

## ANNEX 2 GLOSSARY OF LEGAL DEFINITIONS

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### 1. Bill of Lading

A document issued by or on behalf of the carrier to the shipper of goods to evidence the terms of a contract for the carriage of goods, as a receipt for the goods, and as a transferable document of title to the goods (conferring the right to call for delivery of them). A "shipped on board" bill of lading (typically required for presentation under a letter of credit to complete a CIF sale of the goods which it represents) will describe the goods as shipped, identify the contractual carrier, the ship and the load and discharge ports (or any wider scope of the contract of carriage in case it is a "through" or "combined transport" bill of lading) and provide for payment of freight. Detailed terms of the contract of carriage will be set out on the reverse side of the bill of lading or incorporated in it by reference (typically by reference to a voyage charterparty). In national law, however, the terms may be overridden, usually pursuant to international convention (*e.g.* the Hague or Hague-Visby Rules; or the Hamburg Rules). A typical standard form (in the dry trades) is the Congenbill (designed to incorporate the terms of a Gencon charterparty).

### 2. Bareboat Charter (Demise Charter)

An agreement between the registered or legal owner of a ship (or a person who has bareboat chartered the vessel from him and become the disponent owner) and the bareboat charterer, pursuant to which the owner transfers (demises) to the bareboat charterer possession of the ship and the right to trade it as he chooses for a specified period, on terms that the bareboat charterer will pay the bareboat charter hire (a specified amount, usually per day and payable monthly in advance), maintain and insure the ship and indemnify the owner against liabilities incurred by the ship. The contract is effectively a "dry lease" under which the bareboat charterer will employ the crew and be responsible for all Technical Operation and Commercial Operation and Management expenses<sup>1</sup>. Unlike time charters, bareboat charters contain no offhire provisions: hire is payable "come Hell or High Water". A bareboat charter may often be a finance document and give the bareboat charterer the right to purchase the ship during or at the end of the charter period. The typical form used is the Barecon A or B (with or without purchase option), with amendments. Broadly, the contractual terms are unregulated by national law.

### 3. Co-operation Agreements

Contracts between persons with the right to exploit the earning capacity of their vessels (as registered or legal owners, as bareboat charterers, or as time charterers) to co-operate in the marketing and/or use of ships. Standard form documents are not generally used because such agreements take many different forms, described variously as co-operation agreements, joint venture agreements, pool agreements, consortium agreements, vessel (or space or slot) sharing agreements and so on.

### 4. Horizontal Cooperation Agreement

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<sup>1</sup> There is a lengthy description of the characteristics of a typical bareboat charter by Lord Hobhouse in "THE CHEVRON NORTH AMERICA" [2002] 1 Lloyd's Rep. 77 at p.94-95

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A cooperation is of a horizontal nature. If an agreement or concerted practice is entered into between companies operating at the same level(s) in the market. In most instances, horizontal cooperation amounts to cooperation between competitors. It covers for example areas such as research and development (R & D), production, purchasing or commercialisation.<sup>2</sup>

### 5. Time Charter

A contract for services made between the registered or legal owner of the ship (or a disponent owner who is a bareboat charterer or a time charterer) and the time charterer, pursuant to which the owner does not transfer possession but promises to operate the ship (usually within specified trading limits and excluding specified cargoes) as ordered by the charterer, for a defined period (although the period may be defined only by a description of the permitted employment – a Trip Time Charter), in exchange for the payment of time charter hire (a specified amount, usually per day and payable monthly or semi-monthly in advance) and for bunkers used by the ship. The owner promises to be responsible for crewing, maintenance and insurance; and the time charterer promises to pay port costs, agency costs and the costs of dealing with the cargo. Time charters apportion marine risks: typically, they contain offhire provisions allowing the time charterer to deduct from hire in respect of time lost (and bunkers wasted) by accidents, breakdowns and other events concerning the ship which are not the charterer's fault, but which deprive the charterer wholly or partially of the use of it; however, the charterer will usually be responsible in case the cargoes loaded or ports called at pursuant to his orders cause loss or damage. The overall effect is that for the period of the charter the owner/disponent owner remains responsible for Technical Operation, but transfers to the time charterer the Commercial Management and Operation of the ship – "*the right to exploit the earning capacity of the vessel*"<sup>3</sup>. Typically less than 2 years; more than 18 months is regarded as "long term" may suggest it is ancillary to a ship-financing arrangement. The most common standard forms in use are perhaps the NYPE 1946 and 1993 in respect of dry cargo ships, and the Shelltime 3 and 4 in respect of oil and gas ships, in each case always with extensive amendments. Again, the contractual terms are basically unregulated by law.

### 6. Voyage Charter

Typically a contract between a person who has the right to exploit the earning capacity of the vessel (because he is a bareboat, time or voyage charterer, so a disponent owner) and a voyage charterer, to carry a particular cargo on a particular ship on a particular voyage for an agreed sum (the freight, usually calculated per unit of cargo carried, and earned on loading but payable by instalments after loading and on discharge). The voyage charterer also undertakes to pay liquidated damages for detention (demurrage) if loading and/or discharging take longer than the time agreed (the lay days). The owner / disponent owner retains all the Technical Operation and Commercial Operation and Management responsibilities (for maintaining and insuring the vessel, employing the crew, and all the costs of the voyage, including bunkers and port charges), except risks expressly apportioned to the charterer or within his discretion (*e.g.* as a result of any right to choose ports or cargoes); and the terms of the contract may specify that the voyage charterer is responsible for the costs and perhaps the risks of loading and discharging cargo. The most common forms of voyage charterparty are the Gencon (used with Congenbill bills of lading) and, in oil and gas trades, the Asbatankvoy, always

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<sup>2</sup> Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation Agreements OJC 3/02 of 6.1.2001

<sup>3</sup> per Lord Hobhouse in THE HILL HARMONY [2001] 1 Lloyd's Rep.147 at p.156

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with amendments. Again, there is essentially freedom of contract in that contractual terms are basically unregulated by national law.

### 7. Space Charter

A voyage charterparty under which the space charterer has the right to use only part of the vessel's capacity.

### 8. Slot Charter

A time or voyage charter under which the slot charterer has the right to use only a specified amount of the ship's container carrying capacity. In container liner trades, such charters may be reciprocal ("cross slot charters") between operators / carriers, in order to share capacity.

### 9. Pool Agreement

An agreement between a number of persons who have the right (because they are bareboat or time charterers, so disponent owners) to exploit the earning capacity of similar ships to co-operate in the Commercial Management and Commercial Operation of (typically) all such ships controlled by them (whilst each retaining any responsibility which they may have for Technical Operation). Various legal structures may be adopted, including the establishment of a full function joint venture "Pool Manager" to whom ships may be time chartered, but the most important characteristic is agreement on a formula (a "distribution key") pursuant to which each ship shall earn from the Pool a share in actual Pool net income (however defined) which is proportionate to that ship's agreed theoretical earning capacity, not its actual earnings in the Pool (save insofar as there is provision for any adjustment, *e.g.* by way of offhire, in respect of the operational risks retained by the "owners"). The Pool Manager becomes a ship operator or disponent owner and has the right to exploit the earning capacity of the vessel. No standard form documents in popular use. No national regulation of detailed terms.

### 10. Contract of Affreightment (CoA) or Tonnage Contract

Typically a contract for the carriage of a specified quantity of a particular cargo by more than one voyage between specified ports over a specified period (shippers are seldom willing to commit for more than 2 years), on payment of freight (and with provision for demurrage) in respect of each voyage performed. Often written on a voyage charter form, or specifying that a voyage charter form (with amendments) is to govern individual voyages, a CoA typically does not identify the ships to be used (although it may require them to have specified characteristics), so that the carrier (usually described as "owner") has the right to use any ship(s) whose employment he is entitled to direct at the time for performance; whether as registered or legal owner, or bareboat charterer, or time charterer, or voyage charterer. CoAs are often imprecise as to the size of parcels to be carried and their frequency and timing, so include provisions for nominations of cargoes and ships by the shipper and the owner. Again, detailed contractual terms are basically unregulated by national law.

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### 11. Tramp Shipping

The employment of ships in trades where there are no published schedules, in contrast to liner shipping. Defined by Council Regulation (EEC) No. 4056/86 (Section 1. Article 1(3a)) as follows:

*"Tramp vessel services means the transport of goods in bulk or in break bulk in a vessel chartered wholly or partly to one or more shippers on the basis of a voyage or time charter or any other form of contract for non-regularly scheduled or non-advertised sailings where the freight rates are freely negotiated case by case in accordance with the conditions of supply and demand".*

### 12. Spot Chartering

Entry into (typically) voyage charterparties or trip time charterparties on the basis of a shipper's immediate requirement to ship cargo, typically at an offered rate of freight, and the current or imminent availability of a ship to carry it. Contrast with Period fixtures (time charters and CoAs), the entry into which may satisfy a shipowner's need for secure employment to support his financing arrangements or represent a "hedge" or speculation by the shipowner and/or by the charterer against future fluctuations in the freight rates achievable by spot chartering.