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# Voyage Chartering Masterclass

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# Legal Framework & Contractual Aspects



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# Charter Parties: Structure & Key Clauses

# Structure of Voyage Charter Parties

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**Preamble:** Introduces the contracting parties (the shipowner and the charterer), the vessel's name, and general details of the agreement.

**Particulars of the Voyage:** Details the ports of loading and discharge, type of cargo, and voyage route.

**Freight and Payment Terms:** Specifies the freight rate, currency, payment method, and deadlines.

**Laytime and Demurrage:** Outlines the time allowed for loading and unloading, and penalties for exceeding this time. **Responsibilities and Liabilities:** Defines the allocation of risks and obligations between the parties.

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**Clauses for Dispute Resolution:** Specifies the jurisdiction, applicable law, and arbitration terms if disputes arise.

**Miscellaneous Clauses:** Includes special provisions, additional clauses, and rider clauses as needed for specific agreements.



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# Standard Forms: GENCON & ASBATANKVOY

# Structure of GENCON 1994

1 Preamble	14 Shifting and Seaworthy Trim
2 <b>Cargo Quantity and description</b>	15 Cargo Separation and Tallying
3 Loading Places, Loading Orders and Rotation	16 Dues and Taxes
4 Discharge Places, Discharge Orders and Rotation	17 Port Agents
5 Laydays / Cancelling	18 Bills of Lading
6 <b>Freight</b>	19 Lightening
7 Cost of Loading and Discharging	20 General Average
8 Notice of Readiness and Time Counting	21 Strikes
9 Load and Discharge Rates	22 Exceptions
10 <b>Notices</b>	23 Commissions
11 Ship's Gear	24 <b>Protective Clauses / Lien</b>
12 <b>Stevedore Damage</b>	25 Ice
13 Overtime	26 War Risks

# Changes in GENCON 2022

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- Under New Clause 1, the Owners' obligation to ensure the vessel sets out "as soon as its prior commitments have been completed" has been qualified by the addition of "unless prevented or hindered by events beyond the Owners' control". This is to cover external causes of delay which prevent the vessel from departing immediately on the approach voyage, such as tug strikes or channel blockage.
- New Clause 2 replaces the Owners' Responsibility Clause of previous versions of GENCON. The Owners have two express obligations to exercise due diligence: (1) to have the cargo spaces fit for the cargo at the commencement of its loading; and (2) to have the ship seaworthy and properly manned and equipped at the commencement of each cargo-carrying voyage, reflecting the Hague Visby Rules ("HVR"). And it also provides that the Owners undertake properly to carry and care for the cargo while it is on the vessel, again reflecting HVR. The clause also reflects the protections available to a carrier under the HVR. The clause extends the scope of these protections beyond cargo claims to all other aspects of performance. For example, the one-year time bar now applies to all other claims against the Owners under the charterparty. In addition, the HVR obligations have been restricted to two specific moments: the commencement of loading, and the commencement of each cargo-carrying voyage.

# Changes in GENCON 2022

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- New Clause 3 covering ALL cargo related matters, operationally and financially
- New Clause 7 expressly provides that freight is non-returnable even if ship or cargo is lost.
- New Clause 10 on Laytime brings more clarity. Where the older versions of GENCON used the expression “weather permitting” to make it clear that laytime would run continuously unless the actual working of the vessel was prevented, the new version has replaced this phrase with the following exception: “except to the extent that the actual loading/discharging is delayed or prevented by weather”. The purpose here is to avoid ambiguity as to the intended effect. BIMCO’s 2013 Laytime Definitions are also included in the clause.
- New Clause 16 gives Owners the right of Suspension & Termination in case Charterers fail to make a payment. (96 Hours failure leads to termination!)
- New Clause 20 makes provision for Electronic Bills of Lading



# Key Clauses in ASBATANKVOY

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ASBATANKVOY is commonly used in tanker charters, particularly for transporting oil and liquid cargoes. Its structure includes clauses tailored to the specifics of liquid cargo handling:

Clause 1: Warranty of Seaworthiness: Ensures that the vessel is seaworthy at the commencement of the voyage.

Clause 6: Laytime Calculation: Describes the process for counting laytime and details when laytime starts and ends, including when NOR (Notice of Readiness) is given.

Clause 9: Freight Payment: Stipulates the basis for calculating freight and the method of payment. It may include stipulations for demurrage charges if delays occur.

# Key Clauses in ASBATANKVOY

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Clause 10: Cargo Heating: Often included for cargoes that require heating during transport, outlining the temperature range and heating procedures.

Clause 11: Pumping Warranty: Obligates the vessel to discharge the cargo within a specific timeframe using its pumps, with penalties for non-compliance.

Clause 21: Safe Ports: The charterer must nominate ports that are considered safe for the vessel.

Clause 24: Dispute Resolution: Details how any disputes will be settled, commonly specifying arbitration under New York or London arbitration rules.

# Comparative Analysis of GENCON and ASBATANKVOY

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Type of Cargo: GENCON: More versatile, suitable for dry bulk and general cargoes while ASBATANKVOY: Specially tailored for liquid bulk cargoes, such as oil and chemicals.

Laytime and Demurrage: Both forms include clauses on laytime and demurrage, but ASBATANKVOY tends to have more detailed provisions specific to tanker operations.

Pumping and Heating: Unique to ASBATANKVOY, with specific clauses about pumping capacity and cargo heating, essential for liquid cargo handling.

Vessel Seaworthiness: Both forms contain clauses that ensure the vessel is seaworthy, though ASBATANKVOY may be more stringent due to the hazardous nature of liquid cargoes.

Flexibility: GENCON can be more adaptable with modifications to suit different types of cargoes and voyages. ASBATANKVOY is more rigid, focusing on the specific needs of liquid cargo charters.

# Common Negotiation Points in CPs

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**Freight Rates:** Often a primary negotiation point, influenced by market conditions and the complexity of the voyage.

**Laytime and Demurrage:** Negotiated based on port efficiency and cargo type. Disagreements on these terms can lead to disputes.

**War Risks and Safety Clauses:** Charterers and shipowners may negotiate the handling of risks related to conflicts or unsafe conditions.

**Additional Clauses:** Rider clauses are often added to tailor the standard forms to the specific needs of the parties involved.



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# Negotiating Charter Party Terms

# Introduction & Perspectives of Negotiation

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Negotiating charter party terms is a critical part of securing a fair and effective agreement between shipowners and charterers. This process requires careful attention to detail, a comprehensive understanding of market conditions, and strategic communication to align interests.

**Shipowner's Perspective:** The shipowner aims to maximize profit by securing favorable freight rates, minimizing operational risks, and ensuring optimal vessel utilization. The owner will look to cover costs such as fuel, port fees, and maintenance while making a profit.

**Charterer's Perspective:** The charterer seeks cost-efficiency, reliable service, and favorable terms regarding laytime and demurrage. Their focus is on timely cargo delivery, ensuring that cargo-specific requirements are met and that potential disruptions are minimized.

# Key Points of Negotiation

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**Freight Rate:** One of the most significant components of a charter party. Market conditions, vessel type, cargo specifics, and seasonal fluctuations influence rates. Both parties need to agree on a fair rate that reflects the risks and operational costs.

**Laytime and Demurrage:** Laytime clauses outline the time allowed for loading and discharging cargo. Demurrage is the penalty if the agreed time is exceeded, while dispatch is compensation for completing early. These clauses are heavily negotiated to balance risks between parties, taking into account port efficiency and cargo handling complexity.

**Cargo Requirements:** Specific clauses related to cargo handling, such as stowage, heating (in tankers), and specialized equipment, must be agreed upon. This ensures the vessel and crew can meet cargo needs without undue burden.

# Key Points of Negotiation

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**Loading/Discharging Ports:** Charterers need to specify ports that are accessible, safe, and equipped for the cargo type. Shipowners will assess whether the nominated ports are compatible with the vessel's size and operational capabilities.

**Bunker (Fuel) Costs and Clauses:** Negotiations may cover bunker escalation clauses may be included to adjust for fuel price changes over the charter period.

**War Risk and Safety Clauses:** For voyages that may pass through high-risk areas, parties negotiate terms for war risk premiums and procedures for handling conflicts or piracy. The "safe port" clause is critical here, specifying that charterers must nominate ports considered safe for the vessel.

**Arbitration and Dispute Resolution:** The choice of jurisdiction and arbitration rules (e.g., London or New York arbitration) is essential for resolving disputes. Both parties negotiate to agree on a neutral and efficient forum for potential conflicts.



# Some Other Key Clauses

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**Force Majeure:** Determines how unforeseen events like natural disasters or strikes are managed and what obligations are suspended or waived.

**Termination Clauses:** Specify conditions under which the charter party can be terminated without penalty, such as in cases of vessel unseaworthiness or significant delays.

**Indemnity and Liability:** Clauses outlining who is responsible for various risks, including cargo damage, delays, or port blockages.

**Himalaya Clause:** Extends the protections and immunities available to the shipowner under the charter to include subcontractors and agents, which is crucial when third parties are involved in cargo handling.

# Common Negotiation Strategies

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**Market Research and Preparation:** Both shipowners and charterers should conduct thorough market research to understand prevailing rates, demand-supply trends, and port conditions. This knowledge is crucial for negotiating from a position of strength.

**Flexibility and Compromise:** Successful negotiations often involve finding a middle ground. Both parties should be prepared to make concessions on minor clauses to secure agreement on major terms.

**Clear Communication:** Ensuring that terms are clearly communicated and understood helps avoid misinterpretation and potential disputes. Contractual language should be precise and unambiguous.

# Common Negotiation Strategies

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Use of Brokers: Shipbrokers often facilitate negotiations, bringing market expertise and acting as intermediaries. They can provide valuable insight into current market practices and help bridge differences between parties.

# Negotiation: Potential Challenges

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**Economic Uncertainty:** Market volatility can affect freight rates, leading to disputes or renegotiations.

**Regulatory Changes:** New environmental regulations or trade policies can impact operational costs and terms. For instance, fuel regulations under IMO 2020 or regional emissions limits may affect bunker clauses.

**Port Congestion and Delays:** Delays at busy ports can impact laytime and demurrage agreements. Charterers may seek to include clauses that mitigate their liability for such delays.

**Geopolitical Challenges:** Trade Wars, Sanctions, Actions of State & Non-State actors can have huge implications on the contract being negotiated. Simple rule: Longer the duration of the deal, more comprehensive it should be.

# Recommendations for Effective Negotiation

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**Draft Proposals:** Presenting a draft with clearly outlined terms can streamline discussions and provide a starting point for modifications.

**Consult Legal Experts:** For complex agreements, consulting maritime legal experts can ensure clauses align with current laws and protect the interests of both parties.

**Maintain Professionalism:** Negotiations can become contentious, but maintaining a professional approach helps foster long-term relationships, which is beneficial for future charter agreements.

Remember the motto of Institute of Chartered Shipbrokers is “Our Word, Our Bond”.



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# Legal Implications and Dispute Resolution

# When is a contract binding on parties?

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Binding Nature of the Contract: Charter party agreements are legally enforceable contracts. Breach of contract can lead to legal liability, requiring the non-compliant party to pay damages or fulfill other remedies.

When contemplating a possible charter, parties will often negotiate at the same time with more than one other party in order to see what is the best deal that they can get.

However, parties have to be careful in such circumstances not to enter into a legally binding commitment with more than one other party since they may then be liable in damages if they do not perform one of those charters.

Therefore, it is important to know exactly at what point there is a binding contract.

# When is a contract binding on parties?

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A contract is created only when an offer has been made and that offer has been accepted.

There is a difference between an offer and a mere invitation to treat which is merely an indication that someone may be ready to negotiate a contract.

An offer may be revoked (i.e. withdrawn) at any time before it is accepted and may not thereafter be accepted by the original offeree unless the original offeror reinstates the offer.

A counter-offer destroys the original offer.

Parties will frequently conduct the negotiations in two stages– the “main terms” and the “details”.

Even if there is agreement on the main terms there is usually no binding agreement under English law if the negotiations are still “subject details” since a condition precedent must still be satisfied.

However, this is not a “failsafe” rule and the whole history of the negotiations must be considered.



# When is a contract binding on parties?

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**However!** under US law it is more likely that there will be a binding contract once the “main terms” have been agreed.

This gives a logical difficulty if there is a dispute as to whether or not there is a binding fixture when the negotiations have been conducted between parties in different jurisdictions.

The English court resolves the difficulty by holding that the law which decides if there is or is not a fixture is the prospective law of the contract (i.e. on the assumption that there is a binding fixture).

Under English law, until all terms have been agreed, either party can withdraw from further negotiations without penalty.

There is no obligation to continue negotiations in good faith until all the details have been agreed.

# When is a contract binding on parties?

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Even when all the details have been agreed, the fixture may still be subject to some other condition.

However, a distinction needs to be drawn in this connection between a condition precedent and a condition subsequent.

If there is a condition precedent, there is no binding fixture until the condition has been satisfied e.g. “subject stem” or “subject board approval”.

However, if there is a condition subsequent, there is a binding fixture which can be terminated only if the condition subsequent is not subsequently satisfied e.g. “subject review Ownrs head C/P BTB”.

# Interpreting Charter Party Clauses

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Interpretation of Clauses: Courts and arbitration panels interpret clauses based on their language, industry practices, and legal principles such as contra proferentem (interpreting ambiguous terms against the drafter). Clear and precise wording is crucial to avoid disputes.

The common law tries to give effect to the intention of the parties.

However, it will do so by considering the objective and ordinary meaning of the words used in the context of the contract as a whole and not in accordance with the subjective intentions of the parties.

Unless there is clear evidence to the contrary, words are given their “natural” meaning and not any other “special” meaning which the parties might have wished in the particular circumstance.

However, the court will try to avoid a construction that leads to an absurdity.

# Interpreting Charter Party Clauses

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The court will try to adopt a construction which does not cause conflict with other terms of the contract but in the event of inevitable conflict, the court is guided by the following rules:

- Hand-written or typed or re-formatted words are deemed to override the printed words of a standard contract form.
- Specific provisions prevail over more general provisions.

The logic in both cases is that such a construction is more likely to reflect the real intention of the parties.

# Interpreting Charter Party Clauses

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Traditionally, exception clauses have been strictly construed and, in the event of any ambiguity of wording, have been construed against the interests of the party that seeks to rely on them. (Contra Proferentem)

Therefore, if an exception clause did not, either expressly or by inevitable implication, give protection against negligence, the clause was not usually construed as giving protection against such conduct even if the words could possibly be considered to be wide enough to provide such protection.

The contra proferentem rule will often be undermined by use of phrases such as “*howsoever caused*” or “*howsoever arising*” which have been held to give a wide degree of protection including protection against claims for negligence or even unseaworthiness.

# Interpreting Charter Party Clauses

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The contractual clauses can be divided into:

**Condition:** This is a term of such importance that any breach of it will entitle the innocent party to terminate the contract and/or claim damages.

**Warranty:** A breach of this term will not entitle the innocent party to terminate the contract but merely to claim damages.

**Innominate Term:** Whether breach of this type of term entitles the innocent party to terminate the contract depends on the severity of the breach and its consequences.

# Obligations & Liabilities of the Parties

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Shipowners' Obligations: These typically include providing a seaworthy vessel, proceed to the load port and the discharge port with reasonable dispatch and without deviating, maintaining the vessel in good condition, and care for the cargo while it is on board.

Charterers' Obligations: These may include timely payment of freight, declare any dangerous cargo, nominating safe ports, and loading/discharging cargo within agreed laytime.

# Legal Implications of Other CP Clauses

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**Risk Allocation:** Clauses within the contract allocate specific risks between the parties, such as demurrage for delays, or force majeure provisions that address unforeseeable events.

**Compliance with Laws:** Parties must comply with international regulations, such as MARPOL, SOLAS, and local port requirements. Violations could result in penalties, detention of the vessel, or contractual breach claims.

**Environmental and Safety Regulations:** Increasingly stringent regulations (e.g., emissions restrictions) can impact contractual obligations, requiring parties to renegotiate terms such as bunker clauses or incorporate environmental warranties.



# Common Dispute Areas in Voyage Charters

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**Laytime and Demurrage:** Disagreements often arise over laytime calculation and demurrage charges. Ambiguities in how laytime is calculated or when it commences can trigger disputes.

**Freight Payment:** Delays or disagreements regarding freight calculation or payment can lead to disputes.

**Cargo Claims:** Damage or loss of cargo during loading, transportation, or discharge can lead to disputes over liability.

**Safe Port Clause:** If a charterer nominates an unsafe port and damage or delay occurs, disputes may arise over liability.

# Dispute Resolution Methods

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**Negotiation:** The first step in resolving most disputes is direct negotiation between parties. Effective negotiation can prevent escalation and preserve business relationships.

**Mediation:** Involves a neutral third party who facilitates discussions between parties to reach a mutually acceptable solution. It is non-binding but can be an effective way to resolve disputes without litigation.

# Dispute Resolution Methods

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## Arbitration:

Preferred in Maritime Industry: Arbitration is a common method for resolving disputes due to its confidentiality, specialized arbitrators, and relative speed compared to court proceedings.

Key Venues: London - London Maritime Arbitrators Association (LMAA), Singapore – Singapore Chamber of Maritime Arbitration (SCMA), New York and Hong Kong are popular venues for maritime arbitration.

Binding Nature: Arbitration awards are binding and enforceable under international agreements such as the New York Convention, making it a favored choice for cross-border disputes.

# Dispute Resolution Methods

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## Litigation:

**Court Proceedings:** In some cases, disputes are taken to court, particularly if arbitration has not been specified or agreed upon. Litigation provides a formal process but is typically slower and more public than arbitration.

**Choice of Law:** Charter parties often specify a governing law (e.g., English law), which influences how disputes are interpreted and adjudicated.

**Expert Determination:** In certain technical disputes, an independent expert may be appointed to make a binding decision on specific issues, such as a vessel's performance or cargo damage.

# Key Clauses impacting Dispute Resolution

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**Arbitration Clause:** Specifies the venue, arbitration rules (e.g., LMAA Terms), and the number of arbitrators. Clear wording ensures that the process is understood and agreed upon.

**Jurisdiction Clause:** States the courts that have authority over any disputes. For example, a clause may specify that English courts have exclusive jurisdiction.

**Force Majeure Clause:** Outlines what events are considered beyond the parties' control (e.g., war, natural disasters) and their impact on obligations, providing guidance on how disputes related to these events are resolved.

**Dispute Notification Periods:** Clauses may set time limits for notifying the other party of disputes or claims, which can impact the admissibility of claims.

# Mitigating Disputes: Best Practices

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**Clear Drafting:** Ensure all terms are clearly defined and written to avoid ambiguities.

**Regular Communication:** Open and regular communication between shipowners and charterers can prevent misunderstandings that lead to disputes.

**Due Diligence:** Both parties should conduct thorough due diligence on the counterparty's history, reputation, and compliance with legal standards.

**Use of Standard Forms:** Employing standard charter forms (e.g., GENCON, ASBATANKVOY) with minimal modifications can reduce ambiguity and align with established industry practices.

# Conclusion

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Legal implications in charter party agreements underscore the need for precise drafting and careful negotiation to allocate risks and obligations effectively. In the event of disputes, mechanisms such as negotiation, arbitration, and litigation play critical roles in resolving issues. Understanding and including comprehensive clauses for dispute resolution in the charter party ensures clarity and protects the interests of both parties, fostering smoother operations and minimizing costly conflicts.