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Global Certificate in Ship Chartering and Cargo Operations (United Kingdom) (Part II)

## Charter Party Formation

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**Acceptance** – Related terms: Offer, Contract, Counter-offer. The moment the charterer signs and returns the charter party (or otherwise indicates consent) the acceptance is deemed effective, creating a binding contract. Acceptance must be unequivocal; any alteration to the terms constitutes a counter-offer rather than a true acceptance. Example: A shipowner issues a draft time charter on 1 May. The charterer signs and returns it on 3 May without amendment; acceptance is effective on receipt, and the charter party becomes enforceable. Challenges: Delays in transmission (e.G., Fax, email) can raise questions about the exact moment of acceptance, especially when time-sensitive clauses such as lay-can periods are involved.

**Agency Clause** – Related terms: General Agency, Discharge Port, Loading Port. This clause designates the party (often the shipowner's local agent) authorized to act on behalf of the shipowner for specific operations, such as loading, unloading, and customs formalities. It clarifies the scope of authority and liability. Practical application: In a voyage charter, the agency clause may state that the charterer's appointed agent shall handle cargo operations, limiting the shipowner's exposure to port-related disputes. Challenges: Ambiguities regarding who is the "authorized agent" can lead to disputes over responsibility for delays or damage during cargo handling.

**Bill of Lading** – Related terms: Negotiable Instrument, Cargo Receipt, Delivery Order. Although not part of the charter party itself, the bill of lading is the primary document evidencing the contract of carriage between the carrier and the cargo owner. It must be consistent with the charter party terms to avoid conflict. Example: A time charter includes a clause requiring the master to issue a clean on-board receipt that matches the bill of lading's description of cargo. Challenges: Inconsistencies between the charter party and the bill of lading can give rise to third-party claims, especially when the cargo is transferred to a consignee who relies on the bill of lading as proof of title.

**Broker** – Related terms: Commission, Intermediary, Market Intelligence. A broker facilitates the negotiation of charter parties, providing market rates, vessel availability, and advice on contractual terms. Brokers may act for the shipowner, the charterer, or both (dual-agency). Practical application: A broker advises a charterer on prevailing spot rates for a bulk carrier and drafts a provisional charter party for review. Challenges: Dual-agency arrangements can raise conflict-of-interest concerns; brokers must disclose their status and obtain consent from both parties to avoid accusations of malpractice.

**Charterer** – Related terms: Shipowner, Lessee, Demurrage. The party who hires the vessel, assuming responsibility for freight payments, cargo handling, and other obligations stipulated in the charter party. The charterer may be a cargo owner, a freight forwarder, or a trader. Example: A grain trader hires a Panamax vessel on a time charter to transport soybeans from Brazil to China. Challenges: Determining the charterer's liability for delays caused by third-party logistics, especially when the charter party contains vague "force majeure" language.

**Charter Party** – Related terms: Contract, Agreement, Form. A written contract between shipowner and

charterer setting out the rights, duties, and liabilities of each party for the use of the vessel. It may be a voyage charter, time charter, or bareboat charter, each with distinct risk allocations. Key components: Parties' details, vessel description, cargo description, freight rates, lay-can, demurrage, and termination clauses. Practical application: The charter party is the cornerstone document for any dispute resolution, as courts and arbitrators will interpret its terms to allocate responsibility. Challenges: Incomplete or ambiguous clauses can lead to protracted litigation; careful drafting and use of standard forms (e.G., BIMCO) mitigate such risks.

Clause – General – Related terms: Provision, Sub-clause, Interpretation. Individual provisions within the charter party that address specific aspects of the contractual relationship. Each clause must be read in context with the entire agreement. Example: The "Bunker Clause" specifies the quantity and quality of fuel to be supplied at the loading port, while the "Off-Hire Clause" defines conditions under which the vessel is deemed unavailable for service. Challenges: Overly generic wording can create divergent interpretations; precise language and reference to recognized standards (e.G., ISGATT) are essential.

Commencement – Related terms: Effective Date, Start-Date, Notice of Readiness. The point at which the charter party becomes operative, typically triggered by the issuance of a Notice of Readiness (NOR) by the master and its acceptance by the charterer. The commencement date determines the start of freight calculations and lay-can periods. Practical application: In a time charter, the charter period begins when the vessel is declared ready to load at the agreed port, not necessarily when the charter party is signed. Challenges: Disputes arise when the charterer contests the validity of the NOR, often on grounds of inadequate port facilities or weather conditions.

Condition of Carriage – Related terms: Liability, Cargo Damage, Carriage Contract. Standard terms, often incorporated by reference (e.G., Hague-Visby Rules), that govern the carrier's responsibilities toward the cargo. While the charter party governs the shipowner-charterer relationship, the condition of carriage applies to the carrier-cargo owner link. Example: A voyage charter may state that the vessel shall be loaded in accordance with the Hague-Visby Rules, thereby extending those liabilities to the shipowner. Challenges: Conflicts may emerge when the charter party imposes stricter liability limits than those provided by the condition of carriage, potentially rendering the latter ineffective.

Demurrage – Related terms: Lay-time, Detention, Penalty. A monetary charge payable by the charterer to the shipowner for delay beyond the agreed lay-time for loading or unloading. Demurrage rates are usually stipulated per day or pro rata for partial days. Practical application: If a vessel's cargo is not discharged within the agreed 48-hour window, the charterer incurs demurrage at the agreed rate of US 15 000 per day. Challenges: Calculating lay-time accurately can be complex, especially when multiple loading/unloading operations occur at different ports; disputes often focus on the interpretation of "weather working days" versus "calendar days".

Discharge Port – Related terms: Loading Port, Destination, Off-Hire. The port where cargo is to be off-loaded according to the charter party. The discharge port is a critical factor in determining the vessel's route, freight rates, and potential off-hire events. Example: A time charter specifies that the vessel will discharge a cargo of coal at Port Moran, South Africa. Challenges: If the discharge port becomes unavailable due to strikes or natural disasters, the charter party may invoke force majeure, but the parties must

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negotiate alternative ports or compensation.

**Force Majeure** – Related terms: Act of God, Impossibility, Excuse. A clause that relieves parties from performance obligations when extraordinary events beyond their control prevent contract fulfillment. Typical triggers include war, piracy, natural disasters, and governmental restrictions. Practical application: A voyage charter may contain a force majeure clause allowing the charterer to suspend freight payments if a port is closed due to a hurricane. Challenges: Determining whether an event qualifies as force majeure requires careful analysis of the clause's wording and the governing law; vague clauses may lead to contentious litigation.

**General Average** – Related terms: Shared Loss, Sacrifice, Adjuster. A principle whereby all parties with a financial interest in a voyage proportionally share losses incurred for the common safety of the vessel and cargo. The charter party often refers to the York-Antwerp Rules to define the procedure. Example: When a vessel jettisons cargo to lighten the ship during a storm, the loss is apportioned among the shipowner, charterer, and cargo owners under the general average adjustment. Challenges: Determining the amount of contribution and the parties liable can be complex, especially when the charter party does not expressly incorporate a particular set of rules.

**Hire** – Related terms: Time Charter, Daily Rate, Payment. The monetary consideration paid by the charterer to the shipowner for the use of the vessel under a time charter. Hire is usually expressed as a daily or monthly rate and may be subject to adjustments for fuel consumption, speed, or off-hire events. Practical application: A vessel hired on a 12-month time charter at US30 000 per day, payable monthly in advance. Challenges: Calculating adjustments for fuel consumption (e.g., Bunker-cost clauses) can be contentious, especially when market fuel prices fluctuate sharply.

**Indemnity Clause** – Related terms: Hold-Harmless, Liability, Insurance. A provision requiring one party to compensate the other for losses arising from specific risks, such as cargo damage, environmental pollution, or third-party claims. Indemnities are often limited by statutory caps or insurance coverage. Example: A charter party may include an indemnity whereby the charterer holds the shipowner harmless for any pollution liability arising from the cargo's nature. Challenges: Overly broad indemnities may be unenforceable under local law; careful drafting must balance risk allocation with legal enforceability.

**Lay-Can** – Related terms: Commencement, Notice of Readiness, Off-Hire. The period during which the vessel must be ready to load, as defined in the charter party. The lay-can may be expressed as a range of dates (e.g., 01 Jun to 10 Jun) and is often linked to penalties for late readiness. Practical application: If the vessel is not ready by the end of the lay-can, the charterer may treat the contract as terminated without liability. Challenges: Determining whether delays are caused by the shipowner (e.g., Repairs) or by external factors (e.g., Port congestion) can affect the enforceability of lay-can provisions.

**Letter of Indemnity (LOI)** – Related terms: Guarantee, Release, Cargo. A document issued by the charterer (or its agent) to the shipowner, guaranteeing payment for specific risks, often used to release cargo before the presentation of a bill of lading. Example: An LOI may allow the master to discharge cargo at the discharge port without waiting for the original bill of lading, provided the charterer compensates any loss. Challenges: Courts scrutinize LOIs for adequacy of consideration and authenticity; misuse can expose the shipowner to

fraud-related claims.

Letter of Offer – Related terms: Proposal, Negotiation, Acceptance. The initial document sent by a shipowner or broker outlining the terms under which a vessel is offered for charter. The letter may include vessel particulars, freight rates, and proposed clauses. Practical application: A shipowner's letter of offer may state a daily hire of US 25 000, a lay-can of 01 Jul to 15 Jul, and a demurrage rate of US 12 000 per day. Challenges: If the letter contains definitive language (e.G., "This offer is irrevocable"), it may be deemed a binding contract upon acceptance, limiting negotiation flexibility.

Liability Limitation Clause – Related terms: Cap, Exclusion, Insurance. A provision that caps the amount of damages one party must pay to the other, often referencing statutory limits or insurance policies. In charter parties, liability limitation may pertain to cargo damage, pollution, or personal injury. Example: A charter party may limit the shipowner's liability for cargo loss to the amount covered by the vessel's P&I club. Challenges: Certain jurisdictions may deem limitation clauses unenforceable if they contravene mandatory safety or environmental legislation.

Loading Port – Related terms: Discharge Port, Commencement, Cargo Operations. The location where cargo is to be taken on board the vessel. The loading port determines the vessel's initial route, applicable port fees, and potential off-hire events if the port cannot accommodate the vessel. Practical application: A time charter may specify that the vessel will load iron ore at Port Mendoza, Argentina. Challenges: Port congestion, labor disputes, or infrastructure failures can delay loading, triggering demurrage or off-hire provisions.

Master's Clause – Related terms: Authority, Discharge, Bunker. A clause granting the master authority to act on behalf of the shipowner in specific matters, such as signing bills of lading, accepting cargo, or ordering bunkers. It delineates the master's powers and liabilities. Example: The master may be authorized to sign a clean on-board receipt for cargo, provided the cargo matches the charter party description. Challenges: If the master exceeds the authority granted, the shipowner may be exposed to third-party claims; clear delineation of powers mitigates this risk.

Off-Hire Clause – Related terms: Hire, Unavailability, Maintenance. Specifies circumstances under which the vessel is deemed unavailable for service, and consequently the charterer is not obliged to pay hire. Common triggers include breakdowns, dry-dock periods, and compliance inspections. Practical application: If the vessel undergoes mandatory class surveys during the charter period, the off-hire clause may suspend hire payments for the duration of the survey. Challenges: Determining whether an event qualifies as off-hire often leads to disputes; parties must define "reasonable time" for repairs and provide evidence of unavailability.

Performance Bond – Related terms: Guarantee, Security, Default. A financial guarantee, often issued by a bank, ensuring that the shipowner will fulfill its obligations under the charter party. If the shipowner defaults, the bond may be called upon to compensate the charterer. Example: A charter party may require a 10% performance bond of the total hire value, payable upon signing. Challenges: Enforcing a bond across jurisdictions can be complex; the bond's governing law and jurisdiction must be clearly stipulated.

**Port of Call** – Related terms: Lay-Can, Discharge, Loading. Any intermediate port visited during the voyage, either for cargo operations, bunkering, or crew changes. The charter party may limit the number of ports of call or require prior consent. Practical application: A time charter may allow the shipowner to make “reasonable” ports of call for refueling, provided they do not affect the agreed schedule. Challenges: Unauthorized ports of call can be deemed a breach, leading to claims for loss of freight or additional costs.

**Quotation** – Related terms: Offer, Rate, Negotiation. A non-binding statement of rates and terms provided by a shipowner or broker in response to a charterer’s request. While not a contract, a quotation forms the basis for subsequent negotiations. Example: A broker sends a quotation for a VLCC at US9 500 per day, with a 30-day lay-can. Challenges: Misinterpretation of a quotation as a firm offer can create unintended contractual obligations; parties should clarify the status of the quotation.

**Rating Clause** – Related terms: Freight Rate, Adjustment, Index. A provision that ties the freight or hire rate to a benchmark, such as the Baltic Dry Index (BDI) or a fuel price index. Rating clauses allow rates to fluctuate in line with market movements. Practical application: A voyage charter may state that the freight rate shall be BDI + US5 000 per metric ton. Challenges: Determining the precise index value on the date of performance and handling index volatility can be contentious; parties often include caps or floors to mitigate extreme swings.

**Redelivery** – Related terms: Return, Bareboat, Time Charter. The act of returning the vessel to the shipowner at the end of a bareboat or time charter, typically in a specified condition and at a designated location. The charter party outlines the procedures for redelivery inspection and any associated penalties. Example: At the end of a 24-month time charter, the charterer must redeliver the vessel at the shipowner’s home port, clean and free of cargo. Challenges: Disagreements over the vessel’s condition at redelivery can lead to disputes over repair costs and off-hire deductions.

**Rent** – Related terms: Hire, Bareboat Charter, Payment. In a bareboat charter, “rent” refers to the periodic payment made by the charterer to the shipowner for the use of the vessel, typically expressed as a monthly or quarterly sum. Practical application: A 5-year bareboat charter may stipulate a rent of US200 000 per month, payable in advance. Challenges: Rent escalation clauses tied to inflation or market indices must be carefully drafted to avoid disputes over calculation methods.

**Safety Clause** – Related terms: Compliance, Regulations, Inspection. A provision requiring the vessel to meet all applicable safety standards, flag state regulations, and international conventions (e.g., SOLAS, MARPOL). Non-compliance can trigger off-hire or termination. Example: The charter party may state that the vessel must possess a valid International Safety Management (ISM) certificate throughout the charter period. Challenges: Ensuring continuous compliance can be costly; unexpected regulatory changes may impose additional obligations on the shipowner.

**Security Clause** – Related terms: Protection, Piracy, Insurance. Addresses the responsibilities of parties concerning vessel security, anti-piracy measures, and related insurance coverage. The clause may allocate costs for security personnel, route deviations, or ransom payments. Practical application: A charter party may require the charterer to reimburse the shipowner for any additional bunker costs incurred due to a deviation around a high-risk piracy zone. Challenges: Determining the extent of the charterer’s liability for

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security expenses, especially when the risk assessment was not performed jointly, can lead to disputes.

**Settlement Clause** – Related terms: Arbitration, Dispute Resolution, Governing Law. Specifies the mechanism for resolving disagreements arising under the charter party, including choice of forum, arbitration institution, and applicable law. Example: The charter party may provide that any dispute shall be settled by arbitration under the London Maritime Arbitrators Association (LMAA) rules, with English law governing. Challenges: Inconsistent settlement clauses across related contracts (e.G., Charter party and cargo contracts) can create jurisdictional conflicts; parties should harmonize dispute-resolution provisions.

**Shipowner** – Related terms: Charterer, Vessel, Liability. The legal owner of the vessel who grants the charterer the right to use the ship under the terms of the charter party. The shipowner retains title to the vessel, responsibility for its seaworthiness, and certain liabilities unless expressly limited. Practical application: A shipowner may engage a broker to market a newly built vessel, negotiating a time charter with a major oil trader. Challenges: The shipowner must ensure that the vessel complies with classification societies, flag state regulations, and environmental standards to avoid breach of charter party obligations.

**Stowage Clause** – Related terms: Cargo Arrangement, Safety, Loading. Defines how cargo must be arranged on board to maintain vessel stability, avoid damage, and comply with safety regulations. The clause may reference specific loading manuals or classification society requirements. Example: A bulk carrier's charter party may require that the cargo be loaded in a "center-of-gravity" arrangement to meet the vessel's trim criteria. Challenges: Failure to adhere to stowage instructions can result in cargo damage, off-hire events, or even vessel instability, leading to liability claims.

**Sub-Charter** – Related terms: Assignment, Lease, Re-charter. An arrangement whereby the charterer of a vessel further hires the vessel (or a part of its capacity) to another party. Sub-charters are common in time charter scenarios when the charterer seeks to optimise vessel utilisation. Practical application: A charterer holding a 12-month time charter may sub-charter the vessel for a 3-month voyage charter to a third party, receiving a spread between the hire received and paid. Challenges: The primary charter party must permit sub-chartering and may impose restrictions; failure to obtain consent can lead to breach claims.

**Termination Clause** – Related terms: Cancellation, Notice, Penalty. Outlines the conditions under which either party may end the charter party before its natural expiry, including required notice periods, compensatory payments, and the handling of cargo already on board. Example: A voyage charter may allow the charterer to terminate with 48 hours' notice if the vessel fails to arrive at the loading port within the agreed lay-can. Challenges: Determining whether a termination is justified (e.G., Due to force majeure) can be contentious; parties often negotiate liquidated damages to avoid protracted litigation.

**Unfeasibility Clause** – Related terms: Title, Bill of Lading, Transfer. A provision that reinforces the legal effect of the bill of lading or other documents of title, ensuring that they remain valid despite any undisclosed defects in the underlying contract. Practical application: The charter party may incorporate a clause stating that the master's receipt and bill of lading are "undefeasibly" evidencing the cargo's receipt, protecting third-party holders. Challenges: In cases of fraud or misrepresentation, courts may override the clause, leading to potential exposure for the shipowner.

**Vessel Description** – Related terms: Specifications, Class, Tonnage. A detailed statement in the charter party outlining the vessel's name, IMO number, type, deadweight, dimensions, flag, and class. Accurate description is essential for identifying the correct ship and avoiding disputes over suitability. Example: "MV Oceanic Star, IMO 9876543, 70,000 dwt, Panamax, Flag of Liberia, classed by ABS."

Challenges: Errors in the vessel description (e.g., Misstated deadweight) can lead to claims of misrepresentation, potentially rendering the charter party voidable.

**Voyage Charter** – Related terms: Freight, Time Charter, Bareboat. A contract where the shipowner agrees to transport a specified cargo from a loading port to a discharge port for a predetermined freight rate, usually expressed per metric ton. The shipowner retains operational control, while the charterer directs cargo particulars. Key elements: Cargo description, loading/discharge ports, freight rate, lay-can, demurrage, and off-hire. Practical application: A grain trader contracts a vessel on a voyage charter to carry 70,000 mt of wheat from Canada to Egypt at US 15 per mt. Challenges: The charterer's responsibility for cargo loading and discharge can generate disputes over delays, while the shipowner may face off-hire claims if the vessel is unable to perform due to mechanical failure.

**Weather Working Day** – Related terms: Lay-Time, Demurrage, Calendar Day. A term used to calculate lay-time and demurrage, defining a "working day" as one in which the vessel can perform loading or unloading operations, excluding days lost due to adverse weather conditions. Example: The charter party may state that "weather working days" shall be counted for lay-time, meaning days when the weather prevents cargo operations are excluded from demurrage calculations. Challenges: Determining whether weather conditions truly prevent operations often requires evidence such as meteorological reports and port authority records; disputes may arise over the interpretation of "adverse weather."

**Worldscale** – Related terms: Freight Rate, Index, Bulk Carrier. A standardized system for calculating freight rates for oil tankers, where a base rate (Worldscale 100) is adjusted by a percentage to reflect market conditions. The charter party may specify a Worldscale rate, simplifying negotiations. Practical application: A charter party may reference "Worldscale 85" for a tanker voyage, meaning the freight is set at 85% of the base Worldscale rate for that route. Challenges: Changes in the Worldscale index between the date of agreement and performance can affect the final freight payable; parties often include a clause fixing the applicable Worldscale revision.

**Yield Clause** – Related terms: Profit, Split, Revenue Sharing. A provision that outlines how any surplus revenue (the "yield") generated from the charter is to be divided between shipowner and charterer. Yield clauses are common in contracts where the charterer has significant control over cargo rates, such as in "charter-back" arrangements. Example: The charter party may state that any yield above a specified benchmark shall be shared 70% to the charterer and 30% to the shipowner. Challenges: Calculating the yield accurately requires transparent accounting and agreement on the benchmark; disagreements often arise over what constitutes "revenue" versus "operational cost."

**Zero-Day Clause** – Related terms: Lay-Can, Commencement, Notice of Readiness. Specifies that the lay-can period commences on the day the vessel is declared ready to load, regardless of the calendar date. This contrasts with "fixed-date" clauses where the lay-can starts on a predetermined date. Practical application: If the master issues a NOR on 15 May, the zero-day clause means the lay-can starts that same day, giving the

charterer a precise timeframe for loading. Challenges: Miscommunication about the exact time of NOR issuance can lead to disputes over whether the lay-can has begun, affecting potential penalties for late readiness.