



GIIGNL Launches Standard Contract for Short-term LNG Shipping

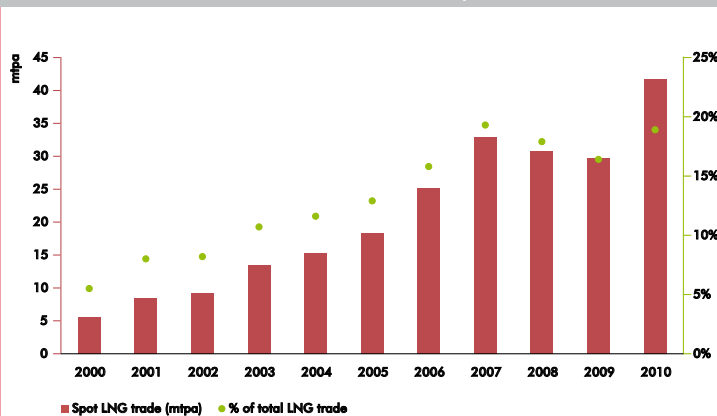
By Jean Vermeire

In February 2012, the International Group of LNG Importers (GIIGNL) launched its pro forma Voyage Charter for LNG ships. This is the first of its type.

The LNG industry has traditionally favoured transportation on time charter terms, conventionally for a period of up to 20 years, and short-term charters are generally concluded using a more concise form of a long-term time charter party. However, given that a growing number of trips are being arranged on a short-term basis in line with the rise in “flexible cargoes”, i.e. spot or short-term trades or cargoes under long-term contract which are deviated from their regular destination, the need for a more voyage specific charter party format has materialised. *Figure 1* shows the rapid growth in spot and short-term trades over the last 10 years and in particular

BELOW
Figure 1.

SPOT AND SHORT-TERM LNG TRADE AND SHARE OF TOTAL LNG TRADE, 2000-2010



*Note: Short-term trade denotes trades under contracts of a duration of four years or less.

since 2006. From GIIGNL’s latest statistical review¹ it is estimated that for 2010, approximately 19% of all LNG flows fall in this category, a share that is certain to have increased since with the continued interest in arbitrage by major producers and portfolio players as well as due to the post-Fukushima supply situation.

The LNG shipping arrangements for shorter-term trade have evolved slowly and are still, to a large extent, using time charter terms, typically adapting Shell LNG Time 1². As there is no available equivalent for carriage of LNG on voyage charter terms, GIIGNL decided to introduce its own form for a voyage charter party (VCP). This avoids having to adapt the provisions of a time charter to the circumstances of the shorter trade, to remove the provisions that do not apply and add some specific terms that are usually missing from time charters (such as demurrage and lay time). The VCP is structured as a two-document contract where the key commercial terms are negotiated in the primary document (freight rate, voyage length, lay time, demurrage, specific ports, etc.) whilst the secondary document containing the mechanics of the VCP generally remains unchanged from voyage to voyage. This allows the counterparties to very quickly negotiate a spot charter transaction.

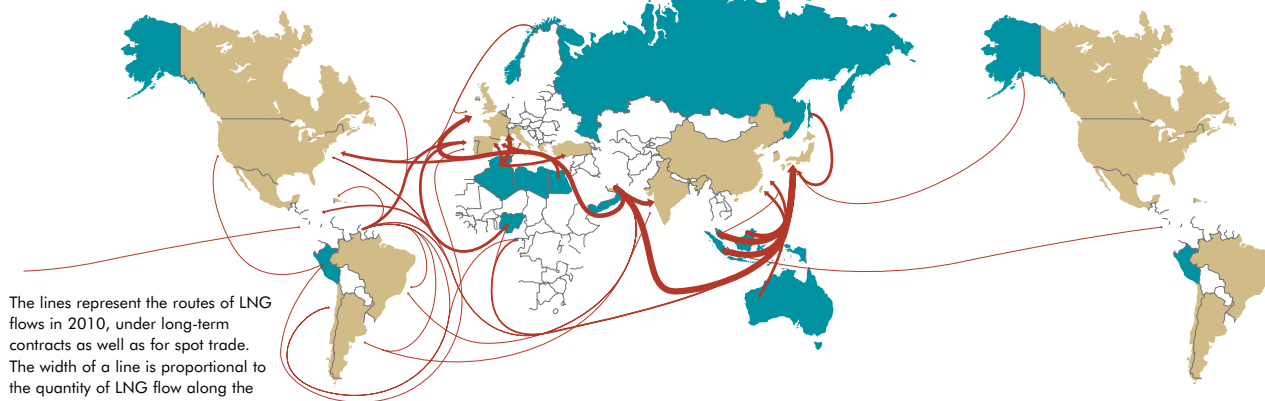
As the creation of the VCP required specialist expertise on shipping law issues, the law firm Stephenson Harwood in London, UK was chosen to assist in drafting this new form.

The standard VCP is available on the public domain of the GIIGNL website (www.giignl.org) under “publications”. Hereunder, a few illustrative examples of major voyage charter provisions are discussed and the conceptual differences with time charter terms are highlighted.

1 The 2012 edition covering “The LNG Industry in 2011” is due to be published at the end of April and will be available from the GIIGNL website.

2 A time charter party designed by Shell specifically for LNG vessel charters.

LNG FLOWS IN 2010



● Risk of delay

Where goods are carried on time charter terms, the risk of delay during the voyage rests primarily with the charterer. Thus, unless an off-hire event occurs for which the owner under the charter terms accepts responsibility, hire is payable and bunkers are consumed at the charterer's cost if the voyage is delayed.

In contrast, for carriage on voyage charter terms, the ship owner bears the risk of unforeseen delay. He receives the agreed freight based on the anticipated voyage, not the actual voyage, and thereby assumes the risk of unforeseen delay, and additional consumption of bunkers. The charterer is nevertheless liable to compensate the ship owner for delay during the loading and discharging process.

● Boil-off

In time charters, the consequence of delay for an LNG vessel, using boil-off for propulsion, is that cargo will inevitably be lost, as it will be used as fuel. If the cause of delay falls within the off-hire provisions for which the ship owner has accepted responsibility, the charterer will be compensated for the loss of time and reimbursement of additional boil-off, applying the usual time charter off-hire provisions. In the event of delay caused by reasons not falling within the off-hire provisions, the charterer agrees to accept this risk, including

additional fuel costs for the period of such delay.

However, in voyage charter terms, there is no similar provision entitling the charterer to compensation for additional boil-off during a period of delay for which the ship owner is responsible, and indeed no method of calculating such delay or such loss. Therefore, the challenge in drafting an LNG voyage charter is how adequately to compensate the charterer for lost boil-off during a period of delay for which the ship owner is responsible. Various suggested methods were considered similar to those used in time charters, but the decision was made through the GIIGNL sub-committee that the simplest form of compensation would be more consistent with the nature of a voyage charter, which is intended to be simple in form and predictable in its terms.

The VCP states that the ship owner should compensate the charterer for boil-off in excess of an agreed maximum for the anticipated sea passage. The overall maximum would be calculated by applying the usual guaranteed maximum daily boil-off to the expected length of sea passage. However, the daily guaranteed maximum would itself apply only to delay occurring in port for reasons for which the charterer is not responsible. The maximum guarantees would be dependent on the vessel type and would be negotiated along with the freight rate.

ABOVE
Figure 2.

● Other provisions

Various other amendments to standard tanker voyage charter terms were incorporated to take account of the specific nature of LNG carriage; in particular, the allocation of liability for gassing up and cooling down, and the provision of LNG heel. These terms differ from typical time charter terms in that under a time charter, the charterer is entitled to give and amend orders to the vessel, which the master is obliged to follow. However, in voyage charters, the terms and conditions of the voyage are fixed in the charter terms, including provision and responsibility for the loading condition of the vessel.

One topic of lengthy debate was the potential liability of the ship owner for failing to present the vessel ready for loading by the relevant cancelling date. It is standard in voyage charters that the charterer should have an absolute right of cancellation, regardless of the cause of delay, even though the charterer's right to recover compensation would be dependent on such cause. Thought was given to whether an alternative arrangement would be suitable for LNG carriage, bearing in mind that the right of cancellation may be an ineffective remedy for a charterer who may have difficulty in quickly fixing an alternative LNG vessel.

However, it was decided that, given that it is unlikely that a ship owner would agree to pay penalties for late arrival, and such penalties may be unenforceable, it would be better for the charterer to maintain, in the usual way, the right to claim its damages for its actual loss, in the event that the delay is attributable to the ship owner. Thus, the ship owner, when fixing the voyage charter, would be required to estimate the expected date the vessel would be ready to load. Although the ship owner would not be liable in the event that the vessel arrives late due to unforeseen circumstances, the ship owner would nevertheless be potentially liable to the charterer for late arrival if such expected readiness date was not specified in good faith. By this means, the ship owner

would not be able to offer a vessel for loading a cargo in the hope that the vessel may arrive in time, whilst expecting her to arrive late – the ship owner would be required to have a reasonable expectation that the vessel could arrive, given the vessel's current commitments, within the required loading window.

● Conclusion

It is hoped that a pro forma voyage charter dedicated to carriage of LNG will assist the LNG industry in maximising opportunities for the sale of spot cargos and the carriage of LNG on simple, predictable terms. No doubt many logistical questions will arise and trading conditions may evolve which may necessitate modifications of an industry standard for voyage charter terms. Any feedback on these issues would be gratefully received by the GIIGNL Central Office (central-office@giignl.org), and will be taken into account in subsequent revisions.

As a reminder, in 2011 GIIGNL also published on the public domain of its website standard forms for LNG Master Sale and Purchase agreements (MSPAs) for ex-ship and FOB transactions. Like the VCP, the MSPAs are structured as a two-part document: the annexure contains the key commercial terms that are negotiated on a cargo by cargo basis whilst the main body of the MSPA generally remains unchanged. The VCP and MSPAs may therefore be used in conjunction to facilitate the efficient and balanced contracting of short-term trades of LNG from both a shipping and a cargo perspective.

Jean Vermeire is the President of GIIGNL. The Voyage Charter Party has been prepared by the Commercial Study Group of GIIGNL chaired by Anita Odedra (BG Group) with the assistance of Christine Abela (GDF SUEZ) and Nicolas Zanen (Cheniere). The legal issues have been addressed by Stuart Beadnall (Stephenson Harwood) who also contributed to this article.