

BIMCO | GIIGNL **LNGVOY**

Liquefied Natural Gas Voyage Charter Party

Explanatory Notes

Introduction

Since the very early days of the industry, liquefied natural gas (LNG) has been carried almost exclusively under time charter terms and conditions. Originally, the majority of LNG was sold by the producers under Long Term DES sale and purchase agreements, with ships chartered under long term time charters by the producers. In recent years there has been a move towards shorter-term contracts and FOB sales as a result of which a spot market has begun to develop, with spot LNG cargoes being carried on trip time charter terms. BIMCO and GIIGNL have developed this new voyage charter party to allow greater flexibility and meet the needs of owners and charterers in the LNG sector.

With this in mind, these notes refer in some places to the differences in approach between time charter and voyage charter terms, since owners and charterers of LNG ships will have been more used to the time charter terms and may initially be less familiar with voyage charter concepts.

LNG is carried at a temperature warmer than its boiling point, and is constantly boiling off. The continuing loss of LNG as boil-off gas requires a number of particular provisions, for example to allocate responsibility for boil-off during periods of delay: LNGVOY provides for a boil-off cap covering the sea passage, as well as separate provisions to allocate the risk of boil-off whilst in port. There is also a provision for an agreed delivery window, since arrival times are particularly important in the LNG trade.

Another key issue is who provides and pays for fuel. Natural boil-off gas is made available free of charge to the owner, to be used for propulsion assuming the ship's main engine(s) can burn it. For a voyage under LNGVOY where only natural boil-off is required, there will only be a small fuel component in the freight, for example for fuel oil/gasoil consumed whilst in port. If, however, the agreed delivery window means that the ship will need to proceed at a speed greater than that which can be achieved using

natural boil-off only, fuel oil/gasoil will need to be burned or additional boil-off will need to be forced.

Under typical time charter provisions, assuming the ship can burn both boil-off gas and fuel oil/gasoil, the charterers will control which quantities of each are to be used since they own and have paid for both the LNG and fuel oil/gasoil. They may prefer one or the other for commercial reasons. Under LNGVOY, if additional fuel is needed beyond natural boil-off, the default position is that fuel oil/gasoil will be provided by owners. Owners may not force boil-off without the charterers' consent. It is possible, however, that at the time of fixing – depending on the relative cost of fuel oil versus forcing additional boil-off – a charterer may prefer to allow the ship to force boil-off, leading to a reduced freight cost. This is a matter for negotiation at the time of fixing. If the parties agree to force boil-off then the agreed boil-off cap will include the anticipated forced boil-off in addition to the expected natural boil-off.

LNGVOY therefore provides owners and charterers not only with a new option for single voyages, but with considerable commercial flexibility to encourage the further development of the emerging LNG spot market.

BIMCO and GIIGNL would like to thank the following Sub-committee members for their considerable efforts in developing this new charter party:

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These notes are intended to provide an insight into the reasoning behind the key provisions of LNGVOY.

The charter party consists of two main parts plus an annex. Part I provides a box layout where variable information such as the names of the parties, the ship and cargo details can be conveniently entered; Part II consists of the standard terms and conditions. The Annex covers the ship's details and is based on a pro forma "vessel questionnaire".

Clause 2 (Condition of Vessel)

The obligations under this Clause in relation to the condition of the ship are essentially the same as found in many standard time charters.

Clause 3 (Charterers' Inspection)

This Clause gives the charterers or their nominee the right to inspect the ship during the charter at the charterers' expense.

Clause 5 (Presentation and Conditioning of Cargo Tanks at the Loading Port)

This clause recognises that the ship may arrive with cargo tanks in one of the following conditions:

- cold and ready to load, or
- warm and under natural gas vapours, or
- warm and inerted.

For a ship operating in the spot market, the arrival condition is more likely to depend on the time where, and the place when, cargo was last discharged, and the owners may not have been able to foresee the length of the next ballast leg when negotiating the amount of heel to retain after discharge at the end of their previous fixture. The options are similar to those under ShellLNGtime1, but with the addition of an upper limit for heel in the first option.

If the ship is required to arrive with tanks cold and ready to load but does not do so, NOR can still be tendered, and time will still count, with the exception that time lost as a result of not arriving in the required condition shall not count. This was thought to be a fair allocation of risk, since LNG for cooling will not normally be loaded until the ship is alongside for the commencement of the main loading operation. If NOR could not be tendered on arrival, then owners would have had to wait until commencement of loading to tender such NOR, even if berthing was delayed by congestion or other causes for which time would normally count.

Other provisions in the clause set out responsibility for time lost loading additional LNG and cooling down if the ship arrives with less than the agreed quantity of LNG, or arrives with the agreed quantity of LNG heel but, because of a delay at the loading port, there is not enough heel for the tanks to remain cold. The clause does not address additional time lost as a result of these circumstances – plus the time loading additional LNG and cooling down – which will be subject to the usual principles of the law on laytime and demurrage.

LNG required under this clause will always be provided by the charterers, even if paid for by the owners, because in nearly all cases it is the charterers who will have access to LNG from the terminal.

Clause 6 (Ownership of Heel)

This Clause deals with the retention of LNG in the ship's cargo tanks as heel at the loading and discharging ports. The heel remains the property of the owners with just a balancing payment at the end – this reflects the common practice under a spot time charter.

Clause 7 (Voyage, Loading and Discharging Ports and Logs)

This reflects the position under common law in that the ship should proceed on the preliminary voyage to the loading port and then on the carrying voyage to the discharge port with due dispatch. This provision, together with Clause 18 (Delivery Window), works as an important incentive for the owners to arrive on time.

Clause 8 (Ship to Ship Transfer (STS) Clause)

Ship to ship transfer operations are becoming more and more common in the LNG trade and therefore provision for this has been included in LNGVOY. However, the parties must expressly agree and state in Box 16 if the charterers are permitted to do ship to ship transfer operations. This clause is intended to apply to two ships transferring cargo on an ad hoc basis and not to cargo transfers to a ship permanently moored as a "terminal".

Clause 9 (Notice of Readiness (NOR))

While there will also be notice of readiness requirements under the sales contract, the owners should tender Notice of Readiness (NOR) upon arrival at the berth (or customary anchorage, if berth not available on arrival) to trigger laytime under the terms of the voyage charter party. As long as the ship is ready, the NOR may be given at any time of the day, even if no berth has been allocated yet. Furthermore, provision has been made for areas where it is not possible to proceed to the customary anchorage, due to, for example, congestion or for safety reasons. In such cases, the owners may tender NOR from a place in the near vicinity.

Clause 10 (Laydays/Cancelling)

Sub-clause (b) – obliges the owners to notify the charterers if they know that the ship will not arrive until after the cancelling date. Furthermore, in the event of the late running of the ship, the owners should notify the charterers of the new date by which the ship will be ready to load cargo. The charterers have to declare their option to cancel within 3 days after the owners have given the notice, otherwise they will lose their right to cancel and the new date in the owners' notice will replace the original cancelling date. The benefit of this provision is that if the charterers choose to cancel, the owners may save considerable costs by not bringing the ship to the loading port and may be able to fix it on another charter at an earlier time.

Clause 13 (Laytime)

The owners and the charterers must agree a number of running hours for loading and discharging of cargo and state it in Box 19.

Clause 14 (Commencement of Laytime)

This Clause sets out when laytime starts at the loading and discharging ports. Laytime will start at the earliest event of either the expiration of the six hours' notice time after the tendering of NOR or just after mooring with or without tendering NOR.

However, due to the importance in the LNG trade that ships adhere to their strict time schedules, NOR can only be tendered and laytime only start after certain points in time.

Clause 18 (Delivery Window)

This clause is important not only for the timing of the Delivery Window but also because this will affect the speed required and therefore whether the owners will require fuel in addition to the natural boil-off. Most importantly this will have an impact on fuel costs and therefore the freight rate which, in turn, may lead to negotiation at the time of the fixture regarding the preferred fuel type. Due to the potentially large losses to the charterers if the ship arrives late at the discharging port, clear incentives for the owners to be on time have been included in the form of a "Delivery Window". For the Clause to take effect, the parties should agree in Box 21 the time frame within which the ship should arrive at the discharging port. It is important to note that there is no absolute obligation on the owners to arrive within the Delivery Window. The obligation of this Clause only applies to the proceeding of the ship at required speed(s) to arrive on time.

Clause 19 (Cargo Measurement)

Because of the tendency of LNG to boil-off continuously, it is necessary to measure and compare the amount of LNG before it was loaded with the amount after discharge. These measurements are used to show the loaded and discharged quantities, heel volumes and the amount of boil-off.

Clause 23 (Boil-off of Cargo)

As customary in this trade, the owners may use natural boil-off from the cargo as propulsive fuel. However, the daily rate for natural boil-off must not exceed the rate stated in Annex A (Gas Form B), see **Sub-clause (a)**. In addition, boil-off during the sea passage, whether forced or natural, must not in any event exceed the agreed "Boil-off Cap", see **Sub-clause (b)**. A number of events are then listed which could cause boil-off but should not count towards the cap. For example, the charterers' breach of contract or delay due to blocked channels or seizure by pirates, and, if at the charterers' request, the parties agree that the ship should proceed outside the warranted speeds under the charter party.

Sub-clause (c) – this Sub-clause provides for the calculation of boil-off during the sea passage by comparing the volume of LNG in the cargo tanks at the beginning of the sea passage with the completion of the same. When calculating boil-off it is important to exclude any existing heel.

Sub-clause (d) – if the owners exceed the daily boil-off rate or the boil-off cap they have to pay for the additional amounts at the LNG Price in Box 11.

Sub-clause (e) – the owners will be responsible for boil-off outside the sea passage, at the LNG Price, only if it resulted from the owners' breach of charter or delays excepted from laytime under Clause 16(a)(i)-(v).

Sub-clause (f) – this is a fall back provision in case accurate measurement of boil-off is not possible. The presumption is then that boil-off has occurred at a rate equal to the percentage of the boil-off rate as stated in Annex A (Gas Form B).

Sub-clause (g) – in order to be able to calculate the amount of boil-off it is important that the owners keep track of all cargo that is loaded, discharged and that which has boiled off in between.

Clause 25 (Dues, Taxes and Charges)

The owners are responsible for any dues, taxes and charges that are levied on the ship while the charterers are responsible for the same levied on the cargo. The parties should agree on an individual basis in Box 26 if the owners should be responsible for freight tax, otherwise the default position is that the charterers are responsible.

Clause 31 (BIMCO Designated Entities Clause for Charter Parties)

The Designated Entities Clause applies in respect of persons or entities (including designated ships), regardless of where they operate from, whose activities are restricted or prohibited and are identified under United Nations Resolutions, European Union laws and regulations or by the United States of America.

The Clause sets out a requirement for owners and charterers respectively to warrant that they are not designated entities. The warranty continues throughout the currency of the charter party.

In the event that a party is, or becomes, identified as a designated person or entity, or a designated ship, the Clause provides flexibility for the innocent party to act as necessary in the circumstances. It is assumed that, in most cases, guidance will be requested from regulatory authorities but, where this is not available, the charter party can be terminated or any offending cargo on board discharged.

Clause 36 (Agency)

Unlike under a time charter party, it is the owners' responsibility to nominate and appoint agents.

Clause 37 (BIMCO Dispute Resolution Clause 2016)

The dispute resolution clause offers four options on arbitration: London (which applies by default if not other venue is agreed); New York; Singapore; and, finally, a free choice of venue as may be agreed between the parties. The mediation provision applies in all circumstances, except in respect of New York arbitration because mediation occupies a different position in the U.S. It is very important that the parties agree which law and arbitration venue is to apply to their contract and that they clearly indicate their choice in Box 29. If you do not indicate your choice of law and arbitration venue, then English law and London arbitration will apply by default.

Annex A – Gas Form B

Gas Form B is widely used in the LNG trade and therefore forms a suitable ship description for parties to use together with LNGVOY.

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