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Bareboat charter party pdf file free pdf template

CHAPTER 5 BAREBOAT CHARTER PARTY • Section 1 Main Terms and Conditions of the Charter • Section 2 Provisions to Apply for New-building Vessels • Section 3 Hire Purchase Agreement Section 1 Main Terms and Conditions of the Charter 1. China Maritime Code 1.1 Definition of Bareboat Charter Party A bareboat charter party is a charter party under which the shipowner provides the charterer with an unmanned ship which the charterer shall possess, employ and operate within an agreed period and for which the charterer shall pay the shipowner the hire.1.2 Main Contents • A bareboat charter party mainly contains the name of the shipowner and the name of the charter; the name, nationality, class, tonnage and capacity of the ship; the trading area, the employment of the ship and the charter period; the time, place and condition of delivery and redelivery; the survey, maintenance and repair of the ship; the hire and its payment; the insurance of the ship; the time and condition for the termination of the charter and other relevant matters.1.3 Delivery and Redelivery • The shipowner shall deliver the ship and its certificates to the charterer at the port or place and time as stipulated in the charter party. At the time of delivery, the shipowner shall exercise due diligence to make the ship seaworthy. The ship delivered shall be fit for the agreed service. • Where the shipowner acts against the provisions of the preceding paragraph, the charterer shall be entitled to cancel the charter and claim any losses resulting therefrom. • When the charter redelivers the ship to the shipowner, the ship shall be in the same good order and condition as it was at the time of delivery, fair wear and tear excepted. • Where, upon redelivery, the ship fails to remain in the same good order and condition as it was at the time of delivery, the charterer shall be responsible for rehabilitation or for compensation. 1.4 Charterer's Obligation • The charterer shall be responsible for the maintenance and repair of the ship during the bareboat charter period. The charterer shall guarantee that the ship shall be employed to carry the lawful merchandise agreed. • The charterer shall guarantee that the ship shall be employed in the agreed maritime transport between the safe ports or places within the trading area agreed upon.If the charterer acts against the provisions of the preceding paragraph, the shipowner is entitled to cancel the charter and claim any losses resulting therefrom. • During the bareboat charter period, the ship shall be insured, at the value agreed upon in the charter and in the way consented to by the shipowner, by the charterer at his expense. • During the bareboat charter period, if the charterer's possession, employment or operation of the ship has affected the interests of the shipowner or caused any losses thereto, the charterer shall be liable for eliminating the harmful effect or compensating for the losses. • During the bareboat charter period, the charterer shall not assign the rights and obligations stipulated in the charter or sublet the ship under bareboat charter without the shipowner's consent in writing. 1.5 Shipowner's Obligation • Should the ship be arrested due to any disputes over its ownership or debts owned by the shipowner, the shipowner shall guarantee that the interest of the charterer is not affected. The shipowner shall be liable for compensation for any losses suffered by the charterer thereby. • The shipowner shall not establish any mortgage of the ship during the bareboat charter period without the prior consent in writing by the charterer. Where the shipowner acts against the provisions of the preceding paragraph and thereby causes losses to the charterer, the shipowner shall be liable for compensation.1.6 Hire Payment • The charterer shall pay the hire as stipulated in the charter. In default of payment by the charterer for seven consecutive days or more after the time as agreed in the charter for such payment, the shipowner is entitled to cancel the charter without prejudice to any claim for the loss arising from the charterer's default. • Should the ship be lost or missing, payment of hire shall cease from the day when the ship was lost or last heard of. Any hire paid in advance shall be refunded in proportion. • If, on the basis of a reasonable calculation, a ship may be able to complete its last voyage at around the time of redelivery specified in the charter and probably thereafter, the charterer is entitled to continue to use the ship in order to complete that voyage even if its time of redelivery will be overdue. During the extended period, the charterer shall pay the hire at the rate fixed by the charter, and, if the current market rate of hire is higher than that specified in the charter, the charterer shall pay the hire at the current market rate. 2. BARECON 2001 2.1 Hire • The Hire provisions of BARECON 2001 have been revised to reflect modern commercial practice and to incorporate the provisions of a new Termination Clause. It should be noted that the Hire Clause now begins with an express statement of the charterers' fundamental obligation to pay hire to the owners punctually in accordance with the terms of the Charter. This provision has been inserted in an attempt to make it clear that any default by the charterers in the payment of hire beyond the grace period would entitle the owners to claim damages for costs and losses incurred as a consequence of delays in the payment of hire, and, if the owners were to withdraw from the Charter, for the consequence of its determination.2.2. Delivery • It should be noted that the order of the two paragraphs in sub-clause 3(a) has been reversed. This has been done to clarify that the owners' due diligence obligation applies to both the first and the second sentence. In the second sentence of sub-clause 3(a), the charterers are now required to direct the owners to deliver the vessel to a prescribed ready "safe" berth.2.3 Trading Restrictions • The title of this clause has been changed from "Trading Limits" to "Trading Restrictions" as it was felt that the original BARECON 89 title did not reflect the true scope of the clause as it covered matters other than geographical restrictions. • According to this Clause, the charterers undertake not to employ the vessel under terms that are not in conformity with the terms of the insurance without first obtaining the consent to such employment of the insurers.2.4 Inspection • This provision gives the owners the right to inspect or survey the vessel throughout the charter period. The Clause has been modified in the new version to require the owners to give the charterers "reasonable notice" of their intention to inspect or survey the vessel. The owners have the right to inspect the vessel for three express reasons that have been divided into three sub-clauses to properly allocate costs. The first two reasons are taken from BARECON 89 and are 1) a survey to satisfy the owners that the vessel is being properly repaired and maintained and 2) a survey while the vessel is in dry dock if the charterers have not dry docked the vessel at the regular intervals agreed to in Clause 10(f). The third reason is new to BARECON 2001 and permits the owners to inspect the vessel for "any other commercial reason", although this right is balanced by the requirement that the inspection should not unduly interfere with the commercial operation of the vessel. 2.5 Maintenance and Operation • One of the most important consequences resulting from the bareboat chartering of a vessel is that during the entire period the vessel is in full possession and at the absolute disposal for all purposes of the charterers. Consequently, the responsibility for maintenance and operation and all costs and expenses arising from these activities rests with the charterers. The Maintenance and Operation Clause has been restructured to provide, where appropriate, clear sub-heading titles to make the provision easier to read.2.6 Insurance and Repairs • In the context of bareboat chartering, the responsibility for arranging and paying insurances and effecting repairs rests solely with the charterers. It follows that there is no question of the vessel coming off hire, for instance, during repairs, and that time on hire runs unabated during such events. The question of responsibility for repairs not covered by insurance due to, for example, franchise or deductibles applicable under the terms of the insurances, is also a point of importance that must be duly reflected in the Charter; otherwise, disputes may easily arise in this respect (See sub-clause 13(a)). It should be observed that the previously used reference to "marine" risks in the first sub-clause has been changed to read "hull and machinery". This has been done to restrict the scope of application, as there are other marine risks, such as loss of hire, which are not applicable in this context.2.7. Redelivery • The "final voyage" provision of the Redelivery Clause has been amended to address problems associated with an unforeseen overrun of the vessel's last voyage beyond the end of the Charter period. BARECON 2001 introduces in the second paragraph of Clause 15 a warranty on the part of the charterers (lines 526-537) stating that they will not permit the vessel to commence a voyage that cannot reasonably be completed prior to the end of the charter period. Should the charterers fail to redeliver the vessel within the charter period, a mechanism is provided to compensate the owners for the period following the expiration of the Charter until the vessel is redelivered. The charterers must pay either the daily equivalent to the agreed rate of hire plus ten percent or pay the current market rate for the vessel, whichever is the higher figure.2.8 Termination Clause • This new clause provides clear provisions regarding the termination of the Charter and consolidates the termination provisions previously found in Clauses 5, 9, 10 and 12 of BARECON 89. The clause distinguishes between termination by default on the part of the charterers, a default on the part of the owners, and extraordinary termination.Section 2 Provisions to Apply for New-building Vessels • It is stressed that this Part is optional and only applies if expressly agreed and stated in Box 37 in the framed part of Part I. In the event that Box 37 is filled in with "yes", Boxes 38, 39 and 40 must also be filled in.1. Specifications and Building Contract • It has been found that in a typical financial bareboat charter such as, for instance, in connection with a new-building vessel, the owners should not become implicated in latent defects which may only manifest themselves a long time after delivery from the yard and the repairs of which are thus not recoverable under the building contract; hence the provisions found in sub-clause 1(d) of this clause that in regard to repairs or replacements or any defects which appear within the first twelve months from delivery, the owners shall only be liable to the charterers to the extent the owners have a valid claim against the builders under the Guarantee Clause of the building contract. Defects appearing later do not give rise to any claim against the owners.2. Time and Place of Delivery • It has not been considered appropriate to incorporate into clauses specifically designed for new-building vessels, provisions regarding to earliest date of delivery and the right to cancel if the vessel is not delivered latest by the cancelling date agreed. Normally, the owners have limited rights under the building contract to reject the vessel on account of delay in delivery from the yard, the builders in most cases being duly covered for delays under the terms of the building contract. This matter is dealt with in sub-clause (a) and sub-clause (d). 3. Survey on Redelivery • Unlike commissioned vessels, there is no point in discussing or determining the condition of a new-building vessel at the time of delivery from the yard or to arrange a time consuming on-survey for that purpose. According to sub-clause 1(c) the charterers have the right to inspect the vessel at all times during the course of her construction. Consequently, the survey clause only speaks about survey on redelivery.Section 3 Hire Purchase Agreement • It is stressed that this clause is optional and only applies if expressly agreed and stated in Box 42 in the framed section of Part I. The provisions of Part IV have been copied from BARECON 89 and incorporated in extenso into BARECON 2001 to provide for the possibility of making the contract a combined Hire/Purchase Agreement.However, it goes without saying that in the context of a hire/purchase agreement there is no point in adhering to the normal practice observed under an ordinary sales agreement in regard to inspection, opening up of engines, drydocking, drawing of tail-end shaft, etc. Under a combined hire/purchase agreement, the vessel has been in full possession and under the complete control of the charterers (buyers) throughout the period of hire so that the charterers (buyers) have full knowledge of the condition of the vessel at the time of taking over as buyers. • It therefore follows that on expiration of the Charter, the sellers (original owners) shall deliver and the buyers (the bareboat charterers) shall take over the vessel "as she is" at the time of delivery.The second paragraph of Part IV (in BARECON 89) relating to the suspension of the owners' right to withdraw the vessel for failure to pay the last month's hire instalment in accordance with Clause 11 (Hire) has been deleted. There was particular concern that suspension of the right of withdrawal could be triggered by "...any reason beyond the Charterers' control." and this was felt to be too broad in its application. The termination of the contract due to a failure to make a timely payment of the final instalment of hire could, potentially, be disastrous for the charterers. However, the gravity of the situation for the charterers would be no less if the contract were terminated on the second or third last payment of hire. Consequently, it was agreed to delete the second paragraph of this Part in favour of taking a consistent approach to delays in payment as set out in the anti-technicality provisions of Clause 28.

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