

CIRCULAR

Re: Recommended voyage charter party clause in respect of the bulk cargoes

After several approaches from the assureds for the recommendations to be given in respect of the wording of clause to be inserted in to voyage charter party protecting Owners against shortage claims of bulk cargo based on shore scale figures, INGOSSTRAKH hereby set out the number of practical clauses in this respect, which Owners are recommended to insist on in the course of concluding relevant charter party.

The reason and starting point of the said recommendations is that determination of the cargo quantity by means of draft survey, which is the only suitable method in terms of Hague/Hague Visby rules is not strictly followed in the countries where Hamburg rules are ratified (Egypt, Morocco, etc) or local legislation is adopted along the terms of Hamburg Rules. In that regard, Owners facing “shore scale” cargo shortage claims have in fact very limited means for putting pressure on receiver who are under protection of favorable local legislation, notwithstanding the fact that most commonly used Congenbill 94 form of bill is expressly subject to Hague/Hague Visby Rules. The below recommended charter party terms can allow to overcome this point getting charterers directly involved into the matter, who would be obliged to take the issue in own hands and compensate Owners losses arising with the matter. It would be perfect of course if all of the below listed recommended terms are included in the charter party as they are, although if it can not be achievable they may be used as a starting point for negotiations.

Recommended Voyage c/p terms in respect of bulk cargoes.

1. The exclusive method of determining quantities/weight/ measurement of cargo loaded on board at each load port and quantities/weight/measurement of cargo discharged at each discharge port shall be by draft survey to be conducted at both ends by a surveyor appointed by the owners. The cost of such draft survey is to be shared equally between owners and charterers.
2. The quantities as determined by the draft survey at load port shall be recorded in the bills of lading as the shipped quantity/weight/measurement.
3. Owners shall have no liability whatsoever for shortage claims which are based upon measurements determined other than the difference between the bill of lading quantity/weight/measurement and the quantity/weight/measurement as determined by the draft survey performed at each discharge port (“Shortage Claim”). A Shortage Claim shall include any cargo claim where any part of the claim is a Shortage Claim.
4. Charterers shall be solely responsible for Shortage Claim. Any Shortage Claim shall be handled defended and settled by charterers, who shall be deemed to be the carrier under any relevant bill of lading in relation to such Shortage Claim, directly with those asserting the existence of a Shortage Claim without any recourse whatsoever to owners.

5. In the event a Shortage Claim is asserted or threatened with arrest or detention or other restraint, whether partially or wholly as a result of a Shortage Claim being asserted, charterers shall procure provision of sufficient security as may be required or demanded by any person asserting a Shortage Claim so that the Vessel is not detained arrested or otherwise restrained. In the event the vessel is arrested, detained or otherwise restrained, the charterers shall not suffer or permit the arrest detention or restraint to continue and shall immediately procure the release of the vessel and at their own cost and expense and provide such bond or other security as may be demanded in respect of the entirety of the claim.

6. For so long as the vessel remains arrested, detained or restrained, the charterers shall pay to owners , in addition to any demurrage or other sums which may be due to owners under the charter, the sum of USD.....per day pro rata for so long as the arrest detention restraint is permitted by charterers to endure.