposes of the charterparty a Force Majeure Event means:
  - (i) acts of God;
  - (ii) extremes of weather, floods, lightening strikes, earthquakes, landslides or other natural phenomenon;
  - (iii) wars, hostilities (declared or not declared), civil or military insurrection, acts of public or foreign enemies, terrorist acts, blockades and embargoes any riot or civil commotion;
  - (iv) strike, lockout or other industrial action;
  - (v) compliance with any law, regulation, ordinance, order, demand or request of an international or national port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them;
  - (vi) loss or shortage of labour or material caused by circumstances beyond the reasonable control of the party affected;
  - (vii) serious accidental damage or other serious failure of any of the Charterer's production facilities;
  - (viii) fire or explosion of materials including power, electricity and fuel;
  - (ix) epidemic or quarantine;
  - (x) accidents to or closings or blockages at railroads, harbours, docks, canals, channels or other assistances to or adjuncts of transport, shipping or navigation;
  - (xi) any financial impecuniosities of the Charterer's intended buyers or other related default(s), in circumstances where, if relevant, alternative cargo(es) are not (in the Charterer's discretion) commercially attainable;
  - (xii) unavailability of materials or equipment; closure or substantial curtailment of production of the Charterer's buyers' mills or any event which leads to a declaration of force majeure by the Charterer's buyers pursuant to sales agreements with the Charterer or closure or substantial curtailment of production from a mine for economic or any other reason for a continuous period greater than sixty (60) days;
  - (xiii) any other cause or causes, whether or not similar to those listed (but excluding lack of finances on the part of the Owner and planned power outages at port facilities) which are beyond the reasonable control of the party affected and which, by the exercise of reasonable diligence, the affected party is unable to reasonably prevent or avoid.
- (c) Upon the occurrence of a Force Majeure Event, the affected party must, as promptly as is reasonably possible, give the other party notice of the event and supporting evidence (**Force Majeure Declaration**). Making a Force Majeure Declaration in accordance with this subclause is a condition precedent to the affected party's ability to rely upon the Force Majeure Event and failure to make a Force Majeure Declaration in accordance with this clause will preclude a party from relying upon the Force Majeure Event.

- (d) A Force Majeure Declaration must include details on when the Force Majeure Event commenced and the length of time the Force Majeure Event is expected to affect the affected party's ability to perform its obligations under this charterparty.
- (e) The party making a Force Majeure Declaration must use all reasonable efforts to overcome or rectify the Force Majeure Event as quickly as possible and must give notice to the other party of the cessation of the Force Majeure Event as soon as possible after the Force Majeure Event ceases to affect its ability to perform its obligations under this charterparty.
- (f) Notwithstanding subclause (e), the settlement of strikes, lockouts and other industrial disturbances is entirely within the discretion of the affected party and nothing in this clause requires that party to settle industrial disputes by yielding to demands when it considers such action to be inadvisable.
- (g) If the Force Majeure Event either continues or is reasonably anticipated to continue beyond a period of thirty (30) days from the date of its occurrence, either party may at any time by five (5) days prior written notice, terminate this charterparty.
- (h) In the event of a termination pursuant to subclause (g):
  - (i) Neither party will be liable to the other in respect of any obligations which may arise subsequent to the termination, except the obligation to pay money owing at the time of termination.
  - (ii) If the parties are able to fully perform their obligations under this charterparty prior to the end of the termination notice period, the parties may by agreement choose to waive the termination and resume performance of this charterparty.
  - (iii) Any monies owing at the time of the termination remain owing despite termination.

If the cumulative Force Majeure Events in any one year total more than thirty (30) days, the Charterer may, at its option, either reduce the number of shipments to be performed in that year proportionately to the cumulative duration of the Force Majeure Events or terminate this charterparty.

### **37. Taxes and Dues**

- (a) The Owner must pay all:
  - (i) Dues, charges, levies and taxes customarily levied on the Vessel including any applicable income or freight tax; and
  - (ii) Canal, lock, seaway and any other river or waterway tolls, dues and charges, however the amount(s) may be assessed. For the avoidance of doubt, any such charges will not be considered to be a disbursement, even if invoiced to the Owner as part of a port d/a.
- (b) The Charterer must pay all dues, charges, duties and taxes customarily levied on the cargo, however the amount(s) may be assessed.

### **38. Extra Insurance**

- (a) Extra insurance on the Vessel and/or cargo on account of the Vessel's ownership, flag, classification, or age will be for the Owner's account.
- (b) Where paid by the Charterer, the Charterer may elect to deduct extra insurance on the cargo from the payment of freight, in which case the Charterer will furnish evidence of payment in support of the deduction.

### **39. Stevedore damage**

- (a) At loading or discharging port(s), any stevedore damage to the Vessel (excluding fair wear and tear commensurate with the nature of the trade) must be settled between the Owner and stevedore(s) directly.
- (b) The Charterer will render all reasonable assistance to the Owner in the pursuit of a claim by the Owner against the stevedore(s) in respect of damage to the Vessel caused by the stevedore(s), which the Owner is not able to settle directly with the stevedores.
- (c) The Charterer/shipper/receiver will not be responsible for the act or default of the stevedores at the loading or discharge port(s).

### **40. Drydocking**

The Vessel must not be dry-docked during the currency of this charterparty except in case of emergency.

### **41. Deviation and Liberties**

- (a) The Vessel has liberty to:
  - (i) Deviate for the purpose of saving life or property;
  - (ii) Sail without pilots, except where compulsory pilotage is required;
  - (iii) Tow or to be towed; and
  - (iv) Assist vessels in distress or to be assisted.
- (b) Salvage will be for Owner's sole benefit.

### **42. Bunkering**

At any stage during a voyage under this charterparty the Vessel may:

- (i) Proceed to any port at which fuel is available for the purpose of bunkering, whether such port is on or off the direct or customary route(s) between any of the loading or discharging ports named in this charterparty; and
- (ii) At that port, take fuel in any quantity in the discretion of the Owner, whether or not such amount is required for the chartered voyage.

**43. Lien & Cesser**

- (a) All liability of the Charterer ceases on completion of loading except for payment of freight, and/or demurrage.
- (b) If the Vessel is under charter to the Owner, the Owner must defend, indemnify and hold harmless the Charterer under this charterparty against any lien on cargo, freight or sub-freights exercised by the owner under the Owner's charterparty, or by the head owner/disponent owner (if the head owner/disponent owner is a party other than the owner under the Owner's charterparty).

**44. Protection & Indemnity (P&I) Cover and Hull & Machinery Insurance.**

- (a) The Owner undertakes as a condition that the Vessel is entered with a P&I Club for full coverage, including without limitation liabilities falling within clause 45, and that the Vessel's hull and machinery is fully insured and will remain so for the duration of this charterparty.
- (b) Laytime will not count nor will demurrage accrue for any time lost through non-conformity with this clause.

**45. Pollution Indemnity**

- (a) The Owner agrees to indemnify the Charterer, their agents and any other party against any liability, including any penalty, which may be imposed on any of them or which any of them may incur under any statute or regulation regarding liability for pollution of waters by oil or other substances:
  - (i) By reason of any contravention of such statute or regulation; or
  - (ii) Where the pollution results from an act or omission, by the Vessel, the Master or any servant or agent of the Owner.
- (b) Indemnity under this clause is provided on the condition that any contravention was not caused or contributed to by the party seeking to be indemnified under this clause.
- (c) Charterers shall have no liability for any loss of time whether laytime, time on demurrage or detention resulting from any form of pollution damage caused by the Vessel during the performance of this charterparty.

**46. Health and Safety**

- (a) The Owner must have on board the Vessel an effective:
  - (i) Occupational health and safety policy with the objective that due care and attention is given by crew members to safe working practices in all operations pertaining to the Vessel; and
  - (ii) Policy regarding drug and alcohol abuse with the objective:
    - (1) That no crew member will navigate the Vessel or operate its onboard equipment whilst impaired by drugs or alcohol.
    - (2) Of strictly prohibiting the possession, use, transport and distribution of illicit or non-prescribed drugs by crew members
- (b) The Owner must exercise due diligence throughout the currency of this charterparty to ensure that the crew complies with the policies referred to in this clause.

**47. Inspection**

- (a) Upon the giving of at least 24 hours prior notice, the Charterer or their representative may inspect the Vessel in port, including while she is in dry dock, at any reasonable time provided that loading or discharging operations are not affected, and the Master and crew must extend all reasonable assistance and co-operation to the Charterer or its representative.
- (b) Upon request, the Owner/Master must make available the Vessel's logs for inspection by the Charterer or its representative.

**48. Bimco ISM Clause**

- (a) The Owner must procure that both the Vessel and "the Company" (as defined by the International Safety Management Code (ISM Code)) will comply fully with the requirements of the ISM Code (where applicable) during the currency of this charterparty. The Owner must provide the Charterer with a copy of the relevant Document of Compliance (DOC) and Safety Management Certificate (SMC) upon request.
- (b) Loss, damage, expense or delay caused by failure on the part of the Owner or "the Company" to comply with the ISM Code will be for the Owner's account.

**49. ISPS Clause for Voyage Charter Parties**

- (a) The Owner must ensure compliance with the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Vessel and "the Company" (as defined by the ISPS Code).
- (b) Upon request Owner will provide Charterer with a copy of the:
  - (i) relevant International Ship Security Certificate (or the Interim International Ship Security Certificate); and
  - (ii) full style contact details of the Company Security Officer (CSO).

Any and all loss, damage, expense or delay, caused by failure on the part of the Owner or "the Company" to comply with the requirements of the ISPS Code or this clause will be for the Owner's account.

- (d) The Charterer must provide the CSO and the Ship Security Officer (SSO)/Master with its full style contact details and any other information the Owner requires to comply with the ISPS Code.
- (e) Except as otherwise provided in this charterparty, loss, damage, expense, excluding consequential loss, caused by failure on the part of the Charterer to comply with this clause will be for the Charterer's account.

- (f) Notwithstanding anything to the contrary provided in this charterparty, the Vessel is entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code, on the condition that the SSO and Master believe on reasonable grounds that clearance will be granted without delay or incident at the port. NOR tendered pursuant to this clause, even if accepted by the Charterer, will be invalidated, if any delay in clearance of the Vessel results from any failure by "the Company" or the Vessel to comply with the requirements of the ISPS Code or this clause.
- (g) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code shall not count as laytime or time on demurrage.
- (h) Notwithstanding anything to the contrary provided in this charterparty, any additional costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, will be for the Owner's account, unless such costs or expenses result from an act or omission by the Charterer, in which case costs to be borne by the Charterer. All measures required by the Owner to comply with the Ship Security Plan will be for the Owner's account.
- (i) If either party makes any payment which is for the other party's account according to this clause, the other party must indemnify the paying party.

## 50. OFAC Compliance Clause

- (a) Notwithstanding any other term or provision of this charterparty, the parties agree:
  - (i) To comply in the performance of this charterparty with the strictest obligations imposed by any applicable sanctions measures, or, if more stringent, by the standards of sanctions measures issued or adopted from time to time by HM Treasury, the Australian Government, the US Government (including the US Department of the Treasury's Office of Foreign Assets Control (**OFAC**)), the European Union, and the United Nations Security Council, as though such regulations were applicable to the parties (**Sanctions**); and
  - (ii) Not to require the other party or any third party (including any financial institution or insurer) to take any action or perform any obligation in relation to the charterparty which involves or may reasonably be considered to involve a violation of Sanctions applicable to such party.
- (b) The standards set out in subclauses (a) and (b) require due diligence as to, without limitation, the countries and ports of origination, destination, and transit in a voyage; ultimate destination of cargoes shipped; the owner, location of suppliers of bunkers and country of origin of cargoes; the country of organisation, registration, location or residence of the vessel, vessel owner(s), subcharterers, and crews.
- (c) It is a condition of this charterparty that no Blocked Vessel may be nominated pursuant to this charterparty. For this purpose, a Blocked Vessel is a vessel:
  - (i) Listed on the Specially Designated Nationals and Blocked Persons List published and amended from time to time by OFAC (**SDN List**), the EU's or UK's Consolidated List, or the Consolidated List of a UN Security Council Sanctions Committee under a resolution imposing an assets freeze (collectively, **Sanctions Lists**);
  - (ii) The registered owner of which is named on a Sanctions List;
  - (iii) Directly or indirectly owned, chartered, operated or controlled by any individual or entity named on a Sanctions List;
  - (iv) Flagged or registered by a country that is the subject of U.S. sanctions laws administered by OFAC (**U.S. Sanctions**), if acceptance of such vessel nomination would constitute a violation of U.S. sanctions by a U.S. individual or entity;
  - (v) Owned or chartered by an individual or entity that is registered, constituted or organised in, or who is a citizen or resident of or located in, a country that is the subject of U.S. Sanctions, if acceptance of such vessel nomination would constitute a violation of U.S. sanctions by a U.S. individual or entity;
  - (vi) Acceptance of which by the party to whom the vessel has been nominated (**Accepting Party**) would constitute a violation of any Sanctions without limitation to any other subclause in this Contract by the Accepting Party, as if the Accepting Party were required to comply with Sanctions, all as amended from time to time.

Nomination of a Blocked Vessel may be rejected by the Accepting Party. Any notice of rejection given by the Accepting Party pursuant to this clause must identify the grounds of rejection and the relevant sanctions relied upon together with an explanation as to why acceptance of the vessel would constitute a violation of such sanctions by the Accepting Party.

- (e) In the case of a valid rejection under subclause (d):
  - (i) The voyage for which the Blocked Vessel was nominated will be cancelled; and
  - (ii) If as a result of a valid rejection of a Blocked Vessel the Accepting Party must charter an alternative vessel for use and incurs a financial loss as a result, the other party will be liable to and indemnify the Accepting Party for the loss.
- (f) No party to this charterparty will permit any vessel nominated or used pursuant to this charterparty to originate or terminate its voyage in a country that is the subject of territorial Sanctions. Nor shall any party to this charterparty permit any vessel nominated or used pursuant to this charterparty to transit any country that is the subject of Sanctions.
- (g) Any party to this charterparty who breaches this clause 50 must indemnify the other for any and all losses, fines, damages and costs suffered by the other which arises out of the violation or breach.

## 51. Protective Clauses

Clauses 52 to 55 inclusive are deemed to be incorporated into all Bills of Lading issued under this charterparty.

## 52. Clause Paramount

The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 ("the Hague Rules") as amended by the Protocol signed at Brussels on 23 February 1968 ("the Hague-Visby Rules") and as enacted in the country of shipment shall apply to this Contract. When the Hague-Visby Rules are not enacted in the country of shipment, the corresponding legislation of the country of destination shall apply, irrespective of whether such legislation may only regulate outbound shipments.

When there is no enactment of the Hague-Visby Rules in either the country of shipment or in the country of destination, the Hague-Visby Rules shall apply to this Contract save where the Hague Rules as enacted in the country of shipment or if no such enactment is in place, the Hague Rules as enacted in the country of destination apply compulsorily to this Contract.

The Protocol signed at Brussels on 21 December 1979 ("the SDR Protocol 1979") shall apply where the Hague-Visby Rules apply, whether mandatorily or by this Contract.

The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging, or while the cargo is in the charge of another carrier, or with respect to deck cargo and live animals.

### **53. Both to Blame Collision**

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

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

### **54. General Average and New Jason**

Any General Average occurring under this charterparty is to be adjusted, stated and settled in London according to York-Antwerp Rules 1994 (including any subsequent amendments), according to English law and practice, but where the adjustment is made in accordance with the law and practice of the United States of America, the following clause will apply:

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, agreement, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods shippers, consignees or owners of the goods to the carrier before delivery."

### **55. "Voywar 93" Clause**

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

- (i) "Owners" shall include the shipowners, bareboat charterer, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and
- (ii) "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgment of the Master and/or Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.

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

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

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

#### **(e) The Vessel shall have liberty:-**

- (i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery or in any way whatsoever which are given by the Government of the nation under whose flag the Vessel sails, or other Government to whose laws Owners are subject, or any other Government which so requires, or any body or group acting with the power to compel compliance with their orders or directions;
  - (ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;
  - (iii) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;
  - (iv) to discharge at any other port any cargo or part of it which may render the Vessel liable to confiscation as a contraband carrier;
  - (v) to call at any other port to change the crew or any part of it or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions;
  - (vi) where cargo has not been loaded or has been discharged by Owners under any provisions of this clause, to load other cargo for Owner's own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the ordinary or customary route.
- (f) If, in compliance with any of the provisions of subclauses (a) to (e) of this clause, anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Contract of Carriage. The use of "Contract of Carriage" in this clause relates to the single voyage in question and not the Contract of Affreightment.

#### **56. War Clause**

In addition to the right provided by clause 62(xiii) of this charterparty, in the event that any two or more of the following countries become involved in a war or war like activities, the Charterer has the right to cancel this charterparty:  
United States of America, the country of the Vessel's flag, the country where a party's primary place of business is located

#### **57. Extra War Risk/War Bonus Clause**

- (a) The Charterer will pay the additional costs, if any, of any War Risks Insurance premiums on the Vessel and for her crew over the rates in effect on the date of this charterparty which are necessitated by the trade in which the Vessel is employed under this charterparty.
- (b) The Owner must provide copies of original underwriter's invoices to the Charterer prior to payment of additional costs by the Charterer under this clause.
- (c) All war risk bonuses paid by the Owner to members of the crew will be for the Owner's account.

#### **58. Japanese Trading Clause**

- (a) The Owner undertakes as a condition that the Vessel will have on board a valid International Group of P&I Clubs certificate of insurance issued by MOLIT (Ministry of Land Infrastructure and Transport (Japan)) if required under Japanese law.
- (b) The Owners must ensure full compliance with all Japanese reporting obligations required under Japanese law.
- (c) Without prejudice to any other rights the Charterer may have at law, the Owner must indemnify the Charterer against all consequences arising out of non compliance with this clause.

#### **59. Ice Clause**

- (a) The Vessel is not obliged to force ice but, subject to the Owner's approval, and having due regard to its size, construction and class, may follow ice-breakers when reasonably required.
- (b) If the voyage to the discharging port is impeded by ice, or if on arrival the discharging port is inaccessible by reason of ice, the Master or Owner must notify the Charterer of this and the Charterer will have the option of ordering the Vessel to wait until the port is accessible or of ordering the Vessel to a safe and accessible alternative port.
- (c) The Charterer must provide orders pursuant to subclause (b) within 48 running hours (Saturdays, Sundays and holidays excluded) of the Master or Owner having given notice to the Charterer. If the Charterer fails to provide orders in accordance with subclause (b), the Master may proceed without further notice to the nearest safe and accessible port and there discharge the cargo.
- (d) If at any discharging port the Master considers that there is a danger of the Vessel being frozen in, and provided that the Master or Owner immediately notify the Charterer of this, the Vessel may leave with cargo remaining on board and proceed to the nearest safe and ice free place and there await the Charterer's nomination of a safe and accessible alternative port within 24 running hours (Saturdays, Sundays and holidays excluded) of the Master's or Owner's notification under this subclause.
- (e) If the Charterer fails to nominate an alternative port pursuant to subclause (d), the Vessel may proceed to the nearest safe and accessible port and there discharge the remaining cargo.
- (f) On delivery of the cargo at a port other than at the port(s) named in this charterparty, all conditions of the Bill of Lading will apply and the Vessel will receive the same freight as if discharge had been at the original port(s) of destination, except that if the distance of the substituted port(s) exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port(s) will be increased proportionately.

#### **60. Dispute Resolution**

- (a) This charterparty is governed by English law.

- (b) The parties acknowledge that circumstances of hardship may arise which could not have been reasonably foreseen at the time this charterparty was entered into but which do not constitute a Force Majeure Event. If such circumstances arise, the parties will attempt to resolve the effect of the hardship on the performance of this charterparty in a spirit of mutual understanding and cooperation. It is a condition precedent to the commencement of any dispute resolution proceedings that the parties first attempt to resolve the effect of the hardship in this way.
- (c) Any dispute or claim arising out of or in connection with, or relating to events which occur in Australia, including a dispute as to whether the matter falls within this subclause, will be settled by arbitration in Perth, Western Australia in accordance with the ACICA Arbitration Rules. The number of arbitrators will be three. The language of the arbitration will be English.
- (d) Subject to any provision to the contrary in this charterparty, any dispute, controversy or claim arising out of, relating to or in connection with this charterparty, including any question regarding its existence, validity or termination, where the total amount claimed (excluding interest and costs) by either party does not exceed US\$75,000 must be referred to arbitration in London in accordance with the London Maritime Arbitrators Association (LMAA) Small Claims Procedure. The language of the arbitration will be English.
- (e) Subject to any provision to the contrary in this charterparty, all other disputes must be referred to arbitration in London in accordance with the Arbitration Act 1996 (UK) or any statutory modification or reenactment thereof for the time being in force. Except as otherwise provided by this clause there will be three arbitrators. Each party must nominate one arbitrator and the two nominated arbitrators must jointly nominate a third arbitrator. The arbitral panel will have the power to order interim and provisional relief. The language of the arbitration will be English.
- (f) A party must, at the time it gives notice to the other party of commencement of arbitration under subclause (e), notify the other party of its appointed arbitrator. Failure to provide notification of the appointed arbitrator at the time of providing notice of the commencement of arbitration will render the notice of commencement of arbitration invalid.
- (g) A party who receives a valid notice of the commencement of arbitration under subclause (e) must appoint its arbitrator within 14 days of receipt of the notice. If a party fails to nominate its arbitrator within 14 days of receipt of notice of the commencement of arbitration, the arbitral tribunal will consist solely of the arbitrator appointed by the party which provided the notice of commencement of arbitration and the decision of the single arbitrator appointed will apply.
- (h) In respect of any dispute, regardless of the subclause into which that dispute falls:
  - (i) The arbitrators must be persons normally engaged in the shipping industry and may be qualified legal practitioners.
  - (ii) Any claim must be made in writing and the claimant's arbitrator appointed within one year of final discharge otherwise that claim will be deemed to be waived and will be absolutely barred.
  - (iii) No arbitral award may be challenged or invalidated on the ground that any of the arbitrators is not qualified as required by this clause, unless objection on this basis is raised within seven days of the appointment of the arbitrator(s) in question.
- (i) Nothing in this clause prevents the Charterer from seeking urgent injunctive relief from a court in the event of an anticipated breach of this charterparty by the Owner and for the purposes of this subclause, the parties irrevocably submit to the jurisdiction of the courts of Australia.

## 61. Commissions

An address commission as stated in Box 19 on the gross amount of freight and/or demurrage will be deducted by the Charterer upon payment of same.

## 62. Termination

In addition to the rights of termination contained elsewhere in this charterparty, either party has the right and to terminate this charterparty in its discretion if:

- (i) There is any breach of this charterparty by a party which continues for 30 days after written notice of the breach is given to that party by the other;
- (ii) The Charterer rejects five or more vessel nominations during the term of this charterparty;
- (iii) A liquidator, provisional liquidator, administrator, official manager, manager and/or receiver or other similar official is appointed to a party or to any of its assets or undertakings or if any steps are taken for such appointment;
- (iv) A party enters into or resolves to enter into any arrangement, composition or compromise with or an assignment for the benefit of any of its creditors;
- (v) Any execution attachment or other process of any court or authority or any distress is issued against or in respect of or levied upon any of a party's property;
- (vi) A party is unable to pay its debts when they fall due;
- (vii) A party commences or has commenced against it a proceedings seeking a judgment of insolvency, bankruptcy or any other relief under any bankruptcy or insolvency or other similar law affecting creditors' rights;
- (viii) A petition is presented for the winding up or liquidation of a party and the petition either results in an order for relief or is not dismissed within 30 days of its presentation;
- (ix) Anything analogous to an event covered by paragraphs (iii) to (viii) occurs under a law of any jurisdiction;
- (x) A party ceases or threatens to cease to carry on its business;
- (xi) A mine of the Charterer is closed or its production ceased, reduced or suspended either permanently or temporarily;
- (xii) Charterer reduces production or sales quantities to Japan, South Korea, China, India or European Union countries or reduces cargo sizes below the minimum quantities of this charterparty;
- (xiii) There is an event of war or war like activities in a region which affects the performance of this charterparty, whether due to passage of the Vessel through the region or otherwise.

## 63. Set-off

- (a) Following a payment default by a party (**Defaulting Party**), the other party (**Non-defaulting Party**) is entitled, at its option and in its discretion, to set-off any amounts that it believes in good faith and on reasonable grounds to be payable to it by the Defaulting Party (whether at the time of default, in the future or upon the occurrence of a contingency and whether under this charterparty or otherwise), against any amounts that it believes in good faith and on reasonable grounds are payable by it to the Defaulting Party (whether at the time of default, in the future or upon the occurrence of a contingency and whether under this charterparty or otherwise).
- (b) The Non-defaulting Party must give the Defaulting Party 3 (three) days prior notice of any intended set-off to be effected under this clause.

- (c) The set-off may occur irrespective of the currency, place of payment or booking office of either party's obligations.
- (d) For the purpose of set-off pursuant to this clause, any amount payable by one party to the other (or the relevant portion of such amount) may be converted by the Non-defaulting Party, acting in good faith and in a commercially reasonable manner, into such currency as may reasonably be required in order to effect set-off.
- (e) If an obligation is unascertained at the time of set-off, the Non-defaulting Party may, acting in good faith and in a commercially reasonable manner, estimate that obligation and use the estimate in the set-off, subject to the relevant party accounting to the other when the obligation is ascertained.
- (f) The rights of the Non-defaulting Party under this clause will apply without prejudice to clause 62 any other right of set-off which it may have whether by agreement, operation of law or otherwise.
- (g) Nothing in this clause will be effective to create a charge or other security interest.

#### **64. Confidentiality**

- (a) A party may not disclose any information in connection with this charterparty, including the related negotiations or its implementation, except as ordered by a court or permitted by law or for the purposes of enforcement or obtaining legal advice.
- (b) This charterparty must remain strictly private and confidential.

#### **65. Grant of security**

The Owner:

- (i) consents to the Charterer granting security over the Charterer's rights, title and interest in, to and pursuant to this charterparty pursuant to any mortgage, pledge, lien, charge, encumbrance or assignment or any other agreement or arrangement having a similar effect granted by the Charterer or a related body corporate (as defined in the Corporations Act 2001 (Cth)) of the Charterer (**Security Document**) in favour of such persons (**Financiers**) whom provide financing or refinancing facilities to the Charterer (or any of the Charterer's related bodies corporate) and to the exercise of any power granted with respect to any such Security Document;
- (ii) consents to the assignment or novation by the Financiers of this charterparty to a third party following enforcement of the Security Documents and agrees to enter into any agreements or documents necessary to effect such assignment or novation; and
- (iii) agrees that the enforcement by a Financier, an administrator and/or a receiver of the Security Documents will not of itself constitute an event of insolvency or an event of default by the Charterer under this charterparty.

#### **66. Attachments**

- (a) The FMG Ship Vetting questionnaire duly completed by the Owner for the performing Vessel, as completed online is deemed to be fully incorporated into this charterparty and to form part of it.
- (b) Throughout the duration of the charterparty, Charterers may update the FMG Ship Vetting questionnaire in which case the updated version will be provided to Owners and Owners must from then on complete the updated version in respect of each performing Vessel.
- (c) Throughout the duration of the charterparty, Charterers may alter the method in which the FMG Ship Vetting questionnaire is to be submitted to Charterers, in which case Charterers will notify Owners of the change in method and Owners must from then on adopt that method of submission.

OWNER: \_\_\_\_\_

CHARTERER: \_\_\_\_\_