Addis Ababa University

The School of Graduate Studies

Faculty of Law and Governance

Standard Charter Party Contracts in Ethiopia; The Law and Practice

By

Yohannes Asefa

Advisor

Professor Tilahun Teshome

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List of Abbreviations

ABS	American Bureau of Shipping
BIMCO	Baltic and International Maritime Council
CEO	Chief Executive Officer
DOC	Document of Compliance
E.C.	Ethiopian Calendar
EMAA	Ethiopian Maritime Affairs Authority
EMTI	Ethiopian Maritime Training Institute
EPRDF	Ethiopian People Revolutionary Democratic Front
ESLSE	Ethiopian Shipping and Logistics Services Enterprise
ETA	Expected Time of Arrival
Ferticon	Fertilizer Voyage Charter Party, 2007
FIO	Free In –Out
FOB	Free on Board
GENCON	Continent Grain Charter Party 2000
IACS	International Association of Classification Societies
ICC	International Chamber of Commerce
IMFO	International Maritime Fumigation Organization
IMO	International Maritime Organization
ISM Code	International Management Code for the Safe Operation of Ships and for Keeping for Seafarers, 1995 as amended

LMAA	London Maritime Arbitrators Association
MT	Motor Tanker
MTS	Maritime and Transit Services
MV	Motor Vessel
NVOCC	Non-Vessel Operating Common Carrier
OCIMF	Oil Companies International Maritime Forum
PDPR	Per Day or Pro-Rata
	Pollution Prevention, 2013
SIRE	Ship Inspection Report Program
SMC	Safety Management Certificate
STCW	International Convention on Standards of Training, Certification and Watch

Abstract

Charter parties are highly standardized contracts. Terms and conditions of the contract are highly detailed and complicated. The role of the charterer is not limited to paying the agreed freight rate. Even if the vessel is manned and navigated by the owner, the charterer has active role in the commercial management of the ship and loading and unloading operations. The Maritime code has contained age old provisions governing charterparties. All the charter parties that has been concluded by Ethiopian Shipping and Logistics enterprise have never selected the Ethiopian law and courts to govern the charters. They rather choose England Law and Arbitration. The Compatibility of the code in governing standard charterparties, Main rights and duties of Shipowner and Charterer in light of England law and Ethiopian law, and the practical legal problems arising in relation to charters parties have been examined by this paper.

Chapter One

1.1. Research Background

The Maritime Code Proclamation of 1960 (Proclamation No. 164/60) was enacted as part of the codification and modernization process of Ethiopia legal system during the late 1950s and early 1960s. The return of "Ethiopia's ancient sea coast on the red sea and the consequent expansion of our Maritime power" [1] is the immediate cause for the enactment of the Code. The Red Sea and Indian Ocean coasts had been under the colony of European colonialists and the Ottoman Turkey Empire. This had seriously impaired Ethiopian shipping activities. The golden era of Ethiopian shipping is during the Axumite period. The Empire had control over Maritime exchange networks in the Red sea which is the most important checkpoint connecting India with the Byzantine Empire.[2] The fall of the Axumite Empire and the consequent emergence of powerful Muslim sultanates in the coastal areas have created limited shipping activities.

The United Nations Resolution 390-A(V) enabled Ethiopia to regain control over 1,151 kilometers coastline along the Red Sea and 1,083 kilometers of island coastline. Emperor Haile Selassie had tried to expand the empire's Maritime power by establishing the Ethiopian Naval Force that used to be active on the Red Sea until the advent to power of the EPRDF and the cessation of Eritrea and the Ethiopian Shipping Line in 1964 to serve as a commercial carrier.[3] The company was jointly owned by an American company named Towers Investment and the Dutch management team.[4] The initial capital of the company was 50,000 Ethiopia dollar with 51 % subscription by Towers investment and 49% subscription from Commercial Bank of Ethiopia and Ministry of Finance.

[1] First paragraph of the preface of The Maritime Code proclamation,1960 (hereinafter called "the Code"
[2] Karl W. Butzer, 'Rise and Fall of Axum, Ethiopia: A Geo-Archaeological Interpretation, (American Antiquity 46, no. 3 1981) 472.
[3] < http://www.winne.com/ethiopia/to08.html accessed on January 20, 2020.
[4] Ibid

Merchant shipping conventions were one of the earliest international commercial conventions.[5] The conventions were drafted by "Comitė Maritime International" an international non-profit organization founded in Antwerp in 1897 to achieve unification of both written and unwritten commercial Maritime laws.[6] The divergence of laws among nations had created tremendous applicability problems. For instance, cargo owning countries used to impose strict liability on the carrier whenever the good is not delivered while Ship owning countries give unlimited freedom of contract which results in the impunity of carriers for non-delivery or mis-delivery of the cargo. The Hague rules tried to accommodate these conflicting interests by imposing certain minimum conditions that could not be abrogated by contracting parties. However, the rules are still considered to favor carriers by incorporating provisions that exempt carriers from liability for negligence in "navigation or in the management" of the vessel (article 4 (1) (2) (a)).[7] These rules do not apply to charter party contracts of carriages as we shall see in detail latte on.

The organization has sponsored several conventions that are said to become the sources of the Maritime Code. The 1910 Convention for the Unification of Certain Rules of Law concerning Collisions between Vessels is the source of Maritime Collisions, Assistance and Salvage provisions of the Code (Title V). Moreover, the provisions of the Code governing contract of carriage supported by a bill of loading are transplanted from the 1924 Hague rules for the Unification of Certain Rules of Law relating to Bills of Lading. The 1926 International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages is the material source for chapter 5 of the Code.

One may argue that the codification commission had no option other than opting to the laws of strong Maritime nations and international convention and this was in line with the need to unify domestic laws with accepted international standards. The mode of transplantation adopted by the Code is not creative transplantation. It is a word by word transplantation.

The Code is meant to be comprehensive covering both public and private Maritime issues.[8] The private law regime of the Code governs Real rights (*Right in rem*) to be created over a ship and

[5] A. N. YiannopouLos, 'The Unification of Private Maritime Law by International Conventions' (law and contemporary problems) 371.
[6] <https://comiteMaritime.org/about-us/history/> 'accessed 20 January ,2020'
[7] YiannopouLos (n 5) 386.
[8] See paragraph two of the Preamble of the Code

personal rights (Rights in personam). Contract of Affreightment (contract for carriage of goods by sea) is the most important shipping instrument creating personal rights against the carrier, shipowner, shipper, charterer, and consignee. There are two completely different forms of contact of carriage: The first one is bill of loading and the second one is charter party form.[9]

Contract of affreightment is usually preceded by a contract of sale concluded between the importer (Buyer) and exporter (Seller).[10] Contract of carriage with the carrier might be concluded by either the buyer or the seller depending on the Incoterm used in the contract. Incoterms are international commercial terms of trade issued by the International Chamber of Commerce (ICC) which among other things determines transfer of risk, conclusion of contract of carriage, Insurance Premium and other related duties.[11] The carrier is not privy to the contract of sale. The thesis will focus on a contract of affreightment made in the form of a charter party.

1.2. Literature Review

The word charter party is derived from the Latin term *"Charta Partita" "Charta divisa"* meaning Document in duplicate, divided document. The origin of this term is the medieval era practice of tearing apart the document "into pieces with one half given to each party".[12]

Different instruments have defined Charters differently. Dictionary of shipping and international trade terms and abbreviations defines it as "A contract whereby a shipowner agrees to place his ship or part of it at the disposal of a merchant or other person (Known as a charterer) for the carriage of goods from one port to another on being paid freight or to let his ship for a specified period, his remuneration being Known as hire money."[13]

The most important element which distinguishes a charter party from a contract of carriage supported by a bill of loading is the placing of the ship (in whole in part) at disposal of the charterer. Charter party is evidence of the hire of a ship to carry complete cargo whereas the bill

[9] See Art 133(1) & (2) of the Code
[10] Njj gaskell, C Debattion and Rj Swatton, *Shipping Law* (8th edn, Pitman Publishing 1997) 165
[11] https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/ accessed on March 1, 2020
[12] https://www.cp-desk.com/wp-content/uploads/2014/12/CP-Desk_THE-CHARTER-PARTY-DILEMMA.pdf accessed on 1 February 2020
[13] Alan E.Branch, *Dictionary of Shipping International Business Trade Terms and Abbreviations*, (4th ed, WIrherby & co.ltd 32-36 Aylesbury Street London ECIR 0ET, 1995) 138.

of loading is evidence of the conclusion of a contract of carriage for transportation of small parcel of goods.[14] Charters are not suitable for persons who want to send a small parcel of goods that do not utilize the whole ship or part of the ship.[15] Such persons must look for a shipping company which is sailing to a port they wish to send their cargo.[16] The carrier will issue a bill of loading after the loading of the cargo on a ship. The bill serves as evidence for the conclusion of contract of affreightment between the carrier and shipper/consignee. Contract of carriage evidenced by bill of loading is not subject of the thesis.

The placement of the ship at the disposal of the charterer does not mean the ship is controlled and navigated by the charterer. When the entire ship together with its control and navigation is transferred from the shipowner to the charter, it is not a contract of affreightment, but rather a contract of letting the ship.[17]Such kind of contract is known as Bareboat/ demise contracts. The relationship between the parties is governed by the laws governing the hiring of chattels under English law.[18] The Maritime Code also does not consider charter by demise as a contract of carriage by sea. Article 126(3) of the Code implies that the provision of the Civil Code governing the hiring of special chattels also governs charter by demise. Charter by demise is an obsolete type of contract relating to the use of a ship.[19]

The ship owner retains control and management of the ship and the ship remains in the possession of the owner. The charterer is presumed to have disposal of the ship because it proceeds by following the charterer's instruction of loading and discharging port. The carrying space of the ship is to be reserved for charterer's cargo. The charterer utilizes the ship without engaging in the operation and navigation of the ship.

Time and Voyage Charters are the most commonly used types of Charters. A time charter is an agreement between the owner and the charterer to employ the ship for the carriage of goods by sea of the latter for a specific period covering 'any number of journeys made within that time.'[20]

[14] WE Astle*, Shipping and the Law*, (fair play publication 1980) 7.
[15] The Charter Party dilemma, (n 12) 17.
[16] Ibid.
[17] Raoul Colinvaux*, Carver's Carriage of Goods by Sea*, (Stevens, and Sons 1982, British Shipping Laws) 410.
[18] See Robertson v. Amazon Tug co. (1881) 7Q.B.D. 598; Hyman v. Nye (1881) 6 Q.B.D 685
[19] Colinvaux (n 17) 411
[20] MARÍA ÁNGELES ORTS LLOPIS, 'Contractual commitment, or obligation? The linguistic interactions in Charter Parties,' 2

Voyage charter party, on the other hand, is an agreement for the use of the ship to one or more voyages.[21]

Terms and conditions in charter party are presumed to be negotiated between contracting parties. The notion of freedom of contract seems to have been preserved under a charter party contract. The shipping market forces determine the contents of the contract. There is no international convention stipulating minimum rules governing Charters. Most municipal laws also do not have mandatory charter party laws.

However, Charters are highly complicated and standardized documents.[22] Standard charter party contracts have been issued by international shipping associations like BIMCO (Baltic and International Maritime Council) and *Syindcatnational du Commerce Exterieur Des Cereales*. The standard charter party contracts are prepared by considering the practices in the industry and are updated from time to time. The standard forms make it unnecessary to negotiate in each term of the contract and create clarity, consistency, and certainty.[23] It would have required a long time to reach an agreement between the parties, had it not been for the standard forms. The standardization of the contract lowers transaction costs in both the formation of the contract and the enforcement of the contract.

Standardization of contracts, on the other hand, seriously hampers freedom of contract, since the other contracting party, particularly the charterer, is not giving fully informed consent. The standard forms are presented by shipping associations whose members are shipowners, shipping agents, and managers. There is an inherent risk of not representing the charterer's interest whose principal activity might not be related to shipping.

[21] See Artice 133(1) of the Code.
[22] Andrei Kharchnka, 'The Meaning of a Good Safe Port and Berth in a Modern Shipping World,' (Ulrik Humber Institute for private international law, Doctrinal series 15, 2014) 6
[23] https://www.bimco.org/about-us-and-our-members/about-us accessed on February 25,2020

1.3. Organization of the Thesis

The thesis has five Chapters. The Second Chapter introduces the general organization of the selected charters and the actual chartering procedure in Ethiopian Shipping and Logistics Enterprise (Hereinafter called ESLSE).

The Third chapter focuses on **Seaworthiness** which is the most important owner's obligation. The Fourth Chapter is dedicated to **Freight**, **Demurrage and Detention** and the final Chapter is a case analysis related to Redelivery**.** These are not the only terms in the charters, the researcher selected these terms due to their importance and impossibility to cover all terms within a single thesis.

1.4. Statement of The Problem

Ethiopian Shipping and Logistic Services Enterprise (Hereinafter called 'ESLSE') has been using standard charter party contracts both in its capacity as vessel owner and as a charterer for the use of well-known shipping companies' vessels or hiring own vessels to charterers. Chartering and slot carrier agreements play vital role in satisfying the country's ever-growing international trade. Ethiopia has only eleven vessels whose tonnage is way too inadequate to cover the country's demand.

There is little or no study concerning standard charter party contracts in Ethiopia. Terms and conditions defining the rights and obligations of owners and charterers have not been studied. This makes, it very hard to presume that the parties are contracting after obtaining all relevant information for reaching rational decision. The compatibility of the age-old Maritime Code with the standard charter party contracts is not also examined. The knowledge gap in the study area is costing the nation very high in the most lucrative business in which millions of dollars is at stake.

1.5. Research Objectives

The research examines the contents of main terms in the selected charters that are widely used in ESLSE. These are; **GENCON** 1994, uniform bulk dry cargo voyage contract, issued by BIMCO; **Continent Grain charter party** 2000, voyage charter party used for transportation of grains like wheat, issued by *Syindcatnational du Commerce Exterieur Des Cereales*; and **Shell TIME 4**

1984 as amended 2003, a time charter party used for transportation of oil and related products, issued by Shell International Trading and Shipping Company Ltd.

The compatibility of these contracts with Ethiopian laws and practical challenges facing the applicability of these contracts are focuses of the research. A comparative study will be principally made with English law; a leading Maritime legal system that has consistently chosen to govern the contracts due to its "enormous experience" in settling charter party related disputes.[24]

1.6. Research Questions

1. What are the main rights and duties of the shipowner and charterer in the selected standard charter party contracts and how the contracts are being negotiated?
2. What are the practical legal problems related to chartering in Ethiopia?
3. How far is Ethiopian law compatible with these standard contracts?

1.7. Methodology and Methods

The research can be classified as Empirical Legal Research if the term Empirical is defined to mean the employment of observational pieces of evidence (data). Standard charter party contracts that have been signed by ESLSE are collected to make a proper examination of the contents of the contract.

The research makes some descriptive inference in addition to observing the existing legal and factual conditions on Charters. Descriptive inference is the "process of using the facts we know to learn about the facts we do not know." One of the research objectives is to infer future problems that might arise relating to Charters by examining the existing problems. All the above raised empirical research objectives require the use of rigorous research tools.

The research is mainly qualitative. The research questions demand an extensive doctrinal reading of both the contracts and the interpretation given to the terms of the contract. The opinions given in these issues are subjective.

[24] Kharchnka (n22)3

The researcher has collected Charters from the legal department of ESLSE. The researcher has the privilege to access this data and tries to use them to the extent that it does not affect his contractual and legal duty not to disclose confidential information. Representative sampling will be used for collecting the Charters since there is no need to examine duplicate documents that have been signed with different parties. Legal opinions given relating to Charters will be examined to find out the practical problems.

The Qualitative issues identified in the methodology are investigated by interviewing the highest officials working in the shipping sector in Ethiopia and conducting an extensive literature review. The researcher has the opportunity to work with the experts in Chartering as part of his legal officer job in the enterprise and working ongoing charter party related responsibilities.

The above methods show that secondary data, (documents, books), is the main source of the research. This does not mean the research is less reliable. Most of the issues raised in the research are addressed through secondary data since Charters are written documents and formal communication in the ESLSE is done via written communication. However, the researcher has assessed the reliability of these documents by cross-checking with the primary data to be gathered through interviews.

The researcher has chosen interviews over other tools like questioners because the qualitative questions demand using extensive information. They are not yes or no questions. Relevant Court as well as Arbitral decisions are also examined.

1.8. Limitations of the Study

The research does not cover all charter party related issues. Charter parties are very complex and technical documents and it is not possible to cover all charter terms within a single LLM thesis. It is only intended to give a general picture of the terms, laws, and practices of chartering in Ethiopia and to inspire further legal studies on a charter party which is almost completely neglected from the legal discourse.

The other limitation of the study is confidentiality. Both the Arbitration procedures and the contracts that are signed by ESLSE are confidential and the researcher cannot disclose all relevant information describing the identity of the parties.

Charter parties are full of technical terms that are specific to shipping. This makes it harder to convey an understandable message to the readers. It is tried to make the paper understandable by defining some technical terms in the footnote.

Chapter Two

Organization of Standard Charters and Chartering Procedure

2.1. Organization of Standard Charters

The most commonly used standard contracts for dry cargo is GENCON (Uniform General Charter). It is BIMCO's (Baltic and International Maritime Council) general uniform voyage charter revised in 1994.[25] Grain voyage charter party as its name implies is used for transportation of grain[26]while Shell TIME 4 is a time charter party specifically designed for Oil and related products.

Gencon 1994 has two parts and the parties can amend the two parts by striking through the standard clauses or adding Rider clause. Part one is known as Box form. In this part, necessary information describing the name and address of the owner and the charter; the vessel and the cargo are provided. Moreover, the freight rate, laytime, and demurrage rate are to be determined in this part. This part has contained 26 boxes the content of which is negotiable. The detailed standard terms and conditions are written down in Part II with 19 clauses in 417 lines. These are predetermined and not-negotiable terms that define the right and obligation of the parties unless the parties excluded them by inserting a rider Clause in Part 3. The Charter's organization is much simpler than other charters and applicable to any kind of general cargos.

Similarly, Grain Charter Party (2000) has two parts along with additional clauses that are freely determined by the parties. The first part is box form whose particulars are to be inserted by the parties. Description of the parties, vessel and the cargo, freight rate, and demurrage are the most important particulars in this part. Gencon and Grain charter difference lies in the nature of the cargo. Both Gencon and Grain Charter are voyage charters however; the latter is exclusively dedicated to the transportation of Grains (Wheat, Maize, and Barley). The second part of this charter has contained 28 clauses in 525 lines containing the detailed non-negotiable terms and conditions unless excluded by additional clauses.

[25] Explanatory Notes on GENCON Charter Uniform General Charter - Revised November 1994, 1
[26] Kharchnka, (n 22)6

The last Charter, Shell Time 4(1984 amended 2003) is different from the above two Charters both in nature and complexity. Shell Time 4 is a standard Time Charter specifically designated to be applied for the transportation of crude petroleum and/or its products. The first part describes the parties and vessel in much more elaborated detail containing technical descriptions of the vessel and the parties. The second part is the main part of the standard contract listing down the terms and conditions of the contract in 48 clauses and 808 lines. The final part is an additional clause that contains freely negotiated terms. This part overrides the second part.

These Charters are widely used by Ethiopian Shipping and Logistics Services Enterprise. Shell Time 4 is used by the ESLSE to hire out its tanker Vessels "MT Hawassa and MT "Bahirdar" to oil companies.[27] The Enterprise charters in vessels owned by international shipping companies like Guardian Navigation, Singapore Shipping International and Western Bulk to carry coal, copper, and steel by using the Gencon charter. It is also chartering out General Cargo Vessels M/V Assosa and Shebelle by using Gencon charter. Finally, Grain charter party is being used by the ESLSE to import wheat on behalf of government owned cargo receiving agents. ESLSE becomes a "**Disponent Owner**" by in turn requesting Government Agencies that import wheat to sign a back to back charter which it has made with the owner. [28]

All the charters have contained Arbitration and Applicable Law Clauses.[29] The applicable law and Arbitration in all Charters are English law and London Maritime Arbitrators Association (LMAA) arbitration.[30] England has a developed jurisprudence in Maritime law. For this reason, the thesis focuses on England's case law and the Ethiopian Maritime Code.

[27] The vessels have exclusively been chartered under Shell Time 4

[28] More than 50% of the signed charters examined by the researcher from the archive of ESLSE'S legal, insurance, and claims department are Gencon 1994 forms.

[29] Clause 19 of Gencon, Clause 28 of Grain charter and Clause 46 of Shell Time 4

[30] Even if Grain Charter chooses French law as applicable law and arbitration by *Chamber Arbitrate Maritime de Paris,* it has always been deleted and replaced by English law and Arbitration by the ESLSE for the sake of consistency.

2.2. Chartering Procedure in ESLSE

Providing international Maritime transportation is one of the principal objectives of ESLSE.[31] The Enterprise can even be considered as a state monopoly of sea transportation since every contract of sale concluded by Ethiopian importers is legally required to include a FOB (free on board)[32] term and nominate ESLSE as a Marine transporter unless there is a waiver granted by ESLSE to choose other shipping companies.[33]

ESLSE has an independent Shipping Sector governed by Deputy CEO. The sector oversees the commercial department and chartering divisions that are responsible for the chartering negotiation and monitoring execution of the contracts. The negotiation and following up of chartering are regulated by a working procedure manual.[34]

Shipbroker plays a huge role in the negotiation of standard charters. A Shipbroker is an individual or corporation acting in the middle between the owner and the charterer. Shipbrokers are highly informed of the prevailing state of the shipping market. ESLSE has detailed procedures for selecting brokers.[35]The Enterprise has authorized brokers list which is amendable from time to time by considering BIMCO member shipbrokers list and brokers nominated by ESLSE's agents.[36]

The Chartering operation procedure starts by collecting chartering requests from cargo receivers. The cargo receivers(which might be individuals or government agencies) request ESLSE to give them chartering service by incorporating relevant terms in their contract of sale such as the type of cargo, weight of the cargo, date of shipment, name of loading port(the discharging port is

[31] See Article 5(1) of Ethiopian Shipping and Logistics Services Establishment Council of Ministers Regulation No 255/2011

[32] FOB is an INCOTERM which empowers the buyer to nominate the marine transporter and the obligation of the seller ends at the time when he places the goods on board of the ship nominated by the buyer.

[33] Federal Democratic Republic of Ethiopia Office of The Prime Minster Directive,(commonly Known as FOB directive) dated 23/05/2000(15/09/1992 E.C)

[34] Chartering Procedure Manual approved by CEO of ESLSE dated 16 Jan 2019 (08/05/2011 E.C)the manual is attached hereunder, hereinafter called "*the manual*"

[35] Article 6.3 of Ibid

[36] Article 6.3.1 of Ibid. The official website of BIMO authorized shipping brokers is https://www.bimco.org/about-us-and-our-members/why-join-bimco/broker accessed on May 26, 2020

virtually port of Djibouti), dates of loading and Unloading.[37] Then, the enterprise sends this information to all authorized brokers via email. This procedure is known as *floating*.[38]

In the floating stage, brokers should submit offers within 24 hours on behalf of owners.[39] The offer of each broker will be examined by ESLSE to assess the current market price.[40] Then, the Enterprise will present a counteroffer to the brokers.[41] The offer and counteroffer focus on the freight rate, demurrage rate, and other terms and conditions. The negotiations do not usually focus on part two of the standard contracts but on the rider clause which replace the predetermined terms of part two and part one (Box form) of the standard charters.[42]Before the conclusion of the charter party contract with the ship-owner the draft contract is reviewed by Legal, Insurance, and Claims department of ESLSE and further negotiation will be conducted with the owners by considering the legal opinion.

2.3. Share of Chartering from Total Cargo Transportation

ESLSE owns 9 dry cargo vessels with a total carrying capacity at a time of 329,185 ton.[43] It also owns 2 oil tanker vessels. Each oil tanker has the capacity to transport 42,000 metric tons of oil. This carrying capacity cannot satisfy the country's import and export demand. ESLSE's involvement in export cargo from the year 2004 to 2011 E.C. ranges from 0.03 to 0.011 % from the total Export cargo which is too much insignificant.[44] ESLSE main participation is on the import cargos. In the year 2011 E.C alone it has transported 4,338,437-ton cargo which is 38.7 % of the country's total 11,216,392-ton import. The Enterprise manages to transport by using foreign owned vessels either by concluding a charter party contracts mainly for bulk cargos or a contract for the carriage of containerized cargo with liner shipping companies. The share of Vessels owned by the Enterprise from the total cargo is only 20.5%.

[37] Article 7.4 of Ibid
[38] Article 7.4.2 of Ibid
[39] Article 7.4.3 of the manual
[40]In an interview with Ato Girma Mekonin who is a division Manager of Marketing and Chartering Department, the researcher has learned that the floating stage is the principal stage to identify the prevailing freight rate. There is a need to develop website to follow up the international shipping market which is changing daily.
[41] Article 7.4.5 of the Manual
[42] The researcher is member of the legal department of ESLSE and has conducted numerous on job interviews the Director of ESLSE Ato Yared Shiferaw and Division Manager Melaku Mekonnen.
[43] Ethiopian Shipping and Logistics Services Enterprise statistical Bulletin, (Ethiopian FISCAL Year Series, 2011 E.C) 19
[44] Ibid 13

The arrangement for the use of international shipping liners vessels for transportation of containerized cargo is known as Slot carrier arrangement which is completely different from charter regime. It is exclusively used for transportation of containerized cargos. In these arrangements, ESLSE serves as 'Non-Vessel Operating Common Carrier'(NVOCC). The relationship between the liner and ESLSE is governed by independent contract which is not charter party. In the contract, the liner company is required to offer suitable container space according to ESLSE's booking request. ESLSE issues bill of lading to the consignee in its own name by switching the in-house bill prepared by the liner.

The cargo transported by ESLSE by using charter parties are mainly non-containerized bulk and Break Cargos. The most commonly transported cargos are Coal, Cooper, sugar, and Oil. In this year, the enterprise has started transporting Wheat using Grain Charter and Fertilizers by using Ferticon standard charter. 1,000,000 metric ton wheat and 1.45 metric ton fertilizer have been transported in 2012 E.C.[45] ESLSE is using chartering for the transportation of essential goods by chartering in vessels owned by foreign companies or by chartering out its vessels to charterers which are usually suppliers to the cargo receivers.

The cargo receivers for most of the charters concluded by ESLSE are Government enterprises such as Public Procurement Agency, Ethiopian Trade Works Corporation, and Ethiopian Petroleum Corporation. These enterprises are expected to sign a back to back charter party with ESLSE so that ESLSE can exercise all the rights of the owner in the original charter against these Enterprises. The back to back charter allows the enterprise to act as a ***disponant owner*** against the cargo receivers which will become ***disponant charterer***. The researcher has observed from the interviews and participation in negotiations that the government Enterprises are reluctant to conclude a back to back charter with ESLSE and the terms and conditions in the contract of sale they conclude with suppliers are sometimes inconsistence with the terms and conditions of the charter.

[45] ESLSE 2012th Nine Months Execution Report by The CEO of the Enterprise available at https://www.youtube.com/watch?v=G5cAUcqiDrw accessed on June 4, 2020.

Chapter Three

Seaworthiness

3.1. Seaworthiness in General

The selected standard charters expressly warrant the fitness of the vessel for the voyage and safekeeping of the cargo. Seaworthiness of the vessel is an implied undertaking in the absence of express agreement. The meaning and scope of this undertaking has always been the main subject of matter of Marine law. Seaworthiness is not only limited to the structural and cargo worthiness of the vessel; it also includes the obligation to sufficiently man and equip the vessel and the obligation to hold all the required licenses for the voyage.[46]

3.2. Seaworthiness in Common Law

The Common law[47] presumes the shipowner to give an implied undertaking for the charterer as to the seaworthiness of the vessel.[48] This implied obligation is equally applicable to contracts of carriage covered by a bill of loading and Charters.[49] Courts, in principle, are not allowed to imply terms of the contract in the name of interpretation.[50] Common law judges imply seaworthiness to give business efficiency to the transaction.[51] A shipowner whose regular business undertaking is the carriage of goods (common carrier) is expected to provide a vessel that is fit to perform the very purpose of the contract. The vessel is expected to be fit in all respects to receive and carry the cargo safely, having regard to ordinary perils the vessel might encounter on the voyage.[52]

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[46] Newfoundland Export & Shipping Co Ltd v United British SS Co Ltd (The Framlington Court) (1934) 69 F 2d 300 (5th Cir) cited from Stephen Girvin, 'The Obligation of Seaworthiness; Shipowner and Charterer' (CML Working Paper Series, 2017/019 http://law.nus.edu.sg/cml/wps.html accessed on April 5,2020)13

[47] Common Law is by and large the product of century's long England Court decisions. It is a collection of legal norms and principles developed by courts.

[48] Sir Alan Mocatta, Michael J.MUSTILL, and Stewat C. Boyd, *Scrutton on Charterparties and Bills of Lading* (Sweet & Maxwell 1974, 18th ed) 80

[49] Njj Gaskell, C Debattion and Rj Swatton, *Shipping Law* (8 th edn, Pitman Publishing 1997) 186

[50] Article 1733 of the Civil Code similarly prohibits courts to make contract in the name of interpretation when the expressed terms are clear.

[51] Julian Cooke 'and others,' *Voyage Charters,* (Informa Law from Routledge, New York, 4th edn 2014) 1.123

[52] Ciampa v. British India Co. [1915] 2 K.B. 774 cited from Mocatta(n48) 82

The standard which is commonly used to measure the fitness of the vessel is 'ordinary, prudent and careful owner's vessel having regard to all the probable circumstance of it' [53]

Seaworthiness has two main aspects; **Vessel and Cargo** seaworthiness. The carrier has two main duties in contract of carriage by sea; *transportation* of the cargo from one place into another (Seaworthiness pure and simple) and the *safekeeping* of the cargo.[54] The shipowner is not only transporter of the goods but also a bailee who has an obligation to safely keep the goods entrusted to him.[55] The law of bailment generally imposes reasonable care duty on ordinary or common bailee. English law imposes a higher standard degree of care on innkeepers and common carrier by imposing absolute and strict duty to provide a seaworthy vessel for the safe up keeping of the goods.[56] .

The responsibility of the shipowner to provide seaworthy ship is absolute. The shipowner cannot allege latent defect or he has taken all due care to make the ship seaworthy if the vessel is in fact unseaworthy.[57] The only standard to determine seaworthiness is would prudent owner have required, the defect to be made good had he known the defects? If the answer is yes, the ship is unseaworthy.[58]

This doesn't mean the obligation of the shipowner is not relative to the nature of the vessel and voyage. The degree of fitness required from ocean-going vessel is not similar with the degree of fitness required from seagoing vessel. It is to be assessed by taking into account the prevailing business practice at the time of making of the contract.[59]

The shipowner is not expected to use the highest available technology but only the one that is prevailing in the industry. In *Bradley v. Federal Steam Navigation*[60] the charterer's claimed that his apples were damaged with brown heart disease due to the failure of the shipowner to install similar ventilation system with the one used in battery vessels and hence the vessel is

[53] Mcfadden v. Blue Star Line{1905] I K.B.697,at p.706 cited from Gaskell(n 49) 187
[54] Ibid
[55] Ibid
[56] Ibid,
[57] Ibid 703
[58] FC Bradley & Sons Ltd v Federal Steam Navigation Co (1926) 24 LlL Rep 446 at 454, cited from Martin Dockray, *Cases & Materials on the Carriage of Goods by Sea,* (Cavendish Publishing Limited, 3rd edn, 2004) 46
[59] Ibid
[60] Bradley v. Federal Steam Navigation, (1926) 24 Ll. L. Rep. 446. Cited from Ahmad Hussam, 'The Legal Aspects of Seaworthiness: Current Law and Development' (PHD dissertation submitted to Swansea University, 2006)32

unseaworthy. The court rejected the claim of the charterer on the ground that the vessel had another ventilation system known as grid ventilation system which is equally used by the market. The owner is not required to provide a perfect ship.

The vessel is only expected to meet the fitness requirement specific to particular stage of the voyage. This is known as **doctrine of seaworthiness by stage**. [61] The vessel is not required to be fit for sailing before the completion of loading stage. At the commencement of loading, the ship is only expected to be fit to receive the cargo and stay afloat in harbor.[62] The vessel need not have sufficient bunkers (fuel) for the whole voyage at the commencement of loading, but only enough to take to the next usual bunking port. [63]The doctrine of seaworthiness by stages is not applicable for time charters, since the contract is not made for specific voyage but for certain period.[64] The owner in time charter is only required to meet seaworthiness at the time of delivery of vessel and not throughout the charter period unless otherwise agreed. Bad Stowage which endangers the safety of the vessel may amount to the unseaworthiness of the ship.[65] The time for assessing seaworthiness is the time of commencement of the voyage.

3.3. Effect of Unseaworthiness

Common law divides terms of the contract into three categories. The first categories are **Promissory Conditions;** nonobservance of these conditions automatically gives rise to cancellation right to the innocent party. The second ones are **Warranties** which only give rise to demand compensation but not right to cancel the contract. The final ones are **Innominate Terms**. The breach of these terms does not result in the cancelation of the contract unless the breach is fundamental and essential[66]

The obligation of Seaworthiness is not a condition. The charterer cannot demand the cancelation of the contract for the mere fact that the vessel is unseaworthy.[67] In principle, the charterer is

[61] Gaskell (n 49) 197
[62] *Reed v. page* [1927] 1 K.B 743; *Svenssons v. Cliffe* S.S. Co. [1932]
[63] Mclver & Co.,Ltd v. Tate steamers Ltd.(1903) Cited fromH. Holman, *A Handy Book for Shipowners and Masters; the 1971 Supplement on Oil Pollution* (Steamship Mutual Management LTD.1964) 150
[64] Giersten v. Turnbull, 1908 S.C. 1101 cited from Raoul Colinvaux, *Carver's Carriage by Sea* (Stevens & Sons,London, 13th edn, 1982)122
[65] Elder Dempster v. Paterson Zochonis [1924] A.C. 522 cited from Mocatta(n48) 83
[66] Mocatta(n48) 73
[67] Colivaux,(n 64) 106

only entitled to compensation for the losses he has encountered as a result of unseaworthiness. This proposition may give an impression that seaworthiness obligation is a warranty. However, there are common law authorities that indicate that seaworthiness may operate as a condition; if the unseaworthiness 'goes to the root of the contract'[68] This means seaworthiness term is innominate term. The charterer treats the contract as canceled and can claim for damages if the unseaworthiness cannot be made good within reasonable time affecting the whole purpose of the contract.[69]

The burden of proving unseaworthiness generally rests on the one who alleges it, on the charterer.[70] It is difficult for the charterer to prove the unfitness of the vessel which is not under his control. In most cases, the relevant facts for proving the unseaworthiness of the vessel are within exclusive knowledge of the shipowner.[71] Courts, however, make prima facie presumption of the unseaworthiness of the vessel if the vessel sinks or leaks shortly after the commencement of the voyage without any apparent reason.[72]

International Safety Management Code (ISM) sets rules and procedures for safe management and operation of vessels. Owners are expected to install a "safety management system". The system must adhere to documentation rules and standards of International Maritime Organization (IMO), flag states, and classification societies. Modern shipping uses this code as a benchmark for adherence to seaworthiness standard. However, mere compliance and certification following this code is not conclusive evidence of the seaworthiness of a vessel.[73] However, it is strong evidence showing that the vessel is seaworthy.

3.4. Express Seaworthiness Clauses in Standard Charters

Almost all standard charters contain express seaworthiness clauses. The clauses either exclude or modify the implied obligation.[74] Seaworthiness is not a public policy provision. Courts are not

[68] Mocatta(n48) 80
[69] Hongkong Fir Shipping Co.v. Kawaski, 1962
[70] Pickup v. Thames Insurance (1878)3 Q.B.D 594; cited from (n 19) 124
[71] Gaskell(n 49) 200
[72] Madras v. P &O. (1924)18 L1.LR. 93 at p.96 cited from Mocatta(n48) 84
[73] Cooke,(n 51) 11.26
[74] Ibid. 11.27

allowed to disregard the express stipulation in the charter which excludes or modifies the common law's seaworthiness obligation.

Contract of carriages covered by a bill of loading are governed by Hague/Hague-Visby or Hamburg Rules(Cargo Liability Regimes) which impose a due diligence duty on the owner to make the ship seaworthy and any contrary stipulation is null and void.[75] These rules do not govern charters unless the parties expressly agree to be governed by them either via inserting a *paramount clause* or annexing the rules with the charter party.[76] Paramount Clause is a clause specifically incorporating cargo liability regime (Hague, Hague vis-by or Hamburg rules) into the charter. Charters incorporating explicitly incorporate cargo liability regime by stating that the charter is subject to the rules regulating bill of loading. [77]

The selected standard charters do not have a sufficient paramount clause or annexed bill of loading rules. Clause 38 of Shell Time 4 and Clause 18 of Grain Charter have contained word incorporation of Clause Paramount by requiring the charterers issuing bill of loading under the charters to be regulated by Hague/ Hague vis-by rules. It is only applicable to regulate the relationship between the charterer and bill holding consignee (cargo receiver) and not the relationship between the owner and charterer.[78] For instance, ESLSE sometimes issue bill loading for the local cargo receivers for the cargo it has transported by chartering. In these instances, the relationship between ESLSE and the cargo receivers is regulated by cargo liability regime while the relationship between ESLSE and the owner is regulated by the charter and common law.

3.4.1. Seaworthiness in Gencon Charter

Gencon charter has specific seaworthiness clause which modifies the common law's absolute obligation to deliver seaworthy vessel. The owner's duty is only 'duty to exercise due diligence'

[75] Art III (1) and Art IV (1) of Hague, Hague-Visby Rules, and Hamburg Rules Art 5 r1 and r4 (a) (I) (ii)
[76] Dockray,(n 58) 97
[77] For instance, NYPE 1993 Clause 31 states that 'This Charter Party is subject to the following clauses all of which are also to be included in all bills of lading or waybills issued hereunder'
[78] https://www.standard-club.com/media/2277755/clause-paramounts-revisited.pdf accessed on April 2, 2020

in making the ship seaworthy. [79]The owner also needs to exercise due diligence for ensuring that the vessel is "properly manned, equipped and supplied"[80]

The charter does not expressly define seaworthiness. Hence, the general law definition that has already been discussed in the previous section shall be used to determine the fitness of the vessel. The rules introduced by the ISM Code have aimed at ensuring "the safe management and operation of ships and for pollution prevention"[81] might be useful in assessing the due diligence of the owner. Due Diligence assumes a prudent owner who will take all necessary precautions by taking into account the existing knowledge and practice. *Ahmed*[82] argues that the existing knowledge and practice regarding the required reasonable care are reflected in the ISM Code.

However, the charter has shifted many responsibilities from the owner to the charter. Common law imposes liability on the owner for bad stowage. For example, stowing of the good in the vessel without adequate protection or stowing of goods in the same hold which should have been stowed separately might affect the safety of the vessel and create damage to the cargo.[83] Clause 5 of the Gencon charter expressly states that the cargo is loaded and stowed by the charterer. This means the owner is not responsible for any loss that may arise related to bad stowage. Charterers have been held responsible for improper stowage related claims when there is a clause stating that the cargo is loaded and stowed by the charter even when the master of the ship participated in the loading and stowing.[84]

3.4.2. Seaworthiness in Grain Charter

Clause 2 of Continent Grain Charter 2000(Grain Charter) has imposed a duty on the owner to provide "tight, staunch and in every way fit for the voyage vessel." Unlike Gencon charter, the duty of the owner is absolute. The owner is not undertaking that he will take due diligence in making the vessel seaworthy, but the vessel is actually seaworthy. Courts tend to apply common

[79] Clause 2 of Gencon
[80] Ibid
[81] Preamble of International Safety Management Code (ISM)
[82] (n15) 205
[83] The Standale (1938)6I LI.LR. 223 cited from Gaskell(n 49) 189
[84] SMA 2195 (1986) (Cederholm, Berg, Carey); SMA 1721 (1982) (van Gelder, Sauer, Crocker) cited form Cooke,(n 51) 11.A. 37

law's absolute liability duty, whenever there is a general seaworthiness clause in the charter unless otherwise is stated.[85]

Moreover, the charter has contained ISM clause demanding the ship owning company and the vessel to comply with the ISM Code requirements.[86] The ISM code requires ship owning company to designate offshore support system which provides direct link between the management of the company and on shore staff and monitor and ensure the safety aspect of the operation[87]; holding relevant document of compliance(DOC) and safety management certificate(SMC).[88] The owner cannot escape liability by assigning responsibility to master or crew unlike Gencon charter.

Similar to the Gencon charter, owners are not responsible for unseaworthiness created by bad stowage as loading function is set to be done by charterers/shippers.[89] This makes the charterer liable for any loss associated with bad stowage. However, Grain Charter expressly states that the owner is responsible to provide and install all required systems for safe storage of the grain. This means the owner has undertaken to safely keep the cargo entrusted to him by the charterer (Cargo worthiness). The owner shall provide a vessel with unobstructed main holds to minimize bad storage.[90] The cargo worthiness of the vessel is to be determined in accordance with international and local regulations.[91]

3.4.3. Seaworthiness in Shell Time 4

Shell Time 4(1984 as amended in 2003) has detailed provisions imposing a higher duty on the owner to ensure the seaworthiness of the vessel. Similar to Grain Charter, but unlike Gencon, it imposes an absolute duty on the owner to deliver "tight, staunch, strong, in good order and condition, and in every way fit vessel to the service"[92] It is not only the fitness of the vessel that

[85] Similar phrase is used by Americanize Welsh Coal Charter, Australian Grain Charter (Austwheat 1956)
[86] Clause 17 of Grain Charter
[87] Cooke,(n 51) 11.26
[88] Ibid
[89] Clause 2 Line 19 of Grain Charter
[90] Clause 2, Line 25-29 of Grain Charter.
[91] Ibid
[92] Clause 1, Line 9-12 of Shell Time 4 (Issued December 1984 amended December 2003)

is described in the charter but also the fitness of equipment like boiler and hull. The cargo worthiness of the vessel to receive and transport oil and its products is also expressly stated.[93]

The owner is required to operate by adhering to ISM code rules of safe management and operation.[94] He has to install a documented safe working, environmental management, accident/incident reporting systems. Besides, the vessel is expected to be classified by the International Association of Classification Societies (IACS) member throughout the chartering period.[95] IACS was founded in 1968 in Hamburg, Germany. It has twelve member societies that give cover to 90% of the world cargo carrying tonnage.[96] The association provides technical assistance and compliance verification to its members aiming at ensuring "safe ships and clean seas"[97] SIRE(Ship Inspection Report Program) inspection which is introduced by The Oil Companies International Maritime Forum(OCIMF) in 1993 to reduce Marine pollution by building a database assessment tool about tanks.[98]

The charter has also contained detailed requirements to ensure Human seaworthiness of the chartered vessel.[99] All shipboard personnel are required to be efficient and competent holding valid certificates under the law of the flag state[100]; They are required to be trained following International Convention on Standards of Training, Certification and watchkeeping for seafarers(STCW)[101] 1995 together with its amendments; They are even specifically required to have working English language competence.

[93] Ibid, Line 9 and 17 of Ibid
[94] Ibid, Line 26-44 of Ibid
[95] Ibid, Line 6-7 of Ibid
[96] http://www.iacs.org.uk/about/ accessed on April 15, 2020
[97] Ibid
[98] L. Grbić and others, 'SIRE Inspections on Oil Tankers, '(The International Journal on Marine Navigation and Safety of Sea Transportation 12, No 2,2018) 359
[99] Clause2, Line 45-65 of Shell Time 4
[100] Only ships that are wholly owned by Ethiopian human and natural persons and Foreigners domiciled in Ethiopia can sail under Ethiopian flag (Article 4-6 of the Code). The flag of a vessel has impact on the safety and trading opportunity of the vessel. In time charters, the change of the vessel's flag is deemed to be a breach of the owner's duty not to alter the vessel impacting the trade opportunities of the charterer (Isaacs v. McAllum (1921) 6 Ll.L.Rep. 291).
[101] Seafarers include masters, pilots, and registered apprentices who are engaged on board operation of the vessel (Article 111 of the Code and proclamation no. 549/2007 Article 2(6)) seafarers who are engaged on board on Ethiopian vessels are not required to pay employment income tax by virtue of Article 13(2) of proclamation no. 549/2007).

Time Charters are made for a certain period, not for a particular voyage. Common law does not apply the doctrine of stages to time charters. The owner is only expected to provide seaworthy vessel at the time of delivery of the vessel before the commencement of loading and sailing.[102] However, Shell Time 4 requires the vessel to be seaworthy in all its aspects "at the date of delivery of the vessel and throughout the charter period."[103]

The owner has to maintain the vessel throughout the charter period whenever maintenance is required.[104] It has to be noted that the maintenance clause is separate from the seaworthiness clause. The owner has no continues duty to maintain the vessel, but only when there is a need to maintain as a result of wear and tear or any event which requires the restoration of condition of the vessel. The duty to maintain is not also absolute but only due diligence.

It can be concluded that Gencon is the most owners friendly charter which imposes a much lighter duty on the shipowner than the one envisaged in the common law. Grain Charter seaworthiness is more or less in line with common law rules. Shell time 4 imposes stringent responsibility on the shipowner to ensure the physical, human, and cargo fitness of the vessel throughout the charter time. This is due to the high level of risk involved in oil transportation. Maritime accidents in oil transportation may result in grave damage to life, property, and environment.

3.5. Seaworthiness in Maritime Code

Article 138 of the Maritime Code regulates seaworthiness. The provision is verbally adopted from Article 3(1) of the Hague Rules. The Hague Rules are only designed to regulate a bill of loading and not Charters.[105] The Code, however, regulates seaworthiness for both bill of loading and charters under similar General Provisions.[106]

Seaworthiness is implied absolute duty in common law in the absence of express agreement. Contracting parties are at liberty to exclude or modify this duty by agreement. One may argue

[102] Hongkong Fir Shipping Company, Ltd. v. Kawasaki Kisen Kaisha, Ltd., (The Hongkong Fir)
[103] Clause 1, Line 6, and Clause 2, Line 45 of Shell time 4
[104] Claus 3(a) of shell time 4
[105] Article 1(b) of the Hague rules states that the rules are only applicable to contract of carriage covered by a bill of loading and other documents title to goods.
[106] Title IV Chapter 1 and Chapter 2, Section 1-3 (Article 133-169) are common general provisions applicable to both charters and bill loading

that Art 138 of the Code is a public policy provision from which contrary agreement is not allowed. The phrase "the shipowner shall be bound" shows that the provision is mandatory. This assertion is true for a bill of loading since any clause in a bill of loading which directly or indirectly relives a carrier from liability is null and void.[107] This restriction is not applicable for charters as clearly stipulated under Article 205 of the Code. Clauses in charters reliving the owner from liability are not null which in effect means modification and exclusion of seaworthiness in the charter is allowed in Ethiopian Law. This means all the standard charters; we have already seen imposing a varying degree of duty on the owner would have been valid agreements had they been governed by Ethiopian Law.

The Code only imposes Duty on the owner to exercise "Due Diligence" in making the vessel "seaworthy" This is a lesser duty than the one implied in the common law. Article 139 of the Code allows the owner to escape from responsibility by proving that the unseaworthiness has resulted from a latent defect which could not be discovered by a prudent owner. The parameters to measure due diligence are not predetermined in the code. Due Diligence considers a prudent owner who will take all necessary precautions by taking into account the existing knowledge and practice. The ISM Code which sets operation standards for the operation shipping company is relevant in assessing what is expected from a prudent owner.

Article 138 covers all aspects of fitness to make the vessel seaworthy. Physical seaworthiness, Human Seaworthiness, and Cargo Seaworthiness are stated under Article 138(a-c).

Article 138(a) does not specify the qualities that must be observed to determine seaworthiness of the vessel and how to discover it. Seaworthiness in common law does not require the owner to provide a perfect ship with no defect. The vessel is still seaworthy if a prudent owner would not have required the defect to be made good had he known the defects. The vessel is deemed to be seaworthy if it can withstand ordinary perils of the sea like wave and wind. Physical seaworthiness of the vessel must be examined by considering the prevailing shipbuilding technologies, shipping knowledge and practice. Failure to employ latest technologies should not tantamount to unseaworthiness. These common law rules for the determination of seaworthiness are also important in understanding Article 138(a) of the Code. The vessel is deemed to be

[107] Article 205 of the Code. Article 44 of the Multi Modal Proclamation also nullifies any stipulation derogating from the proclamation to the determinant of the consignee or consigner

properly manned when the master and crew have obtained the required training, license and certification for the intended voyage.

The Code requires the owner to exercise due diligence before and "at the beginning of the voyage." Even if there is no stipulation of the doctrine of stages in the code, one can safely conclude that the owner is only required to exercise due diligence for each phase separately, which means the vessel should not be required to be fit for sailing at the time when it was performing loading. Time charter is not made for a single voyage and the owner is only required to provide fit vessel at the time of delivery. The owner does not impliedly warrant that the vessel will remain seaworthy at the start of each voyage throughout the charter time unless there is express stipulation similar to the one in shell time 4.[108] Some argue that, the cargo liability regime, if successfully incorporated, bounds the time charter owner to exercise due diligence at the start of each voyage within the period of the charter.[109]This assertion has not received any court approval.

The responsibility of the owner for bad stowage depends on who has performed the stowage. Art 196 which is exclusively dedicated to bill of loading states that the owner is responsible for proper and careful loading and stow the cargo into the vessel. This responsibility is not explicitly provided under Article 138 a provision applicable to charters. Hence, the owner will only become responsible for bad stowage endangering the safety of the vessel if the stowage is performed by the owner or his representatives.

Even if there is no clear distinction of obligations as warranties, promissory conditions, and innominate terms in Ethiopian law, all non-performances do not bring in the cancelation of the contract, except when they bring about "total and irreversible effect."[110] It is only a breach of fundamental provisions of the contract which affect the essence (the very purpose) of the contract that gives rise to cancelation right in addition to compensation.[111] The seaworthiness obligation could be breached by slightest non-performance to exercise due diligence in making

[108] *Giertsen v. Turnbul*l, 1908
[109] https://www.westpandi.com/getattachment/786542da-2969-40b6-9800-84a3e2f252a0/defence-gulbide_clause_paramount_4pp_v2_lr.pdf accessed on April 15, 2020
[110] Tilahun Teshome, *Basic Principles of Ethiopian Contract Law*, (Addis Ababa University Book Centre,2007) 115
[111] Article 1785 of the Civil Code it must be noted that the Civil Code general contract provisions have applicability on the Maritime Code as a gap filing provisions by virtue of 1676(1)

the vessel every way 'fit to the service.'[112] Such breaches only give rise to compensation save contrary stipulation in the contract. But unfitness of the vessel discovered by charterer before the commencement of the voyage that may affect the essence of the contract (on-time safe delivery of the cargo to the destination) gives right to demand cancelation.

3.6. Seaworthiness in ESLSE

The ESLSE operates in accordance with the ISM Code operation system and has designated offshore staffs to ensure the safety of its vessels. The company's ISM code system implementation is annually audited by the American Bureau of Shipping (ABS) Company. All the vessels owned by the enterprise are annually certified to comply with the requirements of the code.

The seafarers are trained by adhering to the international and local seafarers' training standards.[113]The training for the seafarers is given is mainly given at the Ethiopian Maritime Training Institute (EMTI) located at Bahirdar, and Babogaya Maritime Training Institute owned and run by ESLSE. Ethiopian Maritime Affairs Authority (EMAA) has been examining and issuing compliance Minimum Safe Manning Certificate for ESLSE in accordance with International Convention for The Safety of Life at Sea,1974, as amended. All vessels are safely manned when they proceed in to sea. At least Two of the Deck officers are holding GMDSS General Operators Certificate. The personnel of the vessel include among other officers Masters, Chief Mate, Second and Third Mates, Chief Engineer, Second, Third and Fourth Engineers, Deck Ratings, Engine Ratings and Catering Staff all of whom are licensed by EMAA.

Some legal disputes relating to the seaworthiness of vessels that have been chartered by ESLSE have occurred. The disputes are mainly relating to the failure of the owners to provide a vessel which meets the required speed. The owners do not usually undertake to proceed to the discharging port within specific period to avoid delay related liabilities. However, both the common law and the standard charters have imposed duty to proceed to discharging port "with all convenient speed." Sometimes the vessels do not proceed to the discharging port particularly due to stoppage of the vessels in different ports for undergoing repairs.

[112] Holman(n 63) 128

[113] Interview with the Directors of the legal and commercial department; Examination of the vessel documents and the researcher work experience are the bases for this assertion.

This may force the voyage to take much longer time than the expected time of arrival (ETA). Delay of the vessel might cause damage to the cargo particularly to bulk cargos like wheat. Wheat and similar cereals need to be transported within reasonable time to avoid infestation which might only be cured by fumigation. The owners could be held for such damages if the charterer establish the vessel was unseaworthy at the commencement of the voyage and establish causation between the infestation and the prolonged voyage.

3.7. Conclusions

The Maritime Code uses cargo liability regime rules to regulate charters. This makes the need for paramount clauses irrelevant. The Code is owners friendly by reducing common laws "absolute duty" to "due diligence." Parties can freely modify and exclude seaworthiness provisions of the code. This is in line with the international norm regarding charters.

The standard charters should carefully be examined and negotiated before the signing of the contract. Gencon charter, for example, has opened a number of exceptions allowing the owners to escape from seaworthiness related liability. Contrarily, Shell Time 4 imposes a much higher duty on the owner and the vessels by requiring adherence to all the latest international Maritime safety standards.

The legal department of the ESLSE has always been urging for the exclusion of this provision and insertion of Rider clause, whenever Gencon is negotiated as a charterer. There is ongoing Arbitration in London Maritime Arbitration Association[114] amounting to about $ 300,000. The damage to the cargo is alleged to have been caused by ballast water flooding. It is being argued that the leaking of the vessel is a breach of seaworthiness duty of the owner stipulated under Article 2 Gencon and Common law of bailment duty to take reasonable care for the safekeeping of the cargo.

[114] Confidentiality of the Arbitration procedure in LMAA prohibits the disclosure of the parties to the dispute.

Chapter Four

Demurrage and Detention

4.1. Demurrage

The owner has a special interest in each hour the vessel spent on the performance of the charter.[115] The vessel incurs numerous expenses, such as bunker expenses, port service fees, and overhead expenses in addition to consequential losses.

4.1.1. Common-Law Demurrage Definitions and Rules

Demurrage can generally be defined as liquidated damages sum payable by the charterer for the detention of the vessel for loading and unloading beyond the agreed laytime.[116] The definition presupposes that loading unloading of the cargo is the charterer's responsibility. The charterer participates in the loading and unloading process even if the navigation of the vessel is the owner's responsibility.[117]

This does not necessarily mean that the loading and unloading functions are exclusively performed by the charterer. Loading and unloading are *terminal operations* that require the cooperation of both parties.[118] However, the charterer has absolute liability(without a need to prove fault) for any delay occurring in the course of loading and unloading except for the delays covered by the exceptions on the charter or resulted from the fault of the owner.[119] The charterer's absolute liability for delays associated with the terminal operation when the time for the operation is fixed(laytime) is grounded on the *Theory of older view*. This view presumes the charterer has assumed risks associated with loading and discharging of the cargo within the fixed laytime irrespective of the obstacles that may tamper with the completion of terminal operations in the agreed laytime.[120]

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[115] Martin Dockray, *Cases & Materials on the Carriage of Goods by Sea*, (Cavendish Publishing Limited, London, 3rd Edn, 2004) 222

[116] Hugo Tiberg, *The Law of Demurrage,* (Stevens and Sons Limited, London,3rd edn, 1979) 2

[117] Hugo Tiberg, *The Claim for Demurrage*, (Stevens and Sons Limited, London, 1962) 15

[118] Tiberg (n 116) 6

[119] William Alexander v. Akt. Hansa, [1920] A.C. 88, at p. 94. Cited from Julian Cooke 'and others,' *Voyage Charters,* (Informa Law from Routledge, New York, 4th edn 2014) 16.2

[120] Tiberg (n 116)8

The freight rate for the Voyage charter is not determined based on the duration of the voyage.[121] The detention of the vessel for a prolonged time affects the interest of the owner. The voyage charterer should compensate for the financial loss incurred by the owner due to the detention of the vessel for loading and unloading beyond the laytime. Voyage Charters usually have laytime provisions which predetermine the number of days allowed for loading and unloading of the cargo to and from the vessel. The issue of demurrage arises when the charterer fails to perform these tasks within agreed laytime.

There is no demurrage provision in a time charter. The rate of Hire for Time Charter is determined based on time, hence, adding demurrage provision which is to be calculated on the bases of time creates unnecessary duplication.[122]

Historically, there was a debate on whether the failure of the charterer to complete the terminal operations within the agreed laytime constitutes a breach of the contract or only gives rise to supplementary freight claim for the duration of the demurrage.[123] The first view considers demurrage as damages by stressing on the duty of the charterer to complete the terminal operation within the agreed laytime. The second view considers demurrage as supplementary freight by stressing on the right of the charterer to use the vessel for the demurrage time. *In Steel, Young & Co v. Grand Canary Coaling Co*[124] Lord Mathew LJ has argued that demurrage is not compensation for breach of the contract but only agreed extra payment for the use of the vessel beyond the laytime. More recent cases confirm the first view. *In Union of India v. Compania Naviera Aeolus SA (The Spalmatori)*[125] *Lord* Guest has said;

> "Lay days are the days which parties have stipulated for the loading or discharge of the cargo, and if they are exceeded the charterers are in breach; demurrage is the agreed damages to be paid for delay if the ship is delayed in loading or discharging beyond the agreed period."

Demurrage in common law is liquidated damages for delay in terminal operations, unlike a claim for detention. This means demurrage is a **contractually liquidated** sum payable at a fixed rate

[121] Dockray (n 115) 222
[122] Tiberg (n 116)5
[123] John Schofield*, Laytime and Demurrage,* (Informa Law from Routledge, Newyork,6th edn, 2011) 6.2
[124] Steel, Young & Co v. Grand Canary Coaling Co (1902) 7 CC 213, at p. 217. Cited from Ibid, 357
[125] Union of India v. Compania Naviera Aeolus SA (The Spalmatori) [1964] AC 868, at p. 899. Cited from Ibid, 358

per-day or pro-rata if loading and unloading are not completed within the agreed laytime.[126] Demurrage is not only for the benefit of the owner but also protects the interest of the charterer by allowing him to detain the cargo for the agreed demurrage time at the pain of paying the per day or pro-rata demurrage rate.[127]

Usually, charters set the demurrage sum without specifying the length of the demurrage.[128] When the period of the demurrage is not determined in the contract, the charterer has the right to detain the vessel and the obligation to pay demurrage, until the date the commercial object of the voyage is not frustrated by the delay(till the delay 'goes to the root of the contract').[129] The liquidated character of demurrage allows the owner to claim the demurrage sum without the need to show that he has suffered any loss as a result of the detention of the vessel beyond the agreed laytime.[130] Demurrage provisions preclude the claim for general or unliquidated damages for the duration of the demurrage or when time is not specified for a reasonable time.

4.1.2. Exceptions Demurrage Clauses

The General rule of demurrage in common law is "*once on demurrage always on demurrage*." Demurrage starts to count due to the charterer's failure to perform the terminal operation within the agreed laytime. The charterer is in breach of his contract, whenever demurrage has begun to accrue. Any unfortunate event which has extended the time of loading and unloading while the vessel was on demurrage, would not have occurred had the charterer performed the operations within the agreed laytime as rightfully pointed out by Lord Reid in the Spalmatori.[131] This, however, doesn't necessarily mean that there has to be a fault on the side of the charterer for demurrage liability. This rule prohibits interrupting the counting of demurrage period for generally worded laytime exceptions.[132] The charterer who is already on demurrage is required to pay demurrage even for those days he did not perform the terminal operation due to force majeure incidents.

[126] Cooke (n 119)16.6
[127] Sir Alan Mocatta, Michael J.MUSTILL, and Stewat C. Boyd, *Scrutton on Charterparties and Bills of Lading* (Sweet & Maxwell 1974, 18th ed)303
[128] Schofield (n 123) 6.9
[129] Mocatta (n 127) 303-304
[130] Jamieson v. Lawrie cited from Tiberg (n 116)539
[131] Union of India v Compania Naviera Aeolus SA (The Spalmatori) [1964] A.C. 868, at p. 882 Cooke(n 119)16.3
[132] Marc Rich v. Tourloti Cia. Naviera (The Kalliopi A) [1988] 2 Lloyd's Rep. 101, esp. at p. 106. Cited from Ibid 16.4

However, the charter is not responsible for those delays that have resulted from the fault of the owner. The owner's fault interrupts the counting of both laytime and demurrage.[133] This exception is implied exception and there is no need to specifically state it in the charter party. The owner has a duty to mitigate the liability of the charterer. He cannot act to hamper the charterer's ability to load or discharge the cargo as fast as possible. He is even required to take reasonable stapes for the shortening of the detention period.[134]

The owner's lien right over the cargo directly affects unloading operation. The owner has to exercise his lien right reasonably in a manner not to increase the liability of the charterer to pay demurrage or general compensation. He should not detain the whole cargo while he can sufficiently cover his claim by detaining part of the cargo.[135] The owner is deemed to act unreasonably if he unduly detains the cargo while he could allow the discharging operation to proceed at the same time save costs without extra inconvenience to himself. [136]

4.1.3. Demurrage Clauses in Voyage Charters

Gencon clause 7 is dedicated to demurrage. The rate of demurrage is left to be negotiated by the parties. The clause provides that demurrage is payable "per day or pro-rata for any part of a day (PDPR)." The pro-rata insertion prevents the consideration of a demurrage time used in part of a day as a whole day.[137]If for example, the unloading operation took 3 and a half days, the amount of demurrage would have been calculated for 4 full days had it not been for the pro-rata provision. [138] There is similar PDPR provision under Grain charter party clause 9 which states that demurrage is payable "per day for 24 consecutive hours or pro-rata. The demurrage rate on most of the charters signed by ESLSE is around $ 8000 PDPR for both loading and unloading.[139]

[133] Ibid 16.5
[134] Ibid 16.7
[135] Ibid,
[136] Ibid
[137] Ibid 16 A.8
[138] The Lake Yelverton, 300 F. 47, 50, 1924 AMC 1056, 1060 (4th Cir. 1924). Cited from Ibid
[139] The researcher had access to the charters that have been signed by the Enterprise

Gencon clearly states that demurrage "shall fall due day by day" This enables the owner to claim demurrage for each day the vessel was on demurrage and exercise lien for the demurrage counting on discharging date.[140] There is no similar expression on the Grain charter.

The duration of demurrage is not fixed in both Gencon 94 and Grain charters. This means the owner has no right to cancel the contract on the ground of the charterer's delay to load or unload the cargo unless the charterer has delayed the operation for an unreasonably long period or frustrate the commercial purpose of the contact.[141]

The Demurrage provision of Gencon is virtually deleted and replaced by a rider clause in most of the charters signed by ESLSE.[142] The replaced a rider clause states the demurrage rate in PDPR which is usually $ 8000 and requires the demurrage to be settled within 7 days upon production of all relevant signed documents.

4.1.4. Demurrage in the Maritime Code

Article 159 of the Code defines demurrage as a Time running after the lapse of lay days whose amount is to be fixed either by the agreement of the parties or by the custom of the port. This is different from common law which always considers demurrage to be contractual.[143] Demurrage is not only a **contractually liquidated** sum but also a sum liquidated by the **custom of the port**. The code approach of not exclusively considering demurrage as contractual creation is not peculiar to the Ethiopian legal system.[144] For instance, Latin law systems recognizes the codification of customs issued by the chamber of commerce. as an independent source of law [145] The chamber has codified customs defining the time and rate of demurrage [146]

A Sum payable by the charterer for the demurrage time is defined to be "liquidated damages." The term "damages" avoid the debate on whether demurrage is a compensation for breach of the contract or an additional freight. A charterer who has failed to load or unload the cargo with in

[140] Ibid,16. A.6
[141] Inverkip SS Co v Bunge [1917] 2 KB 193, CA.; Universal Cargo Carriers Corp v Citati [1957] 2 QB 401. Cited from Simon Baughen, Shipping Law, (Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN, 6th edn,2015) 236
[142] The researcher had access to the charters that have been signed by the Enterprise
[143]Cooke(n 119) 16.6
[144] Tiberg (n 116) 530
[145]Tiberg (n 116) 132
[146] De Simone, Gli usi commerciali Maritime; Ripert, Natura,p.39 cited from Ibid

the agreed laytime is in breach of his contractual duty and is required to pay damages for the breach.

The owner "as of right" is entitled for demurrage. He is not expected to prove the damages caused by the delay in loading and unloading since demurrage is a liquidated damages. Similarly, Article 1892 of the Civil Code also provides that a defaulting party is expected to pay the agreed penalty notwithstanding the breach does not cause actual damage to the creditor.

It is not clear whether the owner can claim compensation in addition to demurrage by proving greater actual damage. In common law, the provisions of demurrage are presumed to quantify all of the damages relating to delay in loading and unloading.[147]However, Scandinavian and German laws allow general compensation in addition to demurrage if the charterer breaches some primary obligation during the demurrage period.[148] The charterer is not required to pay additional compensation for delay in discharge resulting from the loading of dangerous cargo.[149]One can argue that, the charterer is required to pay general detention in addition to the demurrage in Ethiopia law, when delay is caused intentionally with the view of causing damage, or when there is fault from the charterer by virtue of Article 1892(2) of the Civil Code.

The code restricts the demurrage time not to exceed the laytime. The Article seems to nullify the agreement of the parties which provide a longer demurrage and shorter laytime. The contracting parties are presumed to have more or less equal bargaining power which necessitates wider protection of freedom of contract. Moreover, Article 205 of the code allows the chartering parties to insert whatever terms that may relieve the owner from liability. Longer demurrage period is not only meant to preserve the owner's right but also protects the charterer's interest by prohibiting the owner from canceling the contract for the duration of demurrage. The selected charters do not define the duration of the demurrage. Almost all modern voyage charters do not fix the length of the demurrage.[150] Common law judges have interpreted these provisions to allow the demurrage period to stay much longer period than the laytime.[151]

[147] Mocatta(n 127) 305
[148] Tiberg (n 116) 564
[149] Chandris v Isbrandtsen Moller Co Inc [1951] 1 K.B. 240 cited from Ibid
[150] Cooke(n 119) 16.A.10
[151] See section 2.1 of the thesis for details

4.2. Detention

Detention is default general compensation rule which is applicable whenever demurrage provisions do not cover the delay in terminal operations. Detention is unliquidated damages for delays that are not covered by demurrage provision. Detention is related to damages at large which is to be claimed whenever demurrage provisions do not regulate the delay.[152] The owner can claim general compensation for unreasonable detention of his ship when there is no demurrage provision or when the delay has occurred before the commencement or after the lapse of demurrage.[153]

Article 160 of the Code states that the owner is entitled for detention after the expiration of the demurrage period whose length is to be determined either by the parties or custom of the port. The definition is too narrow. It does not cover delays occurring before the commencement of laytime. In practice, the charterer may cause unreasonable detention of the vessel before the commencement of demurrage or even laytime. This is not covered by the code's definition of detention which restricts it to be exclusively applicable after the expiry of laytime. For instance, the owner can claim damages for detention, caused by the charter's failure to nominate port and berth in due time.[154] This detention claim does not occur before the expiration of demurrage time but before the beginning of laytime.

The amount of detention is unliquidated in common law. The owner can only claim for general damages he has sustained as a result of the delay. The Code, on the other hand, liquidates some of the damages for detention by stating that it is equal to one-half increase of the demurrage amount in addition to general compensation. The availability of additional general compensation is conditioned on "the fault of the charterer." This can be considered as an exception to Article 1791 of the Civil Code which states that damage shall be made good without a need to prove fault so long as there is non-performance.[155] This means detention is not only limited to general compensation which is in principle to be assessed nominally [156] but also includes a legally

[152] Cooke(n 119) 16.2
[153] Holman (n 139) 307
[154] Baughen(n 141) 238
[155] Article 1795(b) of the Civil Code empower special laws to exceptionally require the proof of fault for compensation
[156] Art 1799(2) of the Civil Code

liquidated sum which is to be calculated by considering the demurrage amount. Similar to the stand of common law, delays in the performance of the charter may only give rise to a termination right if the delays defeat the commercial purpose of the transaction according to Article 144(3) of the code.

4.3. Demurrage and Detention related Disputes in ESLSE

Demurrage and Detention are the most commonly contested topics in ESLSE's chartering practice. Owners have a contractual lien over the cargo for the payment of demurrage and detention claims in the standard contracts. Some owners, threaten ESLSE to exercise their lien right unless they are paid demurrage for delays that are not related to loading and unloading even without delay from the side of ESLSE.[157]

Suppliers of the cargo perform loading operations on behalf of ESLSE. The suppliers have no contractual relationship with ESLSE but with the cargo receiver. The contract of sale which is concluded between the supplier and cargo receiver determines among other things who are responsible to load the cargo on board and the duration of loading. We have seen, in chapter two that before the signature of the charter party the cargo receivers should submit to ESLSE the loading port and the time required for loading. Whenever loading is delayed, ESLSE has to pay demurrage for the shipowner and it is immaterial that the loading is performed by a third-party supplier. However, ESLSE claims back from the cargo receiver who is expected to sign a back to back chartering. with ESLSE the loading demurrage it has paid to the owner as a result of a delay from the supplier.[158]

Liquidated demurrage claim is only for delays related to loading and unloading operations. However, some owners claim for the payment of demurrage on ground of alleged breaches that are not related to loading and unloading. For instance, one owner had claimed a demurrage amounting around $ 100,000 for an alleged delay in payment of the freight which he claims to have prevented him from reaching in to the loading port. However, the delay in payment was due to the owner's arbitrary changing of his banking account and it cannot be a ground for the demurrage claim since ESLSE had paid the freight before the commencement of loading

[157] The researcher has participated in a negotiation with owners who have demanded inflated demurrage and detention claims.
[158] Interviews with Ato Yared Shifferaw Director of Legal and Insurance Department Director

operations. Charter party related disputes are usually settled by negotiations. The owner has withdrawn this particular claim after a long negotiation with ESLSE.[159]

Some owners do not try to mitigate the ESLSE's liability and they event intentionally try to increase it by demanding unreasonable payment and refusing to continue the operation unless the unreasonable payment request is settled.[160] For instance, one owner had demanded additional freight by increasing the rate of the freight from $32 per metric ton into $36 per metric ton. He further calculates dead freight on his rate by disregarding the agreed per metric ton rate. The owner intentionally refused to operate the vessel unless his requests are fully settled. He was informed that his request is not supported by the charter. Later on, the owner revised the original claims as per the charter and requested detention for the dates in which the operation was delayed due to the dispute. The detention claim is not proper as the delay in the performance of the vessel is resulted from the owner's unsubstantiated detention claim. This shows that ESLSE needs to carefully follow up on the claims and the actions of the owner otherwise it might expose it to undue payment requests.

ESLSE has a sister company in Djibouti named MTS (Maritime and Transit Services) which provides Stevedoring, Clearing and Forwarding and Shipping Agency Services. The company is registered in Djibouti. The stevedoring service which is related to loading and unloading of the cargo to and from the vessel has direct relation with demurrage. The company's performance is being seriously affected by the protectionist policy of Djibouti port official which tends only to allow Djibouti citizens to perform the stevedoring activities.[161]

The time spent for fumigation of infested bulk wheat cargo has been a principal source of demurrage and detention claims in ESLSE. Wheat cargo is highly exposed to infestation when it is carried on sea. Fumigation is needed to cure the infested cargo. Even if the suppliers who have concluded contract of sale with cargo receiving agencies are required by the contract of to hand over fumigated wheat, the cargo might need additional fumigation during the voyage or after arriving at delivery port. Marine Fumigation or fumigation of cargo while the cargo is in the ship holds is becoming common practice and there is a code of practice on safety and efficacy of

[159] Ibid
[160] The owner's duty to mitigate the charterer's liability is discussed in section 2.2.2. Similarly, Article 1802 of the Civil Code imposes a duty on the innocent party.
[161] On Job interview with Chartering Department Head

Marine Fumigation issued by the International Marine Fumigation Organization (IMFO) in 2010 setting rules and standards that guide operation of marine fumigation by fumigating companies in compliance with IMO Recommendations on the Safe Use of Pesticides in Ships, MSC.1/Circ.1264.

Additional Clause 38 of Grain Charter party provides that all fumigation expenses at loading and discharging ports before or after loading and discharging enroute, in transit or at sea shall be covered by the charterers. The time spent for such operation shall be counted as a laytime or time on demurrage as the case may. The clause imposes implied duty on the owner to all the charterer to conduct fumigation operation on the vessel and to provide a vessel with airtight hatches so that the phosphine gas used to fumigate the infested cargo does not leak. Standard Fumigation clause is introduced in 2015 by BIMCO has introduced similar fumigation clause which specifically require fumigation to be at the expense and risk of the charterer.

Demurrage and detention disputes relating to fumigation arise particularly when the cargo is infested due to owner's fault to proceed to discharging port. ESLSE as a charterer argues that had the vessel not had unseaworthiness that caused the delay, it would have arrived at the discharge port on time, the cargo would not have been infested. Hence the fumigation resulted from such failures should be covered by the owners. The other dispute relates to who should cover the time spent for refumigation resulting from the leakage of hatch covers of the vessels to hold the phosphine gas long enough. The writer is of opinion that such expenses should be covered by the owner since the owner is expected to provide cargo worthy vessel which is suitable for fumigation.

4.3.1. Practical Difficulties Relating to Dead Freight

If the freight rate is determined on the basis of the weight of the cargo to be delivered in the loading port and if the charterer delivers lesser weight, then he must pay *dead freight* for the difference of the actual delivery and the agreed weight.

Practically speaking, the charterer's ability to provide the agreed full and complete cargo is influenced by external factors. ESLSE usually charters for the transportation of goods that are purchased by government enterprises. The supplier's obligation to deliver the agreed goods to the named port for the government enterprises is governed by the contract of sale in which

ESLSE is not privy. Sometimes, there are provisions in a contract of sale allowing the supplier to deliver plus or minus 10% of the agreed weight. The maximum negotiated concession owners make in the selected charters is plus or minus 5 % of the agreed weight charterer's option. Some voyage charters even have given the plus or minus option to owners.

The suppliers based on their contract of sale deliver 10% lesser cargo on the loading port, while the charter party requires full delivery of the cargo. This gives rise to the owner's dead freight claim based on the charter. The solution to solve this problem is making sure that the government enterprises conclude a contract of sale that is compatible with charters.[162]

4.3.2. Lien Right

The transported cargo serves as a principal security for the due payment of freight. The owner will have an edge over the charterer if he is allowed to detain and sell the transported cargo when the charterer fails to pay the freight. Article 156 and 177 of the Code grants possessory lien over the carried cargo in respect of non-paid freight. There is no lien right if freight is agreed to be paid before and independently from delivery in common law.[163]

The Code does not make any difference between freight in Advance and freight conditioned on delivery. This means an owner who has agreed to receive remuneration for the service before the completion of the cargo but does not receive the remuneration has the right to exercise lien in Ethiopia. Moreover, the Code has expressly expanded lien right for demurrage and detention under Article 168 and 169. These provisions give the widest possible protection for the owner.

Clause 18 of the Grain charter party has a provision which precludes, the owner's lien right over the cargo if the Bill of Lading is marked 'freight prepaid.' The owner cannot exercise a lien over a bill of lading holder whose bill which is marked 'freight pre-paid'[164] Gencon does not have 'freight pre-paid'(marked bill of lading) provision. However, the marked bill holder has the right to receive the cargo as per Hague/ Hague vis-by rules even if nothing has been stated in Gencon. Clause 10 of the Gencon states that the charterer has to indemnify the owner against all

[162] Discussion with the shipping service sector deputy CEO, Legal, Insurance and Claims Department and Commercial department regarding dead freight claim.
[163] Raoul Colinvaux, *Carver's Carriage by Sea*, (Stevens & Sons Limited, London, 12th edn, Vol 2,1971) 1335
[164] H. Holman, *A Handy Book for Shipowners and Masters; the 1971 Supplement on Oil Pollution* (Steamship Mutual Management LTD.1964) 322

consequences and liabilities that may arise from the signing of the bill of lading. One of the consequences of signing of a marked bill of lading is the preclusion of lien right against the bill of lading holder.[165] This once again shows how far Gencon is owner friendly.

The owner cannot exercise lien right before the completion of the voyage. Article 156 of the Code expressly restricts the place of exercising lien right to the port of destination. The owner is prohibited from exercising his right of lien before completion of the voyage and the place of exercising of lien is the discharge port unless it is commercially impracticable to exercise it at the discharge port in the common law.[166] This exception is not stated under the Code. However, Ethiopia is currently a landlocked country and it is commercial disadvantageous for the owner to exercise lien in the discharge port. It would have been much more advantageous, had the owner been allowed to exercise his lien right in warehouses (dry ports) located within Ethiopian territory.

Lien is a possessory right that requires the cargo to be at the disposal of the owner either through actual control of the cargo on board or by placing the goods at a warehouse (Constructive possession). The owner cannot exercise a lien on the cargo if he has surrendered the goods to the charterer or the consignee. If the owner lost possession of the cargo, he cannot detain the goods and apply for the sale of the goods as envisaged under Article 156 of the Code. Article 155(1) of the Code seems to grant the owner a lien even after he has delivered to the consignee for 15 days where such cargo is not passed over to third parties. There is no possibility the owner can exercise a lien over the goods he has no possession (except the owner has regained possession of the goods).[167] The Amharic version of Article 155 uses the term pre-emption right *'የተቀዳሚ ኑት፡ መብት፡'* instead of 'lien on the goods' pre-emption right is a preference right granted to the beneficiary when the owner of the good decides to sell the good.[168] Hence, the Amharic version is plausible, and the shipowner has pre-emption right and not lien right once he has lost possession of the cargo to the charterer.

[165] Julian Cooke 'and others,' *Voyage Charters,* (Informa Law from Routledge, New York, 4th edn 2014) 13118
[166] International Bulk Carriers (Beirut) S.A.R.L. v. Evlogia Shipping Co. S.A., vs Marathon Shipping Co. LTD. (THE "MIHALIOS XILAS") [1978] 2 Lloyd's Rep 186 cited from https://www.steamshipmutual.com/publications/Articles/Articles/Exercise_Lien.asp accessed on April 23,2020
[167] Colinvaux (n 163) 1362
[168] Article 1410(2) of the Civil Code

4.4. Conclusions

The detention of the vessel beyond a reasonable or agreed time affects the financial interest of the owner who charters his vessel on voyage charterer. Demurrage claims are liquidated sum claims to be invoked by the owner if the charterer fails to load and unload the cargo within the agreed laytime. Common law always considers lien to be contractual while our code recognizes liquidated sum claim created by the custom of the discharging port. Detention is unliquidated damages to compensate the owner for delays that are not covered by demurrage provisions. The Code only recognizes delays occurring after the lapse of the demurrage period as detention while delays by the fault of the charterer might also occur before the commencement of the demurrage period.

A charterer or a shipowner should carefully examine the demurrage and detention claims as malicious claims are common. The operation of the vessel should carefully be followed up and all relevant documents must be kept to properly examine malicious payment requests. The charterer should make sure that he has discharged his contractual duties within the agreed or reasonable time to avoid demurrage and detention claims.

ESLSE delegates its duty under the charter to load the cargo within the agreed laytime to the suppliers who do not have contractual relation with ESLSE. ESLSE is liable to the owner for delays in loading and unloading. It cannot claim it back such demurrage expenses from the suppliers as the suppliers do not have contractual relationship. The only option ESLSE has is claiming the reimbursement from the cargo receivers that have signed a back to back charter.

Lien is possessory right over the cargo which is the principal security for the owner to ensure that the charterer will discharge his payment obligations. Common law, in the absence of express agreement, only implies lien over freight and general average contribution while the Code gives wider lien right by including the lien right for Advance freight, demurrage, and detention.

Chapter Five

Late Redelivery

In the previous chapter, we have discussed the charterer's principal obligations concerning voyage charters by which the owner agrees to carry cargo for designated voyage or voyages in return for a payment of freight.[169] This chapter, which is the final chapter of the paper examines the charterer's right to control the operation of the vessel and the duty to redeliver the vessel. Time Charters are made for specific period and the charterer is under a duty to ensure that the vessel is redelivered to the owner at the end of that period. This means the charterer's final voyage order duration should coincide with the end of the time chartering period.[170]

Time charters require the operation of the ship to be carried out by the owner upon the direction of the charterer throughout the chartering period.[171] The Time charterer directs the 'where to go' of the vessel by considering the commercial availability of the cargos to be transported.[172] The time charterer, unlike classical voyage charterers, continuously direct the vessel to proceed to loading and discharging ports.[173] The Charterer is required to insure that the vessel is free from his cargos and capable of undertaking its next commercial commitments by insuring the all of his cargos are unloaded at the time when chartering period is lapsed and the final discharging port is reachable within the chartering period. The extent of charterer's liability in case when it does not comply with this requirements has been the subject litigations in ESLSE.

5.1. The Achilleas[174]

Facts of the Case

Owners, (Mercator Shipping Inc, the respondent), of a vessel named the *Achilleas*, had let the vessel on a time charter to, (Transfield Shipping Inc, The Appellants), from 22 January 2003 to 2

[169] Julian Cooke 'and others,' *Voyage Charters,* (Informa Law from Routledge, New York, 4th edn 2014) 1.1
[170] Terence Coghlin, *Time Charters,* (Informa Law from Routledge,7th edn, 2014) Para 4.46
[171] Article 171 and 172 of the Code.
[172] (n 170 Time Charters) para 1.8
[173] D. Rhidian Thomas, The Evolving Law and Practice of Voyage Charterparties (Informa,2009,2) Cited from, *The safe port warranty in charterparty agreements,* (University of Oslo, Faculty of Law LLM thesis,2014) 5
[174] *Transfield Shipping Inc v Mercator Shipping Inc* [2008], UKHL 48, [2008] 3 WLR 345, [2008] 4 All ER 159, [2008] 2 All ER (Comm) 753, [2008] 2 Lloyd's Rep 275

May 2004. The charterers were required to redeliver the vessel on 2 May 2004. The daily hire rate of the charter was $ 16,750.

The owners had given 2 notices for the charterers informing to redeliver the vessel on the redelivery date and then the owners had contracted a new time charter with new charterers at the daily rate of $ 39,500 for four to six months. The owners had undertaken to the new charterers that they would deliver till 8 May 2004 and the new charterers had the right to cancel the contract if the vessel is not delivered on that day.

Before two weeks of the redelivery date, the charterers had ordered the vessel to carry coal from China to two Japanese ports. However, the vessel could not complete the discharging until 11 May 2004 which is nine days after the redelivery date and three days from the last delivery to the new charterers. Due to the default of the charterers the redeliver the vessel on date, the owners had been forced to renegotiate the daily hiring rate with the new charters from the original $ 39,500 to $8000. The rate was reduced due to the market rate fluctuation. The owners claimed for the loss of $ 1,364,584.37.

Defense of the Charterers

The charterers do not argue on the validity of the above-mentioned facts but they present a legal argument that the owners are only entitled for compensation to the difference of the market rate and charter rate for the days they were late to redeliver (overrun period). They argued that they should not be liable for the period of new charter as it is remote and they are not aware of the new fixture.

Decision of the Arbitrators

Majority of the arbitrators assess the claim of the owners for recovery of the value of the hire that the owners lost under the follow-on charter based on the leading common law rule for consequential loss decided on the *Hadley v Baxendale*.[175] The rule states that the loss to be recovered needs to arise "naturally, according to the usual course of things, from such breach of contract itself." They decided in favor of the owner on the ground that the owner's loss is "of a

[175] *Hadley v Baxendale (1854)* 9 Exch 341, 354

kind that, when he [the charterer] made the contract, ought to have realized was not unlikely to result from a breach of contract [by delay in redelivery]"[176]

This means the charterer ought to have realized it was not unlikely that the owner will enter new charter fixture after the lapse of the charter period. Hence, the charterer is not only required to compensate for the loss of the owner for the difference of the market value and the charter price on the overrun period but also to the entire period of the new fixture. The court of appeal also endorsed the decision of the arbitrators.

Decision of the House of Lords

The charterer appealed from the decision on the ground that his liability should be limited to the difference of the charter price and the market price for the overrun period. They argued that the owner did not inform them, at the time of the conclusion of the contract, the content of the new fixture hence they should not compensate for a loss they are not aware of.

The House of Lords has overruled the decision of the arbitrators and appeal court. The court assessed the claim on the ground that whether the consequential loss of the owner is "of a "kind" or "type" for which the contract breaker ought fairly to be taken to have accepted responsibility." Lord Hoffmann, said that the rules established in *Hadley v Baxendale* are not inflexible. The rules are intended to give effect to the presumed intention of the parties. The issue of whether one type of loss is of a "kind" or "type" the contract breaker assumed responsibility is a question of law that requires holistic reading of the contract against the commercial background. He concluded that the charterers cannot reasonably be regarded as assuming responsibility for the risk of the owner's consequential loss on the following charter.

Lord Hope of Craighead argued that the charterer who is in breach of his redelivery duty is presumed to assume responsibility for the loss of "use at the market rate as compared with the charter rate, during the relevant period." Even if the charterers ought to have realized the subsequent fixture was not unlikely to conclude by the owner, they had no control over the terms and conditions of the subsequent fixture. The loss of the owner has not resulted from the fluctuation of the marker (for which the charterer is responsible) but a new fixture that had been

[176] C Czarnikow Ltd V Koufos(The Heron II) [1969] 1 AC 350, 382-383.

concluded by the owner and new charterers which the charterers cannot be presumed to assume responsibility. He also argued that a party should not be assumed to have taken responsibility for something he has no control. Contract law is intended to give effect to the presumed intention of the parties and damages in contract law is limited to ordinary losses.

5.2. Redelivery in Shell Time 4

M/T Hawassa and M/T Bahirdar are tanker Vessels owned by ESLSE that are commonly chartered out under Shell Time 4 for transportation of oil and related products. The vessels are usually hired for a period of either 6 months or a year. The charterer should redeliver the vessel at the redelivery date which is specifically predetermined in the charter. As an owner, ESLSE cannot wait for the expiry of redelivery date to enter subsequent fixtures with new charterers since the vessel would be forced to remain idle in the time between the expiry of redelivery date and concluding new fixture. The effective date of subsequent fixture would be after the expiry of the redelivery date.

However, some charterers do not redeliver the vessel on the redelivery date.[177] The shipping market is volatile and the hiring rate fluctuates daily. For instance, the daily hiring rate of the tanker vessels ranges from $10000-15000. The difference becomes real when it is calculated based on the charter period. Late redelivery sometimes results in the cancelation of the new fixture because of the failure to deliver the vessel to the new charter and forced renegotiation with the new charterer at a lesser hire rate due to the dropping of hire rate in shipping market.

5.3. Ethiopian Laws Regarding Extent of Compensation for Late Redelivery

Article 177(1) of the Maritime Code states that a charterer who has failed to redeliver the vessel after the lapse of the charter period is only required to pay the fixed hire rate for 15 days. This provision even does not allow the owner to claim for the payment of the difference of market hire rate and the contract hire rate for the overrun period.

However, the owner can demand general compensation, in addition to the hire, if the late redelivery extended for more than 15 days. The issue is whether the owner can demand payment

[177] The researcher had participated in a dispute between ESLSE and a charterer relating to late redelivery. He cannot disclose the content of the dispute due to the confidentiality of the dispute settlement process.

of the lost amount on the follow-on charter whose rate is reduced due to the late redelivery from the charterer?

Article 1799(1) of the civil code sets nominal damages rule which requires the defaulting party only to compensate those losses that would normally have caused by the non-performance in the eye of a reasonable person. This rule makes it clear that the creditor (the owner) is not entitled to demand payment of the actual loss if the actual loss results from extraordinary circumstances for which the debtor(charterer) is not aware.[178] The object of damages is to put the claimant in the nominal position they would have had the contract been performed. In assessing the nominal damages, courts are required to consider the special nature of the contract (chartering contract) and special relationship between the parties need to be considered.[179]

The charterer should not be presumed to assume the risk of payment of the lost hire of the subsequent charter since he is not aware of the subsequent contract and the hiring rate and the duration of the subsequent contract is not controlled by the party. Similar to the House of Lords Decision the expectation of the parties regarding the loss is relevant in determining damages in Ethiopian Law.[180] Even if the charterer may expect the possible conclusion of subsequent contract, he does not assume the responsibility for the specific content of the subsequent contract. Subjecting the charterer to a transaction in which he doesn't involve would create uncertainty and unlimited liability on the charterer. However, the charterer should be liable to pay if at the time of conclusion of the contract was informed the contents of the subsequent contract under Article 1801(1) of the Civil Code.

In the Case between *Hilala Suliman(Applicant) vs Gonder university(Respondent)*[181] Federal Supreme Court Cassation Bench has given a binding decision limiting the extent of liability of a breaching party to the losses that are within the reasonable contemplation of the parties at the time of conclusion of the contract. In the facts of the case, the Respondent Gonder University had alleged, among other things, it had been forced to pay additional 0.51 per bread from 28 May 2008 to 8 September 2008 to new supplier due to the Applicant's failure to deliver the bread as per the contract.

[178] See Article 1801 of the Civil Code.
[179] See Article 1799 of ibid
[180] Tilahun Teshome, Basic Principles of Ethiopian Contract Law, (4th edn,2015) 136
[181] *Hilala Suliman vs Gonder university*, File No, 69797, Volume 14

The contract concluded by the parties did not contain penalty clause. However, it required the Applicant to provide a 10% of the contract price as a performance bond. The court has reasoned that the insertion of the performance bond clause in the contract is an indicator of the intention of the parties as to the extent of loss the parties have contemplated to take for non-performance. Hence, the maximum liability of the defaulting party is limited to the amount of the performance bond. This shows that the House of Lord's approach of restricting damages upon the intention of the parties for the risks the contracting parties reasonably ought to have assumed is relevant to Ethiopian laws as well.

Chapter Six

6.1. General Conclusions and Recommendations

Modern Charter parties are highly standardized documents that contain a detailed terms and conditions. Both the owner and charterer should properly understand the meaning, nature and scope of each term before entering in to contract. Even if the standard charters have contained a predetermined form, the negotiating skill of the parties highly determines who is going to get a more favorable term since the standard forms could be delated and replaced by rider clause.

There is a tendency to disregard Maritime law in the mainstream legal discourses of Ethiopia while significant portion of the nation's import is performed through the instrumentality of contract of carriage of goods by sea. This makes the country's jurisprudence on Maritime law more particularly on charter parties less developed.

The provisions of the Maritime code regulating charter parties have not yet been properly scrutinized by legal experts. There is a need to give attention to the provisions of the code. The charters signed by ESLSE are not governed by the code rather by English Laws. The jurisdiction to settle disputes is also given to England Arbitrators.[182] The meaning nature and scope of most of the terms in the standard charters are developed by England Courts.

The provisions of the Code regulating charter parties are either adopted from a bill of loading regime which is a different regime from charters or do not sufficiently address potential disputes arising from the terms. Hence, there is a need for comparative analysis and understanding of the code with foreign sources most particularly with the common law legal system.

Ethiopian vessels are not sufficient to accommodate the country's import and export and this necessitates the chartering of foreign vessels. The standard charters impose a cumbersome duty on the charterer. There is a need to know in detail the charterer's duties most importantly in relation to timely performance terminal operations as a chartering nation since breach of this obligations might result in the payment of demurrages and detention to the owner in a foreign

[182] Article 2(2) and Article 6(4)(g) of Federal Attorney General Establishment Proclamation no 943/2016 authorizes Federal Attorney General to represent Public Enterprises in litigations and negotiations in consultation with the concerned government organs. For this case, the concerned government organ is ESLSE.

currency. There is also a need to harmonize the contract of sale with the charters to minimize dead freight and detention claims. This could be achieved by consulting ESLSE before concluding the contract so that terms of delivery in contact of sale are consistent with the charter.

Chartering is a very complicated business adventure that consistently demands spontaneous decision making. It requires the establishment of trust between owner and charterer to mitigate the liability of each party. Taking maritime disputes in LMAA is not advisable since the fee of the arbitration and service charge of the lawyers is very high. It is advisable to consistently negotiate and communicate with the disputing party before bringing the dispute to arbitration. ESLSE needs to ensure that its staff members particularly those who are responsible to follow up chartering have acquired a special training to prevent possible chartering related dispute and properly negotiate whenever dispute arises.

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On Job Interviews with ESLSE's Manager of Legal, Insurance and Claims Department Ato Melaku Mekonin

Interview with ESLSE's Manager of Marketing and Chartering Department Ato Girma Mekonen On March 15, 2020

Interview with ESLSE's Team Coordinator of Marketing and Chartering Department Ato Wondewosen Seifu

On Job Training about charterer's liability and the need to have charterers liability insurance given by Nick Little, a legal advisor Cambiaso Risso Group-Insurance and Brokers Dubai Branch

The Researcher has been participating in the negotiation of charters and charter party related disputes as a legal officer working in ESLSE

The Researcher has accessed the actual charter parties signed by ESLSE

Appendix

1. Gencon Charter
2. Grain Charter
3. Shell Time 4
4. The Achilleas Case
5. FOB directive
6. ESLSE'S Chartering Procedure Manual
7. Interview Guide Questions
8. A Heading of Negotiation Result Report in which the Researcher is participant (the full document or the identity of the owner could not be disclosed due to the confidentiality)

1. Shipbroker	RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME COUNCIL UNIFORM GENERAL CHARTER - AS REVISED 1922,1976 and 1994 (To be used for trades for which no specially approved form is in force) CODE NAME: "GENCON" - PART I ORIGINAL
	2. Place and date Dubai 13th Mar 2020
3. Owners/Place of business (Cl. 1) Ethiopian Shipping and Logistic Services Enterprises Kirkos Districts, Kebele 15, La Gare PO Box 2572 Addis Ababa Ethiopia	4. Charterers/Place of business (Cl. 1) Holland Ocean Contractor B.V Zwarteweg 39 2201 AA – Noordwijk The Netherlands
5. Vessel's name (Cl. 1) MV Assosa – as per owners general description	6. GT / NT (Cl. 1) As per vessels description
7. DWT all told on summer load line in metric tons (abt.) (Cl. 1) As per vessels desription	8. Present position (Cl. 1) Trading
9. Expected ready to load (abt.) (Cl. 1) 29 Mar 2020 00:01 hrs LT	
10. Loading Port or place (Cl. 1) 1-2 good and safe berth's Yanbu, KSA	11. Discharging port or place (cl.1) 1-2 gsb(s) always afloat Ningde or inchpt Fuzhou (Luoyuan) + 1-2 gsb(s) always afloat Yantai, China
12. Cargo (also state quantity and margin in Owners option, if agreed; if full and complete cargo not agreed, state „partcargo") (Cl.1) Total 23.000 mt +/- 5 pct in chopt copper concentrates in bulk of which 11.500 mt +/- 5 pct in chopt copper concentrate to Ningde or in chopt Fuzhou (Luoyuan) plus 11.500 mt +/- 5 pct inchopt copper concentrate to Yantai Cargo to be shipped/ loaded in accordance with IMO regulations. No bulk/bgd cargo liable to spilling in tweendeck above allowed. Cargo to be loaded into lower hold only and to be separated by holds in line with quantity defined for each discharging port. No completion cargo to be allowed within the same holds as cargo under this C/P. No shifting / re-stowage of cargo under this C/P to take place. Owners completion cargo, if any, not to hinder/delay/loading/discharging operations of the cargo under this C/P and always to be loaded / discharged in / out geographical rotation.	
13. Freight rate (also state whether freight prepaid or freight payable on delivery)(Cl. 4) USD 27,00 pr wmt intaken fiost grab trimmed basis 1:2	14. Freight payment (state currency and method of payment; also benificiary and bank account) (Cl. 4) 95 pct payable within 5 banking days into owners nominated bankacct. Balance within 10 days after r/t delivery
15. State if vessel's cargo handling gear shall not be used (Cl. 5) - Vessel's cranes to be in good working condition	16. Laytime (if separate laytime for load. and disch. is agreed fill in a) and b). If total laytime for load. and discharge, fill in c) only) (Cl. 6)
17. Shippers/ Place of business (Cl. 6)	a) Laytime for loading in each port: 2500 wmts pwwd Thur Noon / Sat 09:00 hours excl eiu
18. Agents (loading) (Cl. 6) see clause 33	b) Laytime for discharging 2000 wmts per wwd Fri 5 pm / Mon 09:00 hours excl eiu
19. Agents (discharging) (Cl. 6) see clause 33	c) Total laytime for loading and discharging n/a
20. Demurrage rate and manner payable (loading and discharging) (Cl. 7) USD 8.000 pdpr half despatch working time safed both ends See also rider clause 25	21. Cancelling Date 3 Apr 2020 23:59 hrs LT
	22. General Average to be adjusted at (Cl. 12)
23. Freight tax (state if for the Owners' account (Cl. 13 (c)) see rider clause 27	24. Brokerage commission and to whom payable (Cl. 15) 3,75 pct address commission to Holland Ocean Contractors 2,50 pct brokering commission to Mbuie Shipping
25. Law and Arbitration (state 19 (a), 19 (b) of Cl. 19; if 19(c) agreed also state Place of Arbitration (if not filled in 19(a) shall apply(Cl. 19) English law to apply and arbitration in London	
(a) State maximum amount for small claims/ shortened arbitration (Cl . 19) USD 50,000	26. Additional clauses covering special provisions, if agreed clause 20 – 46 both inclusive are incorporated in this C/P
It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.	
Signature (Owners) Messrs Ethiopian Shipping and Logistic Services Enterprises Kirkos Districts, Kebele 15, La Gare PO Box 2572 Addis Ababa Ethiopia	Signature (Charterers) Messrs Zwarteweg 2201 AA The Netherlands

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the seventh day after the new readiness date stated in the Owners' notification to the Charterers shall be the new cancelling date.
The provisions of sub-clause (b) of this Clause shall operate only once, and in case of the Vessel's further delay, the Charterers shall have the option of cancelling the Charter Party as per sub-clause (a) of this Clause.

~~10. Bills of Lading~~
~~Bills of Lading shall be presented and signed by the Master as per the "Congenbill" Bill of Lading form, Edition 1994, without prejudice to this Charter Party, or by the Owners' agents provided written authority has been given by Owners to the agents, a copy of which is to be furnished to the Charterers. The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the signing of bills of lading as presented to the extent that the terms or contents of such bills of lading impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this Charter Party.~~

11. Both-to-Blame Collision Clause
If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, Mariner, Pilot or the servants of the Owners in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Owners against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying Vessel or the Owners. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

12. General Average and New Jason Clause
General Average shall be adjusted in London unless otherwise agreed in Box 22 according to York-Antwerp Rules 1994 and any subsequent modification thereof. Proprietors of cargo to pay the cargo's share in the general expenses even if same have been necessitated through neglect or default of the Owners' servants (see Clause 2).
If General Average is to be adjusted in accordance with the law and practice of the United States of America, the following Clause shall apply: "In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owners are not responsible, by statute, contract or otherwise, the cargo shippers, consignees or the owners of the cargo shall contribute with the Owners in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving vessel is owned or operated by the Owners, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Owners, or their agents, may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the goods to the Owners before delivery.".

~~13. Taxes and Dues Clause~~
~~(a) *On Vessel* -The Owners shall pay all dues, charges and taxes customarily levied on the Vessel, howsoever the amount thereof may be assessed.~~
~~(b) *On cargo* -The Charterers shall pay all dues, charges, duties and taxes customarily levied on the cargo, howsoever the amount thereof may be assessed.~~
~~(c) *On freight* -Unless otherwise agreed in Box 23, taxes levied on the freight shall be for the Charterers' account.~~

~~14. Agency~~
~~In every case the Owners shall appoint their own Agent both at the port of loading and the port of discharge.~~

15. Brokerage
A brokerage commission at the rate stated in Box 24 on the freight, dead-freight and demurrage earned is due to the party mentioned in Box 24.
In case of non-execution 1/3 of the brokerage on the estimated amount of freight to be paid by the party responsible for such non-execution to the Brokers as indemnity for the latter's expenses and work. In case of more voyages the amount of indemnity to be agreed.

16. General Strike Clause
(a) If there is a strike or lock-out affecting or preventing the actual loading of the cargo, or any part of it, when the Vessel is ready to proceed from her last port or at any time during the voyage to the port or ports of loading or after her arrival there, the Master or the Owners may ask the Charterers to declare, that they agree to reckon the laydays as if there were no strike or lock-out. Unless the Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, the Owners shall have the option of cancelling this Charter Party. If part cargo has already been loaded, the Owners must proceed with same, (freight payable on loaded quantity only) having liberty to complete with other cargo on the way for their own account.
(b) If there is a strike or lock-out affecting or preventing the actual discharging of the cargo on or after the Vessel's arrival at or off port of discharge and same has not been settled within 48 hours, the Charterers shall have the option of keeping the Vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging until the strike or lock-out terminates and thereafter full demurrage shall be payable until the completion of discharging, or of ordering the Vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after the Master or the Owners have given notice to the Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions of this Charter Party and of the Bill of Lading shall apply and the Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance to the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.
(c) Except for the obligations described above, neither the Charterers nor the Owners shall be responsible for the consequences of any strikes or lock-outs preventing or affecting the actual loading or discharging of the cargo.

17. War Risks ("Voywar 1993")
(1) For the purpose of this Clause, the words:
(a) The "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and
(b) "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all Vessels or imposed selectively against Vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.
(2) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Contract of Carriage, or any part of it, may expose, or is likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Contract of Carriage, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Contract of Carriage provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterers the Vessel, her cargo, crew, or other persons onboard the Vessel may be exposed, or may be likely to be exposed, to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Contract of Carriage if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.
(3) The Owners shall not be required to continue to load cargo for any voyage, or to sign Bills of Lading for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo (or any part thereof), crew or other persons on board the Vessel (or any one or more of them) may be, or are likely to be, exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Contract of Carriage. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been

PART II

"Gencon" Charter (As Revised 1922, 1976 and 1994)

1. It is agreed between the party mentioned in Box 3 as the Owners of the Vessel named in Box 5, of the GT/NT indicated in Box 6 and carrying about the number of metric tons of deadweight capacity all told on summer loadline stated in Box 7, now in position as stated in Box 8 and expected ready to load under this Charter Party about the date indicated in Box 9, and the party mentioned as the Charterers in Box 4 that:
The said Vessel shall, as soon as her prior commitments have been completed, proceed to the loading port(s) or place(s) stated in Box 10 or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo (if shipment of deck cargo agreed same to be at the Charterers' risk and responsibility) as stated in Box 12, which the Charterers bind themselves to ship, and being so loaded the Vessel shall proceed to the discharging port(s) or place(s) stated in Box 11 as ordered on signing Bills of Lading, or so near thereto as she may safely get and lie always afloat, and there deliver the cargo.

2. Owners' Responsibility Clause
The Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by personal want of due diligence on the part of the Owners or their Manager to make the Vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the Owners or their Manager.
And the Owners are not responsible for loss, damage or delay arising from any other cause whatsoever, even from the neglect or default of the Master or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this Clause, be responsible, or from unseaworthiness of the Vessel on loading or commencement of the voyage or at any time whatsoever.

3. Deviation Clause
The Vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist Vessels in all situations, and also to deviate for the purpose of saving life and/or property.

4. Payment of Freight
~~(a) The freight at the rate stated in Box 13 shall be paid in cash calculated on the intaken quantity of cargo.~~
(b) *Prepaid.* If according to Box 13 freight is to be paid on shipment, it shall be deemed earned and non-returnable, Vessel and/or cargo lost or not lost.
Neither the Owners nor their agents shall be required to sign or endorse bills of lading showing freight prepaid unless the freight due to the Owners has actually been paid.
~~(c) *On delivery.* If according to Box 13 freight, or part thereof, is payable at destination it shall not be deemed earned until the cargo is thus delivered.~~
Notwithstanding the provisions under (a), if freight or part thereof is payable on delivery of the cargo the Charterers shall have the option of paying the freight on delivered weight/quantity provided such option is declared before breaking bulk and the weight/quantity can be ascertained by official weighing machine, joint draft survey or tally,
Cash for Vessel's ordinary disbursements at the port of loading to be advanced by the Charterers, if required, at highest current rate of exchange, ~~subject to two (2) per cent to cover insurance and other expenses.~~

5. Loading/Discharging
(a) Costs/Risks
The cargo shall be brought into the holds, loaded, stowed and/or trimmed, tallied, lashed and/or secured and taken from the holds and discharged by the Charterers, free of any risk, liability and expense whatsoever to the Owners. The Charterers shall provide and lay all dunnage material as required for the proper stowage and protection of the cargo on board, the Owners allowing the use of all dunnage available on board. The Charterers shall be responsible for and pay the cost of removing their dunnage after discharge of the cargo under this Charter Party and time to count until dunnage has been removed.
(b) Cargo Handling Gear
Unless the Vessel is geared or unless it has been agreed between the parties that the Vessel's gear shall not be used and stated as such in Box 15, the Owners shall throughout the duration of loading/discharging give free use of the Vessel's cargo handling gear and of sufficient motive power to operate all such cargo handling gear. All such equipment to be in good working order. Unless caused by negligence of the stevedores, time lost by breakdown of the Vessel's cargo handling gear or motive power - pro rata the total number of cranes/winches required at that time for the loading/discharging of cargo under this Charter Party - shall not count as laytime or time on demurrage. On request the Owners shall provide free of charge cranemen/winchmen from the crew to operate the Vessel's cargo handling gear, unless local regulations prohibit this, in which latter event shore labourers shall be for the account of the Charterers. Cranemen/winchmen shall be under the Charterers' risk and responsibility and as stevedores to be deemed as their servants but shall always work under the supervision of the Master.
(c) Stevedore Damage
The Charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the Vessel caused by Stevedores. Such damage shall be notified as soon as reasonably possible by the Master to the Charterers or their agents and to their Stevedores, failing which the Charterers shall not be held responsible. The Master shall endeavour to obtain the Stevedores' written acknowledgement of liability.
The Charterers are obliged to repair any stevedore damage prior to completion of the voyage, but must repair stevedore damage affecting the Vessel's seaworthiness or class before the Vessel sails from the port where such damage was caused or found. All additional expenses incurred shall be for the account of the Charterers and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.

6. Laytime
* *(a) Separate laytime for loading and discharging*
The cargo shall be loaded within the number of running days/hours as indicated in Box 16, weather permitting, ~~Sundays and holidays excepted, unless used, in which event time used shall count.~~
The cargo shall be discharged within the number of running days/hours as indicated in Box 16, weather permitting, ~~Sundays and holidays excepted, unless used, in which event time used shall count.~~
~~* (b) Total laytime for loading and discharging~~
The cargo shall be loaded and discharged within the number of total running days/hours as indicated in Box 16, weather permitting, Sundays and holidays ~~excepted, unless used, in which event time used shall count.~~
(c) Commencement of laytime (loading and discharging)
Laytime for loading and discharging shall commence at 13.00 hours, if notice of readiness is given up to and including 12.00 hours, and at 06.00 hours next working day if notice given during office hours after 12.00 hours. Notice of readiness at loading port to be given to the Shippers named in Box 17 or if not named, to the Charterers or their agents named in Box 18. Notice of readiness at the discharging port to be given to the Receivers or, if not known, to the Charterers or their agents named in Box 19.
If the loading/discharging berth is not available on the Vessel's arrival at or off the port of loading/discharging, the Vessel shall be entitled to give notice of readiness within ordinary office hours on arrival there, whether in free pratique or not, whether customs cleared or not. Laytime or time on demurrage shall then count as if she were in berth and in all respects ready for loading/discharging provided that the Master warrants that she is in fact ready in all respects. Time used in moving from the place of waiting to the loading/discharging berth shall not count as laytime.
If, after inspection, the Vessel is found not to be ready in all respects to load/discharge time lost after the discovery thereof until the Vessel is again ready to load/discharge shall not count as laytime.
Time used before commencement of laytime shall count.
* *Indicate alternative (a) or (b) as agreed, in Box 16.*

7. ~~Demurrage~~
Demurrage at the loading and discharging port is payable by the Charterers at the rate stated in Box 20 in the manner stated in Box 20 per day or pro rata for any part of a day. Demurrage shall fall due day by day and shall be payable upon receipt of the Owners' invoice.
In the event the demurrage is not paid in accordance with the above, the Owners shall give the Charterers 96 running hours written notice to rectify the failure. If the demurrage is not paid at the expiration of this time limit and if the vessel is in or at the loading port, the Owners are entitled at any time to ~~terminate the Charter Party and claim damages for any losses caused thereby.~~

8. Lien Clause
The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, deadfreight, demurrage, claims for damages and for all other amounts due under this Charter Party including costs of recovering same.

9. Cancelling Clause
(a) Should the Vessel not be ready to load (whether in berth or not) on the cancelling date indicated in Box 21, the Charterers shall have the option of cancelling this Charter Party.
(b) Should the Owners anticipate that, despite the exercise of due diligence, the Vessel will not be ready to load by the cancelling date, they shall notify the Charterers thereof without delay stating the expected date of the Vessel's readiness to load and asking whether the Charterers will exercise their option of cancelling the Charter Party, or agree to a new cancelling date.
Such option must be declared by the Charterers within 48 running hours after the receipt of the Owners' notice. If the Charterers do not exercise their option of cancelling, then this Charter Party shall be deemed to be amended such that

PART II

"Gencon" Charter (As Revised 1922, 1976 and 1994)

carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight.

(4) If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo, crew or other persons on board the Vessel may be, or are likely to be, exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.

(5) The Vessel shall have liberty:-

(a) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery or in any way whatsoever which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government which so requires, or any body or group acting with the power to compel compliance with their orders or directions;

(b) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;

(c) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

(d) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;

(e) to call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions;

(f) where cargo has not been loaded or has been discharged by the Owners under any provisions of this Clause, to load other cargo for the Owners' own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the ordinary or customary route.

(6) If in compliance with any of the provisions of sub-clauses (2) to (5) of this Clause anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Contract of Carriage.

18. General Ice Clause

Port of loading

(a) In the event of the loading port being inaccessible by reason of ice when the Vessel is ready to proceed from her last port or at any time during the voyage or on the Vessel's arrival or in case frost sets in after the Vessel's arrival, the Master for fear of being frozen in is at liberty to leave without cargo, and this Charter Party shall be null and void.

(b) If during loading the Master, for fear of the Vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for the Owners' benefit for any port or ports including port of discharge. Any part cargo thus loaded under this Charter Party to be forwarded to destination at the Vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Charterers, freight being paid on quantity delivered (in proportion if lumpsum), all other conditions as per this Charter Party.

(c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Master or the Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section (b) or to declare the Charter Party null and void unless the Charterers agree to load full cargo at the open port.

Port of discharge

(a) Should ice prevent the Vessel from reaching port of discharge the Charterers shall have the option of keeping the Vessel waiting until the re-opening of navigation and paying demurrage or of ordering the Vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after the Master or the Owners have given notice to the Charterers of the impossibility of reaching port of destination.

(b) If during discharging the Master for fear of the Vessel being frozen in deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest accessible port where she can safely discharge.

(c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and the Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

19. Law and Arbitration

* (a) This Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator, the decision of the three-man tribunal thus constituted or any two of them, shall be final. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final.

For disputes where the total amount claimed by either party does not exceed the amount stated in Box 25** the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.

* (b) This Charter Party shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and should any dispute arise out of this Charter Party, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for purpose of enforcing any award, this agreement may be made a rule of the Court. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc..

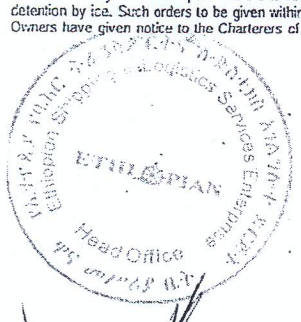
For disputes where the total amount claimed by either party does not exceed the amount stated in Box 25** the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc..

* (c) Any dispute arising out of this Charter Party shall be referred to arbitration at the place indicated in Box 25, subject to the procedures applicable there. The laws of the place indicated in Box 25 shall govern this Charter Party.

(d) If Box 25 in Part 1 is not filled in, sub-clause (a) of this Clause shall apply.

* *(a), (b) and (c) are alternatives; indicate alternative agreed in Box 25.*

** *Where no figure is supplied in Box 25 in Part 1, this provision only shall be void but the other provisions of this Clause shall have full force and remain in effect.*



Rider Clauses to Charterparty between
Ethiopian Shipping and Logistic Services Enterprises, as owners, and
Holland Ocean Contractors B.V , as Charterers
dated 13th March 2020 in Dubai, UAE

Clause 20 – Owners bank details

Ethiopian Shipping & Logistics Services Enterprise

ABN AMRO Bank N.V Rotterdam

Post bus 749, GL 0310

3000 AS Rotterdam

Account No. in EURO: NL 96 ABNA 0562 3929 98

Account No. in USD: NL 24 ABNA 0598 4170 87

Bank Identification Code (BIC) ABNANL2A

Clause 21 – Notices

Master to send daily position updates 12:00 hrs to:

Holland Ocean Contractors:	Chartering@hollandoceancontractors.nl
Mbuie Shipping:	Mbuie@Mbuieshipping.com
Loadport agent(s):	Faisal Higgi, Yanbu
Discharging port agent(s):	China: To be advised

Master also to send 20 (twenty), 15 (fifteen), 10 (ten), 7 (seven), 5 (five), 3 (three) days approximately notice of arrival loadport respective discharging port followed by 2 (two),1 (one) definite notice of arrival in loadport respective dischargingport

Notice of readiness cannot be tendered before the first layday.

Notice of Readiness to be tendered by telex or cable or fax or in writing by the vessel's Owners/agents of vessel either to shipper/receiver or their agent with one copy to Charterers after vessel's arrival to the limit WWWW and during working hours i.e. from 09:00 hours to 17:00 on Saturday to Wednesday and 09:00 hours to 12:00 hours on Thursday at loadport and from 09:00 hours to 17:00 hours Monday to Friday at discharge port.

Shipping

Rider Clauses to Charterparty between
Ethiopian Shipping and Logistic Services Enterprises, as owners, and
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dated 13th March 2020 in Dubai, UAE

Clause 22 – Vessels holds conditions on delivery

If the vessel is found in unsatisfactory conditions/unacceptable by surveyor, time from the rejection till the time holds are passed by the surveyor not to count as laytime.

Clause 23 - shifting

First shifting from anchorage to berth to be for Owners' account. Time and cost for shifting from 1st to 2nd berth on Charterers' account at both ends.

Clause 24 – Overage Premium

OAP, if any, to be on Charterers' account. The Owners can provide a Liner Certificate in case of vessel older than 20 years.

Clause 25 – Demurrage

Demurrage: USD 8,000.00 per day pro rata, hdwts. Demurrage/despatch/detention, if any, to be settled within 7 days of COD and filing of all relevant documents duly signed by all relevant parties.

Clause 26 – Lashing / dunnage / meal breaks / labour shifts.

Lashing/separation/dunnage etc., if any, for Charterers' account.

Stoppage due to meal breaks and labour shifts to be for charterers time / account.

Clause 27 – Taxes and dues Additional War Risk & Armed guards

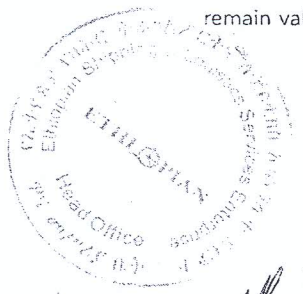
Taxes and dues, if any, on cargo and wharfage to be on Charterers'/shipper /receivers' account and any taxes and dues on freight, flag and vessel on Owners' account.

However 100 Pct Zakat Tax in Saudi Arabia and Saudi Withhold tax entirely charterers account.

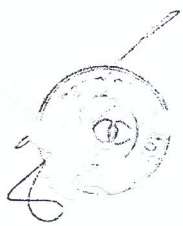
Any war risk/extra war risk premium as well as costs for armed guards, costs, surcharges related to/resulting from piracy, GOA passage are entirely for owners' account.

Clause 28 – cargo gear certificate

Owners guarantee that the vessel's holds all valid trading and cargo gear certificates, which will remain valid for the duration of the voyage.



Shipping



Rider Clauses to Charterparty between
Ethiopian Shipping and Logistic Services Enterprises, as owners, and
Holland Ocean Contractors B.V , as Charterers
dated 13th March 2020 in Dubai, UAE

Clause 29 – P and I

Owners guarantee vessel is fully P and I covered and classed equivalent to Lloyd's 100 A1 standard and shall maintain till completion of discharging.

Clause 30 – Pollution

The Shipowners warrant that the ship is fully insured and certified for pollution risks in accordance with rules and regulations of national port authorities relevant to the trading under this contract. In no case the Charterers will be liable for demurrage on result of Shipowners failing to comply with such rules and regulations.

Clause 31 – Ventilation

Owners confirm vessel have proper ventilation.

Clause 32 – Claims or threat of arrest

Owners guarantee that vessel is free from any charge claim or threat of arrest present and throughout the duration of this voyage.

Clause 33 – Agents

At Loadport:	**Yanbu:**	
	Faisal Higgi & Associated Co. Ltd	
	Tel. No:	+966 (0) 4 322 2046
	Company email:	main@faisal-higgi.com
	Marwan Erfan, Ops Manager	marwan@faisal-higgi.com
	Tel. No:	+966 14 322 2046 ext 114/133
	Mob No.:	+966 50 536 2732
	Faisal Higgi Operation:	ops01@faisal-higgi.com
		ops05@faisal-higgi.com
At Disch. port(s):	To be advised	

Shipping

Rider Clauses to Charterparty between
Ethiopian Shipping and Logistic Services Enterprises, as owners, and
Holland Ocean Contractors B.V , as Charterers
dated 13th March 2020 in Dubai, UAE

Clause 34 – Bills of lading

Owners agree to issue one Congen '94 Bill of Lading for the complete cargo in conformity with the remarks, if any, on the Bill of Lading signed by or on behalf of the Master/Owners loaded in each load port in which Puyvast will appear as consignee, this Bill of Lading will be signed by or on behalf of Master/Owners.

At discharge port cargo to be discharged against the original of respective Bill(s) of Lading signed on behalf of the Owners. In case original Bills of Lading have not arrived in time at the discharge port, cargo to be discharged into agents' custody against a Letter of Indemnity as per Owners' P and I Club wording, issued/signed by Charterers on their letterhead. Charterers to provide copy of the Bills of Lading to Owners to check that the Bills of Lading are issued in accordance with this Clause.

Clause 35 – Shore cranes

Shore cranes, if any, to be for Owners' account both ends if vessel's gear not working, otherwise Charterers' account.

Clause 36 – Draft survey

Cargo quantity to be ascertained as per draft survey, which to be performed at loading port(s), individual weight of respective discharge ports will be declared at Charterers' option. However, total weight must be the same as total quantity loaded.

Clause 37 – Letter of indemnity

Charterers to provide Letter of Indemnity for not mentioning cargo weight on Manifest (subject to draft survey weight agreeable by Charterers and Owners). Charterers to take full responsibility for any delay or inconvenience that may occur in this regard.

Mbuie Shipping

Rider Clauses to Charterparty between
Ethiopian Shipping and Logistic Services Enterprises, as owners, and
Holland Ocean Contractors B.V , as Charterers
dated 13th March 2020 in Dubai, UAE

Clause 38 – Vessels description

MV Assosa - As per owners general description

Clause 39 – Front loader

Owners allow charterers to use front loader in vessels holds in load- and dischargeport and same not to exceed vessels tanktop strenghts

Clause 40 – Grab loading and discharging.

Owners confirm vessel is suitable for grab loading and grab discharging and vessels cranes can work simultaneously and are able to serve all holds at the same time. Owners further confirm that mechanical grabs can be fitted to vessels cranes.

Clause 41 – Cargo / vessels stability

Owners confirm that vessel is fully suitable to load copper- and zinc concentrate cargo in bulk as descriped without stability problems.

No shifting / re-stowage of contracted cargo to take place.

Clause 42 – IMSBC Code

Owners / vessel to comply with IMSBC code and confirm that a valid "Document of compliance for the carriage of dangerous solid bulk cargoes" is available on board.

Owners warrant that vessel and crew are and will at all times be in every respect fully equipped and trained for the purpose of carrying such resp. contracted cargoes.

Owners confirm vessel complies with all restrictions / requirements demanded in terms of loading and transport of the contracted cargo

Mbule Shipping

Rider Clauses to Charterparty between
Ethiopian Shipping and Logistic Services Enterprises, as owners, and
Holland Ocean Contractors B.V , as Charterers
dated 13th March 2020 in Dubai, UAE

Clause 43 – IMSBC code – Zinc concentrates and Marpol

Owners confirm that vessel in all respect are fitted and suitable to load Zinc Concentrate cargo under "Group B" and complies with all requirements demanded in terms of transport.

Vessel is equipped with fixed fire extinguishing system

Owners to be responsible in discharging for the implementation of the Marpol resolution MEPC 201(62) annex V adopted 15.7.2011, with regards to residues of the intaken Solid bulk cargo in the loading port of this C/P, which can be harmfull to the marine environment.

Clause 44 – IMO regulations

Shippers have to load the cargo as per IMO regulations and shall ensure that concentrate loaded on board the carrying vessel conforms to the stipulation of the IMO Code of Safe Practice for Solid bulk Cargoes. Cargo to be naturally separated by hold with no other cargo loaded in the same hold as this cargo.

The vessel to fully comply with/meet strictly the following requirements by charterers/shippers/receivers nominated survey/inspection company:-

1. Six sides ship's draft marks at fore and after and middle position and deck line, plimsoll mark at amidships to be clearly cut and marked by steel plate and to be clearly legible.
2. Sounding pipe/s of tank/s to be completely unobstructed
3. Ship's party to provide ships particulars, load line certificate and other relative documents of draft survey
4. Ships tables to be endorsed by a recognized classification and/or society/documents to bear the current name of the vessel
5. The draft mark corrections to be available
6. The ballast water/fresh water tank correction tables to be available and endorsed by classification society

...ue Shipping

Rider Clauses to Charterparty between
Ethiopian Shipping and Logistic Services Enterprises, as owners, and
Holland Ocean Contractors B.V , as Charterers
dated 13th March 2020 in Dubai, UAE

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7. Ships trim list condition not to exceed ballast water/fresh water correction tables/curves
8. Displacement scale/capacity plan/hydrostatic curves to be available and to be endorsed by classification society
9. Pumping of ballast water/shifting of deck cranes/opening or closing of cargo compartments by no means to take place during draught readings
10. All decks and hatch covers to be free from ice upon vessel's arrival in loading/discharging port respectively, during draught readings.

Failing, any delay, expenses resulting from negligence/non-compliance of aforesaid to be for owners' account as well as costs for necessary ascertaining of weight by weighbridge both ends

Further charterers have such case the right to pay sea freight on delivered weight ascertained by weightbridge. Any difference can be set off with the balance freight respectively to be compensated by owners.

Clause 45 – Port Disbursement Account

- Port disbursement account in loadport(s) – charterers account, except owners items
- Port disbursement account(s) in discharge port(s) – charterers account, except owners items

Clause 46 – Confidential clause

This Fixture be kept strictly confidential between the parties.

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Mouri Shipping

CONTINENT GRAIN CHARTERPARTY
Code name: "SYNACOMEX 2000"

Adopted PARIS 1957 by SYNDICAT NATIONAL DU COMMERCE EXTERIEUR DES CEREALES
ammended 1960, 1974, 1990 and 2000 in agreement with COMITE CENTRAL DES ARMATEURS DE FRANCE
in cooperation with Chambre Arbitrale Maritime de Paris and the French Chartering and S. & P. Brokers' Association

PART I

1. Shipbroker	2. Place and date of ~~Charter Party~~ *CONTRACT OF AFFREIGHTMENT* *23th July 2019*
3. ~~Owners~~/Place of business (state full style and address) (Cl.1)	4. Charterers/Place of business (state full style and address) (Cl.1) ETHIOPIAN SHIPPING & LOGISTICS SERVICES ENTERPRISE SHIPPING SECTOR, COMMERCIAL DEPARTMENT KIRKOS DISTRICT, KEBELE 15, LAGARE ADDIS ABABA, ETHIOPIA
5. Vessel's name (Cl. 1) *TO BE NOMINATED* *see vessel's description in Clause 29* ~~flag / built / class~~ ~~NT / GT~~ ~~summer DWT~~	6. ~~First layday date~~ (Cl. 6) *See Clause 63 - Shipment Period* ~~Cancelling date (Cl. 6)~~
	7. Present position / expected ready to load (Cl. 1)
8. Loading port(s) (Cl. 2) *One/two safe berth(s), one safe port Black Sea - Port in Charterers' option plus options as per Clause 30* *See also Clause 65* a) Always afloat (*) b) "safely aground" (*)	9. Advance notices (Cl. 7) *Owners to give notices of ETA at load port 15/10/7/5/4/3/2/1 days prior vessel's arrival, where applicable* -at load port to: *Charterers and agents*
10. Discharging port(s) (Cl. 3) *See Clause 62* ~~a) Always afloat (*) b) "safely aground" (*)~~	-at discharging port: number of days / to: *see Clause 41*
11. Cargo nature and quantities (Cl.2) *See also Clause 64* *1,000,000 metric tons, more or less 10 per cent in Owners' option.* *Cargo: bulk wheat* a) No bags (*) ~~b) Maximum in bags for stowage (*)~~	12. Freight rates (Cl. 4) *See Clause 30*
13. Freight rate payment (state currency and method of payment, beneficiary and bank account) (Cl. 4) *See Clause 30*	14. Loading rate (Cl. 5 4) *6,000MT per weather working day as per Clause 32* 15. Discharging rate (Cl. 5) *4,000MT per weather working day as per Clause 32* 16. Demurrage / Despatch money (Cl. 9) *See Clause 34*
17. Agents at loading port(s) (Cl. 13) *Charterers' agents both ends*	18. Agents at discharging port(s) (Cl. 13) *Charterers' agents both ends*
19. Extra insurance, maximum (Cl.14)	20. Brokerage commission and to whom payable (Cl. 15) *1.25 per cent to GEMCORP due on freight, deadfreight and demurrage.* *Brokerage commission as above is deductible by Charterers on initial freight payment.*
21. Address Commission (Cl. 16) *2.5 per cent to ESL on freight, deadfreight, and demurrage* *Address commission as above is deductible by Charterers on initial freight payment*	a) Deductible(*) b)
22. Number of additional clauses covering special provisions, if any agreed *Clauses 29 to 65 both included.*	

It is mutually agreed that this Charter Party shall be performed subject to the conditions contained herein consisting of PART I and PART II including additional clauses if any agreed and stated in Box 22. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict but no further.

For ~~Owners~~	For The Charterers

Approved by The Documentary Committee of The Baltic and International Maritime Council (BIMCO)

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PART II
"SYNACOMEX 2000" Continent Grain Charterparty

1. Owners, Charterers
It is this day agreed between the party designated in Box 3, Owners of the Vessel named and described in Box 5, being now in position and expected ready to load as mentioned in Box 7, and the party designated in Box 4 as Charterers, THAT

2. Loading Port(s) and Cargo
The said Vessel being tight, staunch and in every way fit for the voyage, shall with all convenient speed proceed to the place designated in Box 8, which in case of named port(s) Owners acknowledge as safe and suitable for this Vessel and there load *not* always afloat, ~~unless *but*~~ "safely aground" has ~~been specifically agreed in Box 8~~, in such safe berth, ~~dock, wharf~~ or anchorage as Charterers or their Agents or Shippers may direct a ~~full and complete~~ cargo of wheat ~~and/or maize and/or rye and/or barley~~ as described in Box 11, in metric tons ~~(5 % more or less in Owners' option)~~ in bulk. *Charterers* ~~Shippers~~ have the option of using a second safe berth. The time for shifting between the two berths shall count as laytime, but shifting expenses shall be for ~~Vessel's~~ *Owners'* account. *Cargo shall be loaded at the risk and expense of Shippers/Charterers at the rate stated in box 14*

Owners shall provide and install at their risk and expense and on their time all that is required for safe stowage of grain according to local and international regulations. The cargo shall not exceed what the Vessel can reasonably stow and carry over and above her bunkers, apparel, stores, provisions and accommodation. The whole cargo shall be carried and stowed under deck in unobstructed main holds. All cargo on board to be delivered.
Owners confirm vessel will leave the berth as soon as possible, but not later than completion of loading and free pratique and cargo/customs/port clearance granted. Costs or penalties from the terminal due to non-compliance with same to be for Owners' account what so ever.
~~Furthermore, if stowage bags have been specifically agreed, the following shall apply.~~
~~Charterers shall supply for stowage purposes a quantity of bagged cargo not exceeding the quantity specified in Box 11, which shall be stowed at their risk and expense. The number of bags signed for on Bills of Lading to be binding on Vessel and Owners, unless error or fraud be proved.~~
Owners are responsible to satisfy themselves of any restrictions.

3. Discharging Port(s)
Being so loaded, the Vessel shall proceed with all convenient speed direct to the place designated in Box 10, which in case of named port(s) Owners acknowledge as safe and suitable for this Vessel, and there discharge the cargo ~~always afloat, unless "safely aground" has been specifically agreed in Box 10~~, in such safe berth, ~~dock, wharf~~ or anchorage as Charterers or their Agents or Receivers may direct. ~~Receivers~~ *Charterers* have the option of using a second safe berth. The time for shifting between the two berths ~~shall~~ count as laytime, but shifting expenses shall be for ~~Vessel's~~ *Owners'* account.
Owners are responsible to satisfy themselves of any restrictions.

Freight *See Clauses 38 & 39*
The freight *rates* agreed under this Charter Party shall be as stated in *Clause 38* Box 12, per metric ton *free in-out spout trimmed* on nett Bill of Lading weight
4. and *full freight* shall be deemed earned as cargo is *being* loaded on board, prepaid discountless and non-returnable, Vessel and/or cargo lost or not lost.
The freight shall be paid as specified in *Clause 38* Box 13.
All charges and dues levied on the cargo shall be for Charterers' account and those levied on the Vessel *and/or freight* howsoever assessed shall be for Owners' account.

Loading and Discharging
Cargo shall be loaded, spout-trimmed and/or stowed at the risk and expense of Shippers/Charterers, *(it is understood that "risk" in this case not include cargo shortages or cargo damages caused by the ship)* at the average rate stated in Box 14, ~~weather permitting~~.
Cargo shall be discharged at the ~~risk and~~ expense of Receivers/Charterers at the average rate stated in Box 15, ~~weather permitting~~.
5. Stowage shall be under Master's direction and responsibility. *Provided relevant LOI has been submitted to Master* Shippers' and/or Charterers' representatives have the right to be on board the Vessel during loading, discharging or lightering for the purpose of inspecting the cargo and/or weighing. Charterers and Owners are allowed to work overtime, such expenses shall be for account of the party ordering same. If ordered by Port Authorities, overtime shall be for Charterers' account. Overtime services rendered by ship's crew shall be in all cases for Owners' account.

6. Laydays, Cancelling - *See Clause 63 Shipment Period*
At port of loading laytime shall not count before 08.00 hours on the layday date stated in Box 6 and in any case not ~~before the date notified by the 10 days notice as per Clause 7.~~ ~~Should the Vessel's notice of readiness not be validly tendered as per Clause 8 before 09.00 hours on the cancelling date stated in Box 6, Charterers shall have the option of cancelling this charter at any time thereafter, but not later than one hour after the notice is validly tendered.~~

7. Vessel's Positions , Notices
Master and/or Owners shall give, *where applicable, 15/10* days and thereafter *7/5/4/3/2/1* days notice of Vessel's expected readiness to load to the party designated in Box 9.
Master and/or Owners shall give notice of Vessel's Expected Time of Arrival (ETA) at discharging port as specified in *Clause 41* Box 9.
Master and/or Owners shall give the relevant parties prompt advice of any substantial change in Vessel's ETA at loading and at discharging ports.

8. Laytime
Vessel's written notice of readiness to load and/or discharge shall be tendered by hand or by any means of telecommunication at the offices of Shippers/Charterers/ Receivers or their Agents *as per Clause 32.*
~~between 08.00 and 17.00 hours on all days except Saturdays, Sundays and Holidays and between 08.00 hours and 12.00 hours on Saturdays unless a Holiday.~~ Such notice of readiness shall be delivered when Vessel is in the loading or discharging berth and in all respects ready to load/discharge. At loading port Shippers/ Charterers or their Agents have the privilege to inspect Vessel's holds and reject the notice when holds are not clean, dry, odourless and in all respects ready to receive the cargo.
In case of dispute, an independent surveyor shall decide about Vessel's readiness to load, the party in the wrong bearing the costs. If the rejection of notice of readiness is undisputed or confirmed by surveyor the laytime will only start to count after the Vessel has validly tendered again when ready.
~~Only when the loading and/or discharging berth is unavailable, Master may warrant that the Vessel is in all respects ready and may tender notice of readiness to load and/or discharge from any usual waiting place, whether in port or not, whether in free pratique or not, whether customs cleared or not.~~
Laytime shall commence *as per Clause 32.* ~~at 14.00 hours if notice of readiness to load and/or discharge is validly tendered at or before 12.00 hours and at 08.00 hours on the next working day if notice of readiness is validly tendered after 12.00 hours. Time used before commencement of laytime shall not count.~~ Laytime shall not count *as per Clause 32.* ~~between 12.00 hours on Saturdays or 17.00 hours on days preceding a Holiday and 08.00 hours on the following working day, unless used in which case half time actually used shall count.~~
Any delays caused by ice, floods, quarantine, or by cases of "force majeure" shall not count as laytime unless the Vessel is already on demurrage.
When Master has tendered notice of readiness to load or

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discharge from a waiting place and Vessel is subsequently found unready in application of the above provisions, laytime or time on demurrage shall not count from the time the Vessel is rejected until the time she is accepted. Additionally, any actual time lost on account of Vessel's obtaining free pratique or customs clearance shall not count as laytime or time on demurrage.
~~At second or subsequent port(s) of loading or discharging, laytime or time on demurrage shall resume counting from Vessel's arrival at loading or discharging berth, if available, or from Vessel's arrival at a usual waiting place, if berth is unavailable.~~
At all ports any time lost shifting from waiting place to berth shall not count as laytime or as time on demurrage.
Shifting time from pilot station to berth not to count as laytime.
Laytime is non reversible between loading and discharging ports.
BIMCO Holidays to apply at loading and discharging ports.

9. Demurrage, Despatch Money
Demurrage is payable by Charterers at the rate stated in Box 16 *Clause 34* per day of 24 consecutive hours or pro rata. Owners shall pay to Charterers despatch money for laytime saved in loading/discharging at the rate stated in Box 16 *Clause 34*

per day of 24 consecutive hours or pro rata.
Once on demurrage always on demurrage.

10. Seaworthy Trim
If ordered to be loaded or discharged at more than one berth and/or port, the Vessel is to be left in seaworthy trim *conditions* to Master's reasonable satisfaction for the passage between berths and/or ports at Shippers'/Charterers'/Receivers' expense, and time used for placing Vessel in seaworthy trim shall count as laytime or time on demurrage.

11. Fumigation
Charterers have the liberty to fumigate the cargo on board at loading and discharging port(s) or places en route at their risk and expense. Charterers are responsible for ensuring that Officers and Crew as well as all other persons on board the Vessel during and after the fumigation are not exposed to any health hazards whatsoever. Charterers undertake to pay Owners all necessary expenses incurred because of the fumigation and time lost thereby shall count as laytime or time on demurrage. When fumigation has been effected at loading port and has been certified by proper survey or by a competent authority, Bills of Lading shall not be claused by Master for reason of insects having been detected in the cargo prior to such fumigation.

12. Lights and Gear
Whenever required, Vessel shall supply free use of lights as on board but sufficient to carry on night work.
Provided described as geared, Vessel, whenever required, shall supply free use of all cargo handling gear on board, in good working order, with the necessary power, and of runners, ropes and slings as on board. Shore hands shall be used to drive the gear, at Shippers'/Charterers'/ Receivers' account. Any time actually lost on account of breakdown of Vessel's gear shall not count as laytime or time on demurrage and any stevedore standby time charges incurred thereby shall be for Owners' account.

13. Agencies
At loading port, Vessel shall be consigned to the Agents designated in Box 17.
At discharging port, Vessel shall be consigned to the Agents designated in Box 18.

14. Extra Insurance
Extra insurance on cargo due to Vessel's age ~~and/or flag and/or class~~ shall be for *Charterers'* Owners' account ~~but limited to the amount specified in Box 15; such extra insurance shall be covered by Charterers for Owners' account and shall be deducted from settlement of freight.~~

15. Brokerage
A brokerage commission as stated in Box 20 on the gross amount of freight, deadfreight and demurrage earned, is due to the party(ies) designated in Box 20 and is deductible from same unless "non-deductible" has been specifically agreed.

16. Address Commission
An address commission as stated in Box 21 on the gross amount of freight, deadfreight and demurrage earned is due to Charterers and is deductible from freight, deadfreight and demurrage.

17. ISM Clause
From the date of coming into force of the International Safety Management (ISM) Code in relation to the Vessel and thereafter during the currency of this Charter Party, the Owners shall procure that both the Vessel and "the Company" (as defined by the ISM Code) shall comply with the requirements of the ISM Code. Upon request the Owners shall provide a copy of the relevant Document of Compliance (DOC) and Safety Management Certificate (SMC) to the Charterers.
Except as otherwise provided in this Charter Party, loss, damage, expense or delay caused by failure on the part of the Owners or "the Company" to comply with the ISM Code shall be for the Owners' account.

18. Bills of Lading
The Master is to sign Bills of Lading as presented without prejudice to the terms, conditions and exceptions of this Charter Party. If the Master delegates the signing of Bills of Lading to his Agents, he shall give them authority to do so in writing, copy of which is to be furnished to Charterers.
When Bills of Lading marked "Freight prepaid" are required, same shall be released by Owners immediately upon receipt of a telex from Charterers' Bank confirming that freight payable has been irrevocably transferred.

19. Relet
Charterers have the right to relet all or part of this Charter Party, they remaining responsible for its due fulfilment.

20. Deviation
Deviation in saving or attempting to save life or property at sea or for bunkering purposes or any other reasonable deviation shall not be deemed an infringement of this Charter Party and the Owners shall not be liable for any loss or damage resulting therefrom.

21. Lien Clause
The Owners shall have a lien on the cargo for freight, deadfreight, demurrage, and average contribution due to them under this Charter Party.

22. Responsibilities and Immunities
Except as otherwise provided and stipulated in this Charter Party, it is hereby expressly agreed that this Charter Party shall have effect subject to the provisions of the Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924, as enacted in the country of shipment. These rules shall apply to any Bill of Lading issued under this Charter Party.
When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply.
In trades where the International Brussels Convention 1924 as amended by the Protocol signed at Brussels on February 23rd, 1968 - The Hague - Visby Rules - apply compulsorily, the provisions of the respective legislation shall apply.
The Owners shall in no case be responsible for loss of or damage to cargo howsoever arising prior to loading into and after discharge from the Vessel.
Save to the extent otherwise in this Charter Party expressly provided, neither party shall be responsible for any loss or damage or delay or failure in performance hereunder resulting from Act of God, war, civil commotion, quarantine, strikes, lockouts, arrest or restraint of princes, rulers and peoples or any other event whatsoever which cannot be

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avoided or guarded against.
Hamburg Rules never to be permited or applied.

23. Amended General Ice Clause

Port of Loading - *See Clause 53*

~~a)In the event of the loading port being inaccessible by reason of ice when Vessel is ready to proceed from her last port or at any time during the voyage or on Vessel's arrival or in case frost sets in after Vessel's arrival, the Master for fear of being frozen in is at liberty to leave without cargo, and this Charter Party shall be null and void.~~
~~b)If during the loading the Master, for fear of Vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for Owner's benefit to any port or ports including port of discharge. Any part cargo thus loaded under this Charter Party to be forwarded to destination at Vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Receivers, freight being paid on quantity delivered (in proportion if lumpsum), all other conditions as per Charter Party.~~
~~c)In case of more than one loading port, and if one or more of the ports are closed by ice, the Master or Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section b) or to declare this Charter Party null and void unless Charterers agree to load full cargo at the open port.~~

Port of Discharge

a)Should ice prevent Vessel from reaching port of discharge, Receivers shall have the option of keeping Vessel waiting until the reopening of navigation and paying demurrage, or of ordering the Vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after Master or Owners have given notice to Charterers of the impossibility of reaching port of destination.
b)If during discharging the Master for fear of Vessel being frozen in deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest accessible port where she can safely discharge.
c)On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

24. Amended Centrocon Strike Clause

If the cargo cannot be loaded by reason of Riots, Civil Commotions or of a Strike or Lock-out of any class of workmen essential to the loading of the cargo, or by r ason of obstructions or stoppages beyond the control of the Charterers caused by Riots, Civil Commotions or a Strike or Lock-out on the Railways, or in the Docks, or other loading places, or if the cargo cannot be discharged by reason of Riots, Civil Commotions or of a Strike or Lockout of any class of workmen essential to the discharge, the time for loading or discharging, as the case may be, shall not count during the continuance of such causes, provided that a Strike or Lock-out of the Shippers' and/or Receivers' men shall not prevent demurrage accruing if by the use of reasonable diligence they could have obtained other suitable labour at rates current before the Strike or Lock-out.
In case of any delay by reason of the before-mentioned causes, no claim for damages or demurrage, shall be made by the Charterers / Receivers of the cargo, or Owners of the Vessel. For the purpose, however, of settling despatch money accounts, any time lost by the Vessel through any of the above causes shall be counted as time used in loading or discharging, as the case may be.

25. General Average and New Jason Clause

General average shall be adjusted *in London* according to the York-
Antwerp Rules 1994 or any subsequent modification thereof, but where the adjustment is made in accordance with the law and practice of the United States of America, the following Clause shall apply:

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.
If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his Agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery"
and the Charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same Clause.

26. Both-to-Blame Collision Clause

If the liability for any collision in which the Vessel is involved while performing this Charter Party falls to be determined in accordance with the laws of the United States of America, the following Clause shall apply:
"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.
The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact"
and the Charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same Clause.

27. War risks ("Voywar 1993")

VOYWAR 2013 to apply (see Clause 46)

~~a) For the purpose of this Clause, the words:~~
~~(i) "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master, and~~
~~(ii) "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.~~
~~b)If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Charter Party, or any part of it, may expose, or is likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Charter Party, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Charter Party provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterers the Vessel, her cargo, crew, or other persons onboard the Vessel may be exposed, or may be likely to be~~

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ADDITIONAL CLAUSES TO THE CONTRACT OF AFFREIGHTMENT TO DJIBOUTI M/V TO BE NOMINATED

Clause 29 –Nomination Clause + Vessel's Description

A/ Nomination Clause :
Owners to nominate performing vessel latest 7 days (9.00-18.00 hours Geneva time Saturday/Sunday and holiday excepted) prior vessel's ETA load port, but together with attached questionnaire duly fulfilled, valid certificates and below confirmations / guarantees (see B/)

Charterers have the right to refuse a nomination by reason of actual ownership/management or the condition/track record of the Owners/vessel after Charterers' screening, same not to be unreasonably withheld.

Charterers' acceptance or rejection to be made latest within 24 hours, Saturday/ Sunday and holidays excepted (provided vessel nominated within 09.00-18.00 hours Geneva time the day before), after all screening information/vessel's full description has been supplied as per Charterers' questionnaire and same to be in line with Charterers standards (including information regarding financials).

Should a vessel be rejected, then the nomination procedure to take effect again

B / Vessel's Description :
M/V TO BE NOMINATED

It is understood that, whenever used in this Contract of Affreightment, the word "vessel" applies for each performing vessel.

OWNERS CONFIRM / GUARANTEE THAT DEFINITE PERFORMER:

- VESSEL < =20YEARS OF AGE, GRAB AND CRANE FITTED, 4 GANGS AT A TIME,IF VESSEL AGE B/N 16-20 SUBJECT ON THE CARGO RECEIVERS APPROVAL, NOT TO BE UNREASONABLY WITHHELD.
-IS GEARED MINIMUM 4x30MT WITH GRABS
-4 GANGS AT A TIME
-CLASS IACS
-P&I COVERD

- OWNERS GUARANTEE VESSEL IS GEARED SELF TRIMMING BC SUITABLE FOR GRAB DISCHARGE WITH CLEAN AND CLEAR UNOBSTRUCTED MAIN HOLDS ONLY (OBOS/CAR CARRIERS/CHIP CARRIERS ALWAYS EXCLUDED)

- OWNERS GUARANTEE THAT VESSEL IS AND WILL REMAIN FOR THE WHOLE DURATION OF THIS CHARTER PARTY CLASSED HIGHEST LLOYDS OR EQUIVALENT AND MEMBER OF IACS

- OWNERS GUARANTEE THAT VESSEL IS AND WILL REMAIN FOR THE WHOLE DURATION OF THIS CHARTER PARTY FULLY P&I COVERED BY A MEMBER OF THE INTERNATIONAL GROUP CLUBS

- OWNERS GUARANTEE THAT VESSEL IS AND WILL REMAIN FOR THE WHOLE DURATION OF THIS CHARTER PARTY FULLY H&M INSURED WITH: (PLEASE ADVISE) / H&M VALUE: (PLEASE ADVISE)

- VESSEL AND OWNERS TO MAINTAIN A MINIMUM OF 4 STARS RIGHTSHIP APPROVAL THROUGHOUT THE DURATION OF THIS CHARTER PARTY.

- ARE THERE ANY CONDITIONS OF CLASS/ RECOMENDATIONS ATTACHED TO HULL/MACHINERY (YES/NO):

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"SYNACOMEX 2000" Continent Grain Charterparty

exposed, to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Charter Party if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.

c)The Owners shall not be required to continue to load cargo for any voyage, or to sign Bills of Lading for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo (or any part thereof), crew or other persons on board the Vessel (or any one or more of them) may be, or are likely to be, exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Charter Party. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight

d)If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo, crew or other persons on board the Vessel may be, or are likely to be, exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.

e) The Vessel shall have liberty:-

(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery or in any way whatsoever which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government which so requires, or any body or group acting with the power to compel compliance with their orders or directions;

(ii)to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;

(iii)to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

(iv)to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;

(v)to call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions;

(vi)where cargo has not been loaded or has been discharged by the Owners under any provisions of this Clause, to load other cargo for the Owners' own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the ordinary or customary route.

f) If in compliance with any of the provisions of sub-clauses b) to e) of this Clause anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Charter Party.

28. Arbitration *See Clause 36*

Any dispute arising out of the present contract shall be referred to Arbitration of "Chambre Arbitrale Maritime de Paris – 16 rue Daunou – 75002 Paris".

The decision rendered according to the rules of Chambre Arbitrale and according to French Law shall be final and binding upon both parties. The right of both parties to refer any disputes to arbitration ceases twelve months after date of completion of discharge or, in case of cancellation or non-performance, twelve months after the cancelling date as per Clause 6 or after the actual date of cancellation whichever is the later. Where this provision is not complied with, the claim shall be deemed to be waived and absolutely barred.

The contract to be governed in accordance with English Law.
Arbitration to be in London and conducted under LMAA Rules 2017.

It is understood that, whenever used in this Contract of Affreightment, the word "vessel" applies for each performing vessel and the word "Charterparty" also refers to the Contract of Affreightment.

INVESTMENT

Ethiopian Shipping & Logistics Services Enterprise
ETHIOPIAN
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ADDITIONAL CLAUSES TO THE CONTRACT OF AFFREIGHTMENT TO DJIBOUTI M/V TO BE NOMINATED

- OWNERS GUARANTEE VESSEL HAS NOT BEEN INVOLVED IN ANY GENERAL AVERAGE NOR DETAINED THROUGH PSC INSPECTION(S) SHOWING DEFICIENCIES THROUGHOUT THE LAST 12 MONTHS.

IN CASE DETAINED KINDLY PROVIDE PSC REPORT SHOWING RECTIFICATIONS

- GEAR AND GRABS, IF ANY, ARE IN FULLY WORKING CONDITION AND TO BE SO MAINTAINED AND AT CHARTERERS' FREE DISPOSAL FOR THE ENTIRE DURATION OF CHARTER PARTY.

- OWNERS GUARANTEE VESSEL FULLY ISM COMPLIANT - BIMCO STANDARD ISM/ISPS CLAUSES TO APPLY

- OWNERS GUARANTEE VESSEL FULLY ITF OR ITF EQUIVALENT COMPLIANT - PLEASE ADVISE WHICH APPLIES:

- OWNERS GUARANTEE VESSEL IS SUITABLE FOR AND CHARTERERS ARE ALLOWED TO PERFORM IN TRANSIT FUMIGATION

- PLEASE ADVISE CHAIN FULL STYLE AND ADDRESS OF ALL MEMBERS :

- PLEASE ADVISE WHO WILL BE THE DIRECT COUNTERPART TO CHARTERERS THROUGHOUT THIS CHARTER:

DISPONENT OWNERS:

- PLEASE ADVISE VESSEL'S ITINERARY INCLUDING AGENTS FULL STYLE AT LAST DISCHARGING PORT:

- PLEASE ADVISE BEST STOW PLAN BASIS: XXXXX BASIS NO BAGGING / STRAPPING / SECURING.

- LAST 3 CARGOES / CHARTERERS (LATEST TO BE FIRST):

- LAST 5 PORTS (LATEST TO BE FIRST):

PLEASE KINDLY REVERT WITH FOLLOWING:
- CERTIFICATE OF CLASS
- P&I CERTIFICATE (INSURANCE CER IFICATE)
- H&M INSURANCE CERTIFICATE
- DOCUMENT OF COMPLIANCE
- SAFETY MANAGEMENT CERTIFICATE
- INTERNATIONAL SHIP SECURITY CERTIFICATE

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ADDITIONAL CLAUSES TO THE CONTRACT OF AFFREIGHTMENT TO DJIBOUTI M/V TO BE NOMINATED

(b) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Contract of Carriage, or any part of it, may expose the Vessel, cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Contract of Carriage, or may refuse to perform such part of it as may expose the Vessel, cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Contract of Carriage provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterers the Vessel, cargo, crew, or other persons on board the Vessel may be exposed to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Contract of Carriage if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.

(c) The Owners shall not be required to continue to load cargo for any voyage, or to sign bills of lading, waybills or other documents evidencing contracts of carriage for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, cargo, crew or other persons on board the Vessel may be exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Contract of Carriage. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra

distance represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight.

(d) If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, cargo, crew or other persons on board the Vessel may be exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.

(e) (i) The Owners may effect War Risks insurance in respect of the Vessel and any additional insurances that Owners reasonably require in connection with War Risks and the premiums therefore shall be for their account.

(ii) If, pursuant to the Charterers' orders, or in order to fulfil the Owners' obligation under this Charter Party, the Vessel proceeds to or through any area or

INVESTMENT S...

ADDITIONAL CLAUSES TO THE CONTRACT OF AFFREIGHTMENT TO DJIBOUTI M/V TO BE NOMINATED

Payment terms:

95 PERCENT FREIGHT, LESS COMMISSION AND ESTIMATED DESPATCH, TO BE PAID WITHIN **3 -7 BANKING DAYS** AFTER SIGNING/RELEASING CLEAN ON BOARD, "FREIGHT PAYABLE AS PER CP" OR IN CHOPT "FREIGHT PREPAID" BILL(S) OF LADING. IN CASE OF FREIGHT PREPAID BLS SAME TO BE RELEASED UPON RECEIPT OF CHRTS SWIFT COPY CONFIRMING THAT 95 PCT FREIGHT HAS BEEN IRREVOCABLY PAID./

THE REMAINING 5% FREIGHT AND FINALIZATION OF ACCOUNTS IS TO BE SETTLED BETWEEN OWNERS AND CHARTERERS WITHIN **10 DAYS** AFTER COMPLETION OF DISCHARGE AND PRESENTATION OF FINAL FREIGHT ACCOUNT INCLUDING DEMURRAGE AND PRESENTATION OF FINAL SUPPORT COPIES OF THE NOTICE OF READINESS AND STATEMENT OF FACT.

Owners' bank details:
TBA

Clause 31
Owners undertake not to clause the Bill(s) of Lading/Mates receipts, or withhold same due to any dispute in connection with intaken weights on board differing from elevator weights.
Should such problems not be resolved amicably, then the arbitration procedure under this Charter Party to apply.

Master has the right to reject damaged cargo which may cause the Bills of Lading to be clausedSame to be replaced by Charterers/Shippers at their time, risk and expenses.

Clause 32 - Loading and Discharging Terms / Notice of Readiness

At load port:
Time counting: time not to count from 17.00 hours on Friday or day prior to a holiday, until 8.00 hours Monday or next working day after a holiday or local equivalent, even if used.

Notice of readiness: NOR to be tendered during local working office hours Saturdays, Sundays, Holidays excluded or local equivalent and time to start counting at 08.00 hours on next working day, even if used. NOR can be tendered at customary place off or in port, whether at berth or not, whether at anchorage or not, weather custom cleared or not, whether in free practique or not.

At load port, Charterer to be allowed a maximum of 6 running hours free for completion/signing/delivery of documentation to the vessel.

At discharge port:
Time counting: time not to count from 17.00 hours on Thursday or day prior to a holiday, until 8.00 hours Sunday or next working day after a holiday or local equivalent, even if used.

Notice of readiness: NOR to be tendered during local working office hours Saturday PM, Sundays, Holidays excluded or local equivalent and time to start counting at 08.00 hours on next working day, even if used. NOR can be tendered at customary place off or in port, whether at berth or not, whether at anchorage or not, weather custom cleared or not, whether in free practique or not.

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ADDITIONAL CLAUSES TO THE CONTRACT OF AFFREIGHTMENT TO DJIBOUTI M/V TO BE NOMINATED

Clause 38
Charterers have the option of fumigating the cargo at loading and/or discharge port(s) during /after loading, respectively before / during discharge, respectively enroute, in transit and/or sea in their option and at their time and expenses. If crew required to stay ashore by port authorities, lodging and transport to and from place of rest / hotel expenses to be for Charterers' account.

All cost associated with fumigation of cargo to be for Charterers' account.

Laytime and time on demurrage as the case may be to count in full during such operations.

Charterers to give clear written instructions in English to Master concerning use and safety concerning fumigants used on cargo.

Clause 39 - Taxes and Dues
Any taxes and dues on vessel and/or freight to be for Owners' account.
Any taxes and dues on cargo to be for Charterers' account.

Where all or part of the port dues or any other expenses which are normally paid by the vessel are calculated basis per ton of cargo loaded or discharged then same to be for Owners' account.

Clause 40
If during the currency of this Charter Party the terms/conditions under which the crew is employed is not acceptable to the ITF or equivalent, any delays or costs occasioned thereby for Owners' account.

Clause 41 - Notices at Discharging Port(s)
Master/Owners to give notice to Charterers (email : to be advised) and agent (to be advised) on sailing loading port and 15/10/7/5/4/3/2/1 days prior vessels arrival, where applicable.

Clause 42
Deleted.

Clause 43
Owner to allow ESL to switch Owners Bill(s) of Lading to ESL Bill(s) of Lading as per the requirement of Ethiopian Banks, with a specific ESL full style to be given to Owners before the switch, always complying with OFAC regulations and LOI will be issued by Charterers as per owners P&I request in this respect. Only Congen bills to be used – no "in transit" Bill(s) of Lading to be used.

In case Charterers need to issue new set of Bill(s) of Lading due to change of destination and/or notify party and/or order, old copies of Bill(s) of Lading marked "null and void" to be sent to Owners by fax, then couriered to Owners' office by Charterers or their agents who will also provide airway bill number. Draft copies of the new set of Bill(s) of Lading to be faxed to Owners for their approval which not be unreasonably withheld, then Owners will immediately authorize Charterers or their agents to issue/sign new set of Bill(s) of Lading.
However, Charterers are to issue a relevant letter of indemnity keeping Owners harmless/not responsible whilst old set of Bill(s) of Lading are in transit/ couriered to Owners' office and, once the old set are safely in Owners' hands, then the letter of indemnity becomes null and void.

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ADDITIONAL CLAUSES TO THE CONTRACT OF AFFREIGHTMENT TO DJIBOUTI M/V TO BE NOMINATED

In case original Bills of Lading are not available at discharge port, Charterers have the option to instruct Master to discharge the entire cargo against presentation of Letter of Indemnity in Owners' P&I Club wording, signed by Charterers only.

Charterers always to present their LOI within working hours Monday-Friday.

Clause 49
Owners to complete Charterers questionnaire with vessel's nomination.
Such Questionnaire shall form an integral part of this charter.

Clause 50
Charter party to be drawn up and signed prior to vessel's arrival at discharge port, if needed by Charterers. If Owners fail to assist with same, then all consequences, time lost and expenses, due to failure to comply with same, is to be for account of the Owners.

Clause 51 - Force Majeure Clause
Save to the extent otherwise agreed in this charter party expressly provided, neither party shall be responsible for any loss or damage or delay or failure in performance hereunder resulting from act of god, war, civil commotion, quarantine, strikes, lockouts, arrests or restraints of princes, rulers and peoples or any other event whatsoever beyond Charterers' control.

Clause 52 - Trading Areas
Deleted, not applicable.

Clause 53 - Ice Clause - not applicable for this voyage -
~~Owners acknowledge risk of ice at load port and confirm vessel can and will enter, load and exit the port without any extra costs to Charterers whatsoever. Any time lost due to ice to be for Owners' account, and Owners confirm vessel will, in case of need, follow ice breakers which in any case will be for the account of the Owners. Further, Owners confirm that vessel will comply with all port conditions/regulations during ice campaign, and all ice dues to be for Owners' account, including any additional insurance, if any.~~

Clause 54
Charterers/Shipper or their servants have the right to appoint their surveyor to inspect for leakages from ballast and wing tanks into main holds and carry out hose test/ultrasonic tests on holds, hatch covers, which will be effected with the assistance and equipment, which assistance to be free of expense to Charterers provided adequate equipment is available on board, failing which same to be supplied/delivered by Charterers/Shippers at their risk and expense and in their time.
If repairs are required, then same to be carried out at Owner's time and expense.

Clause 55 - BIMCO Electronic Bills of Lading
(a) At the Charterers option, Bills of Lading, waybills and delivery orders referred to in this Charter Party shall be issued, signed and transmitted in electronic form with the same effect as their paper equivalent.

(b) For the purpose of sub-clause (a) the Owners shall subscribe to and use electronic (paperless) trading systems as directed by the Charterers, provided such systems are approved by the international group of P&I Clubs. Any fees incurred in subscribing to or for using such systems shall be for the Charterers' account.

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ADDITIONAL CLAUSES TO THE CONTRACT OF AFFREIGHTMENT TO DJIBOUTI M/V TO BE NOMINATED

Clause 59
Owners to remit funds necessary to cover ship's disbursements before the arrival at destination. Owners hereby undertake to remit such funds to their agents in due time.

Clause 60
Should the vessel be delayed, detained or arrested during the currency of this Charter Party at the suit of any party having or purporting to have a claim against or any interest in the vessel, Master, her crew or Owners, time not to count in respect of any period during which the vessel is not fully at Charterers' disposal and time is actually lost and any consequential time and expenses directly resulting from same which the Charterers may incur, to be for Owners' account.

Clause 61
Charterers have the option to load cargo in rain under suitable tenting & tarping at Shipper's/Charterers' risk against Shipper's/Charterers' single Letter of Indemnity. Owners/Master to liaise with loading port agents/terminal foreman to facilitate smooth cargo loading. Owners/Master to use his discretion to load under rain, but not to unreasonably reject "rain loading".

Clause 62 – Discharging port(s)
- One/two safe berth(s) Djibouti, where vessel to discharge in Charterers' option.

Doraleh multipurposes where draft 15.30 meters. PDS

SDTV terminal where draft 11.75 meters.

Discharging terminal/draft to be declared by Charterers together with each cargo laycan declaration.

- At narrowing of L/C and nomination of loadport, Charterers to declare discharge berth and draft. If discharge draft not declared and discharge draft ends up to be deeper than loading draft, deadfreight to apply for the difference of intake for Charterers' account based on the f eight rate of the declared loading port.

Clause 63 - Shipment Period

I/ JULY PERIOD:
1ST SHIPMENT: 1 X50,000 MT 10% +/- LAYCAN:15-20TH JULY, 2019
2ND SHIPMENT: 1 X 50,000 MT 10%+/- LAYCAN: 20-30TH JULY, 2019
3RD SHIPMENT: 1 X 50,000 MT 10% +/- LAYCAN: 22ND JULY – 12TH AUGUST, 2019

II/ AUGUST PERIOD: 6 X 50,000 MT 10% +/- LAYCAN TO BE ADVISED
III/ SEPTEMBER PERIOD 6 X 50,000 MT 10% +/- LAYCAN TO BE ADVISED
IV/ OCTOBER PERIOD 5 X 50,000 MT 10% +/- LAYCAN TO BE ADVISED

7 DAYS SPREAD LAYCAN TO BE DECLARED BY CHRTRS LATEST 15 DAYS PRIOR 1ST DAY OF LAYCAN

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Head Office

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Charter Party Date : ---TBA--- 02-Feb-2020

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PART I

(A) VESSEL DESCRIPTION
= = = = = = = = = =

Descriptions as above, Other as per attached Q88.

Approximate intake : 32,000 M TONS GASOIL BSS S.G. 0.8236 AND TEMP 30 C. AT 9.7 METERS ARRIVAL DRAFT HODEIDAH.

INSURED VALUE : US$ 15,086,205

LAST 10 PORTS : As attached

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(B) SPEED AND CONSUMPTIONS (AS PER ATTACHED PERFORMANCE SHEET)
= = = = = = = = = = = = = =

(B1) SERVICE SPEED
==========
OWNERS STATE THAT THE AVERAGE SPEED AND BUNKER CONSUMPTION OF THE VESSEL PER DAY SHALL BE AS FOLLOWS:

C/P SERVICE SPEED / CONSUMPTION FIGURES IS BASED ON WINDS UPTO AND INCL. BEAUFORT FORCE FIVE (5) AND/OR DOUGLAS SEA STATE 4 FROM SEABUOY TO SEABOUY EXCLUDING HARBOUR MANOEUVERING, CANAL TRANSIT, RESTRICTED PASSAGE.

LADEN : 12.0 KNOTS ON 21.8 MTONS FOR M/E + 3.5 MTONS FOR A/E IFO 380 + 0.1 MT MGO

BALLAST : 12.0 KNOTS ON 20.5 MTONS FOR M/E + 3.5 MTONS FOR A/E IFO 380 + 0.1 MT MGO

++

(B2) OTHER BUNKER CONSUMPTIONS (PER 24 HRS)
==========
ALL FIGURES ABOUT GIVEN IN GOOD FAITH WITHOUT GUARANTEE AND NOT TO BE USED FOR PERFORMANCE CALCULATION / CLAIM

1. IN PORT IDLE : 3.5 MTONS IFO 380 (A/E) + 3.2 MTONS IFO 380 (BOILER) + 0.2 MT MGO

2. IN PORT LOADING INCLUDING DEBALLASTING : 5.5 MTONS IFO 380 (A/F
MTONS IFO 380 (BOILER) + 0.2 MT MGO

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MT HAWASSA - ACCOUNT MOK PETRO ENERGY - TIME CHARTER PARTY - DRAFT C/P RECAP.

STRICTLY PRIVATE AND CONFIDENTIAL

For a time charter as follows:

I. MAIN TERMS

STRICTLY PRIVATE AND CONFIDENTIAL

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PREAMBLE
========

CHARTERER : MOK PETRO ENERGY FZC.
OFFICE ADD. OFFICE 302B ,
BANI YAS COMPLEX BUILDING - DUBAI UAE.
TEL : +9714 224 0190
FAX : +9714 223 9183

OWNERS : Ethiopian shipping and Logistics Services Enterprise
Kirkos District, Kebele 15 (La Gare), P O Box 2572,
Addis Ababa, Ethiopia
Tel: +251 011 5518280
Fax: +251 11 55 29 165
Email: dpa@eslc.com.et

Vessel	: M/T "HAWASSA"
Flag	: ETHIOPIA
Class	: American Bureau of Shipping (ABS)
Sdwt	: 42,190.00 M Tons on 11.30 m
Grt/Nrt	: 26,827 / 11,335 M Tons
SCNT	: 23,782.62 M Tons
L.O.A	: 187.80 m
Beam	: 31.50 m
Cubic Cap	: 44,648.93 m3 (98 pct excl slops)
Slops	: 2,157.78 m3 (98 pct)
Crane	: 1 x 10.00 Tons
Vsl fitted	: SBT / IGS / Double Hull

Itinerary : Vessel currently at Singapore OPL Anchorage , awaiting charterer's instructions for discharging at Singapore. Expected to complete discharging by 10 Jan 2020 AGW
Expected to sail fm Singapore 20/JAN 2020
Expected time arrival Fujairah 01/FEB/2020

Last 3 cargoes

Last cargo : GASOIL
2nd last : GASOIL
3rd last : GASOIL

TBOOK : KMG, KOCH, EQUINOR

Last SIRE inspection: OCT 17,2019 / FUJAIR

3. IN PORT DISCHARGING : 5.5 MTONS IFO 380 (A/E) + 25.0 MTONS IFO 380 (BOILER) + 0.2 MT MGO

4. ALL OTHER CONSUMPTIONS PLEASE REFER TO ATTACHED PERFORMANCE SHEET.

#VESSEL SHALL USE FUEL OIL BUNKER CONSUMPTIONS DURING IDLE, LOAD, DISCHARGE WHERE PERMITTED BY PORT REGULATIONS.

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Type and quality of fuel will be as per IMO regulation for global and Emission control area (ECA)

(C) PERIOD:

-06 MONTHS FIRM PERIOD.
-ADDITTIONAL 03 MONTHS + 03 MONTHS IN OWNER'S OPTION
-AT END OF PERIOD CHARTERERS HAVE PLUS/MINUS UPTO 15 DAYS
-OPTIONS FOR PERIOD EXTENSION TO BE DECLARED BY OWNERS 15 DAYS PRIOR TO COMPLETION OF EACH PERIOD.

(D) NOTICES:

OWNERS TO PROVIDE 7 DAYS TENTATIVE AND 5 / 3 / 2 /1 DAYS FIRM DELIVERY NOTICES (WHERE APPLICABLE)

CHARTERERS TO PROVIDE 7/5 DAYS TENTATIVE AND 3 / 2 / 1 DAYS FIRM REDELIVERY NOTICES.

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(E) LAYCAN: 02 FEB 2020 (0001-2359 HRS)

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(F) DELIVERY: AT A SAFE ANCHORAGE IN FUJAIRAH PORT ALWAYS FREE OF CARGO AND SLOPS WITH TANKS IN FULL INERT CONDITION AND READY TO LOAD GASOIL AND GASOLINE. OWNERS SHALL ARRANGE HULL CLEANING PRIOR DELIVERY.

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(G) RE-DELIVERY: AT APS (ARRIVAL PILOT STATION) OR DLOSP (DROPPING LAST OUTWARD SEA PILOT) FUJAIRAH PORT ALWAYS FREE OF CARGO AND SLOPS.

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(H) TRADING RANGE

ALWAYS AFLOAT, ALWAYS ACCESSIBLE, VIA SAFE PORT(S), ANCHORAGE(S), BERTH(S) IN AND BETWEEN EAST OF SUEZ (INCLUDING YEMEN), ARABIAN GULF, MEDITERRANEAN, SINGAPORE, FAR EAST ASIA UPTO RUSSIA (NAKHODKA REGION) AND BLACK SEA AND AFRICA (INCLUDING EAST AFRICA, SOUTH AFRICA, WEST AFRICA, MEDITTERANEAN AFRICA) AND INCLUDING ANY OTHER REGION WORLD-WIDE NOT SPECIFIED HEREIN PROVIDED IT IS NON-SANCTIONED BY UN & EXCLUDING IRAN AND ANY ICE BOUND AREAS AS CHARTERER MAY DIRECT. YEMEN IS PERMITTED BASIS CHARTERERS ACCEPTANCE PAY WAR RISK INSURANCE PREMIUM.

(I) CHARTER HIRE:
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HEAD OFFICE

(1) DAILY HIRE OF USD 14,300 GROSS PER DAY PRO-RATA OWNERS SHALL ISSUE SIGNED HIRE INVOICES ATLEAST 2 WORKING DAYS PRIOR DUE DATE. CHARTERERS TO REMIT HIRE IN US DOLLARS BY DEFAULT.

IF OWNERS REQUEST FOR PAYMENT IN EUROS, THEN CHARTERERS SHALL REMIT THE INVOICED US DOLLAR HIRE AMOUNT CONVERTED TO EUROS AT THE EXCHANGE RATE of CHARTERERS BANK ON THE 2ND WORKING DAY FOLLOWING THE DUE DATE INVOICE {Comment: charterers need 2 working days to negotiate FOR A BETTER exchange rate with banks}. EXCHANGE LOSS IF ANY FOR OWNERS ACCOUNT.

HIRE PAYMENT TERMS: EVERY 30 DAYS IN ADVANCE.

(2) CVE : USD 2,500 PER MONTH PRORATA.

(3) WHILE VESSEL IS TRADING TO HIGH RISK / JWC WAR LISTED AREAS:

(A) ADDITTIONAL WAR RISK INSURANCE PREMIUM SHALL BE FOR CHARTERERS ACCOUNT. ~~CHARTERERS~~ ~~OWNERS~~ **CHARTERERS** OPTION TO PROVIDE COMPETITIVE AWRC QUOTE FROM WAR UNDERWRITERS. ~~CHARTERERS MAINTAIN LAST. CHARTERER HAS ALREADY PROVIDED A COMPETITIVE QUOTATION FROM TRAVELLERS VIA MR. NICK OF BROKERS CR WHO IS CURRENTLY UNDER DISCUSSION WITH EIC. IN THE COVER, CHRTRS HAVE OBTAINED AND SHARED WITH OWNERS A QUOTE FOR 6 MONTHS MIN – 12 MONTHS MAX, TO FULLY COVER THE SHIP TO AVOID ANY EXPOSURE TO THE SHIP, WHICH CHARTERER REQUEST OWNERS TO CONFIRM AND ACCEPT THE QUOTATION LATEST BY 31/JAN/2020 IN WRITING. ON THE OTHER HAND IF OWNERS HAVE A MORE COMPETITIVE AWRP COVER PLEASE SHARE BEFORE 31/JAN/2020 TO AVOID COMPLICATION IN DOING SMOOTH BUSINESS. IF OWNERS CANNOT OBTAIN A MORE COMPETITIVE AWRP COVER BY 31/JAN/2020, THE TRAVELLERS' QUOTATION OBTAINED/SHARED BY CHARTERERS TO BE IN FORCE FROM THE DATE OF DELIVERY OF THE VESSEL TO CHARTERER.~~

(B) KIDNAP & RANSOM PREMIUM, CREW WAR BONUS FOR CHARTERERS ACCOUNT.(OWNERS OPTION TO PROVIDE COMPETITIVE KIDNAP & RANSOM COVER QUOTE FROM WAR UNDERWITERS)

(C) ARMED SECURITY ON CHTRS ACCOUNT. CHARTERER'S SHALL DIRECTLY HIRE 3 ARMED GUARDS FROM A REPUTED PRIVATE MARITIME SECURITY COMPANY (PMSC) FROM THE ATTACHED LIST AND ISO: 28007 CERTIFICATION AND GOVERNED BY BIMCO GUARDCON CONTRACT. IF REQUIRED FOR ADDITIONAL WAR RISK OR KIDNAP AND RANSOM COVERS. **AMMUNITION TRANSFER COSTS OF THE ABOVE CHARTERER-APPOINTED 3 ARMED GUARDS** SHALL BE PAID DIRECTLY BY CHARTERES VIA THEIR AGENT AS PER THE PROVIDED INVOICE TO CONCERNED BODIES ACCORDINGLY.AMMUNITION TRANSFER COST RELATED TO OWNER'S GUARDS FOR OWNERS ACCOUNT. THE GUARDS EMPLOYED BY **CHARTERERS WARRANT THAT THE GUARDS WILL BE SUPPLIED WITH ADEQUATE WEAPONS AND AMMUNITIONS WHILE VESSEL IS PASSING / STAYING IN HIGH RISK AREA.** [COMMENT : **CHTR MAINTAIN LAST. chtr already paying for all related costs for arm guards, weapons and ammunitions. We cannot pay for any additional cost related weapons over and above what is already sufficiently placed to cover the vessel, crew and cargo. For a whole year charterers have been providing 3 armed guards and adequate ammunitions for sister ship Bahir Dar. The same arrangement will be made by Charterers for Hawassa, therefore there is no need for Own to place additional ammunition.)**

for Empb

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++

(J) BANKING DETAILS :

HIRE PAYABLE IN EURO / U.S. DOLLARS BY WIRE TRANSFER TO:

BENEFICIARY : ETHIOPIAN SHIPPING AND LOGISTIC SERVICES ENTERPRISES.

BANK ACCOUNT DETAILS :

ABN AMRO BANK N.V ROTTERDAM
POST BUS 749, GL 0310
3000 AS ROTTERDAM
ACCOUNT NO. IN EURO NL 96 ABNA 0562 3929 98
ACCOUNT NO. IN USD NL 24 ABNA 0598 4170 87
BANK IDENTIFICATION CODE (BIC) ABNANL2A

++

(K) BUNKERS ON DELIVERY / REDELIVERY

AS PER AGREED C/P FORM TERMS.

VESSEL TO BE DELIVERED ONLY WITH BUNKERS ON BOARD THAT ARE COMPLIANCE WITH IMO 2020. VESSEL SHALL NOT HAVE ANY NON - COMPLIANT (HFO) BUNKERS ON BOARD AT THE TIME OF DELIVERY. IF HFO STILL AVAILABLE ON BOARD, SAME SHALL BE DE-BUNKERED AT OWNER'S TIME AND COST BEFORE VESSEL DELIVERY.

BUNKER SPECIFICATION: IN COMPLIANCE WITH IMO2020 REGULATION.

++

(L) TRADABLE CARGOES:

1 TO 2 GRADES CLEAN PETROLEUM PRODUCTS UNLEADED UNDARKER 2.5 NPA
EXCLUDINGCASINGHEAD/LUBES/SOLVENTS/CHEMICALS/PENTANES/PENTANES/MTBE/PYGAS.
INTENTION GASOLINE AND / OR GASOIL.
CHARTERERS OPTION UPTO MAXIMUM PERMISSIBLE DEADWEIGHT

++

(M) TERMS

- CHARTER PARTY FORM : SHELLTIME 4 AMENDED DECEMBER 2003, AND RIDER CLAUSES AS PER MOK STANDARD TERMS WITH AMENDMENTS/ADDITIONS ATTACHED.

++

(N) OTHER TERMS

++

(O) COMMISSION: 2.50 % ON ALL HIRES EARNED DEDUCTED AT SOURCE FROM OWNERS INVOICES AND PAYABLE BY CHARTERERS TO OCEANBZ OIL DMCC, DUBAI

++ END RECAP ++

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Enclosures:

1) MAIN CHARTER PARTY (CHARTERER'S RIDER TERMS 1-31).
2) VESSEL Q88.
3) PERFORMANCE SHEET (SPEED & BUNKER CONSUMPTIONS).
4) PMSC APPROVED LIST.
5) LAST 10 PORTS OF CALL.

For Owners:

for Eng.

Roba Megerssa
Chief Executive Officer

For Charterers:

ETHIOPIAN PUBLIC SHIPPING AND LOGISTICS SERVICES ENTERPRISE
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ETHIOPIA

Main Charter party

MOK Petro Energy FZE - OWNERS "ESL" – MT HAWASSA
Rider terms – Time Charter Party –dated : 02-Feb-2020

1. MANAGEMENT AND FLAG.
The Owner shall not change the ownership or management of the vessel, or change the vessel's flag or registry during the period of this charter without prior and written approval of the Charterer.

2. TANK CLEANING.
The Owner shall be responsible for cleaning tanks, lines and pumps **at delivery** in such manner as to enable vessel to pass inspection for the Charterer's next nominated cargo upon arrival at the port **delivery** of loading providing sailing / delivery time between voyages permit. Master of vessel to ensure that all cargotanks completely dry and free of any water or residue whenpresenting vessel for loading.The master and the crew shall exercise due diligence to clean the tanks, lines and pumps for the intended cargos and shall use all reasonable endeavours to complete the cleaning obligations prior to vessel's arrival at any particular loading port/berth.If tank cleaning with mopping, the Charterers will pay crew bonus about **USD-50/mopped tank.** **All time and cost towards ~~subsequent (after the first cargo discharge)~~ tank cleaning is for charterers account.**
BEFORE START OF TC PERIOD, VESSEL NEEDS TO BE DELIVERED WELL CLEANED AND ACCEPTABLE TO LOAD CHTRS NOMINATED CARGO.

3. CARGO:
Owners warrant vessel is able to segregate minimum 2 grades with double valve, line and pump segregation. Owner warrants vessel able to load/discharge 2grades simultaneously without contamination.

4. FRESH WATER:
All fresh water required on board to be arranged by Owners and to be for Owners' account. Charterers will not be responsible for any expenses relating to Fresh Water. **Fresh water for cleaning of cargo to be on charterers account.**

~~5. ON HIRE/OFF HIRE SURVEY:~~MAINTAIN AS PER SHELLTIME 4 POINT.3 DUTY TO MAINTAIN
~~Should vessel become offhire for any reason for a continuousperiod of seven (7) days or more, then Charterers will have the option to cancel Charter Party without prejudice to anyof Charterers' rights under this Charter Party.~~

6. CARGO RETENTION.
In the event that any cargo remains on board upon completion of discharge, the Charterer shall have the right to ~~deduct from hire~~*claim from the owners* an amount equal to the FOB port loading value of such cargo

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voyage freight due with respect thereto provided that the volume of cargo remaining on board is pumpable and reachable by the vessel's fixed pumps, or would have been pumpable and reachable but for the fault or negligence of the Owner, the Master, the vessel or her crew, as determined by an independent surveyor appointed by the Charterer and acceptable to both the Owner and the Charterer, whose findings shall be final and binding. Any action or lack of action in accordance with this provision shall be without prejudice to any rights or obligations of the Charterer. For the purposes of this clause, any surveyor from an internationally reputable surveyor company shall be considered acceptable to both the Owner and the Charterer.

7. IN TRANSIT LOSS.

The Owner is to be responsible for any cargo in-transit loss exceeding **0.3%** as determined by an independent surveyor's figures. In-transit loss is defined as, the difference between net vessel's volume after loading at the load port and before unloading at the discharge port, based on the independent surveyor's figures. Calculation is always to be based on same cargo temperaturewithout applying VEF. Such cargo in-transit losses are to be ~~deducted from hire~~*claimed by the Charterers to the Owners* at an amount equal to the FOB load port value of such cargo, plus hire and bunkers with respect thereto.

8. CARGO TRANSFER SUPER CARGO INSPECTION

The Charterer may, in its option, at their time and at its risk and expense place a representative on board to observe preparations for loading or discharging of the cargo during the period that the vessel is proceeding to or is in a port. Such representative to be suitably insured for all personal risk and liability by the Charterer. Such visits shall include, without limitation, access to the pump room, ~~the engine room/ to be deleted/,~~ the cargo control room, ~~the navigation / to be deleted/~~and the deck area. The Charterer's representative may render advice to the Master. **He will not, however, under any circumstances order or direct the taking of any particular action by vessel or crew or interfere in any way with the Master's exercise of his authority.** LOI must be issued for charterers rep's visit onboard.

9. SHIP TO SHIP TRANSFER.

The Charterer shall have the option to load and discharge the vessel via ship-to-ship ~~transfer at sea/ to be deleted/~~, at anchor or ~~underway off any port with the trading limits of this Charter Party/ to be deleted/.~~ The Owner is to agree to allow supervisory personnel on board, including but not limited to a Mooring Master, to assist in the performance of the lightering operati

The Owner and Charterer warrant that any ship-to-ship operation and equipment shall be carried out in accordance with the procedures set out in the last revised edition of the International Chamber of Shipping Oil Companies International Marine Forum, Ship-to-Ship Transfer Guide for Petroleum.

It is understood and agreed that the crew of the vessel will be required to assist handling fenders and cargo hoses as well as mooring and unmooring as designated by the Mooring Master at the transfer site at no additional cost to the Charterer.

STS is required to be undertaken at safe location & master reserves the right to cancel the operation for safety reasons. Transhipment of cargo not allowed without Owners approval, and such approval shall not be unreasonably withheld. OK

10. ADHERENCE TO VOYAGE ORDERS.

The Owner undertakes that, unless the Charterer requires otherwise, the Master will follow **law full** voyage instructions issued by the Charterer. The Owner shall be responsible for any time, cost, delay or loss associated with vessel deviating from the Charterer's voyage instructions ~~including loading any cargo quantity in excess of, or short of, that instructed within the voyage orders.~~ If a discrepancy arises at loading terminal, e.g. for ship-shore difference > 0.1% Master is to contact the Charterer at once concerning said discrepancy, before loading, to clarify the situation.If a conflict arises between terminal order and the Charterer's voyage instructions, the Master is to stop cargo operations and to contact the Charterer at once.Terminal orders shall never supersede the Charterer's voyage instructions and any conflict shall be resolved prior to resumption of cargo operations.Master/Owner shall not ask to include charter party information in the B/Ls. Master is to lodge a Letter of Protest at port of loading, should the ship´s cargo figures be less than the Bill-of-Lading figures.

At port of discharge, Master to sign documents as presented by the terminal. In case of LOPs if Master/owners have disagreement with its contents they can sign for receipt only.

11. ISPS.

BIMCO latest ISPS clause to apply.

12. SWITCHING BILLS OF LADING (B/

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Charterers shall have the right to ask owners to reissue new Bill of Lading, as per requirements of Charterers, upon delivery of the signed B/L's to the owner/owners agent or Master. Charterers option to amend shipper, consignee, discharge port and notify-party names in the re-issued cargo docs including BL. Owners shall comply with such request provided all set of previous original BLs (3 of 3 set) are canceled as null and void and be delivered physically, either to Owners or Owners agents' possession or to be delivered physically onboard the vessel canceled as null and void, prior to re-issuance.

13. LETTER OF INDEMNITY AND BILL OF LADING.

If the Charterer by telex, facsimile, email or other form of written communication that specifically refers to this clause request Owners to discharge a quantity of cargo either:

a) Without Bills of Lading and/or;
b) at a discharge place other than that named in a Bill of lading and/or;
c) that is different from the Bill of Lading quantity;

In consideration of the Owner complying with the Charterer's specific instructions, as above, the Charterer shall, upon giving formal notification to Owner, invoke the Owner's P and I Club Letter of Indemnity Wording for such activity. The Owner's P and I Club Letter of Indemnity Wording are always to be issued without a bank's guarantee / third party's counter-signature. Such indemnity shall automatically be null and void upon presentation of the relevant Bill of Lading, or 13 (thirteen) months after completion of discharge of cargo to which such indemnity is relevant. The Owners P&I club's blanket Letter of Indemnity wordings to be incorporated into this time charter party.

14. ONBOARD BLENDING / COMMINGLING.

Charterers shall have the rightto load on top of any cargo previously loaded by them, load into a tank containing an on board quantity at bottom, perform onboard blending, inter-tank cargo transfer / circulation, commingling of cargo whilst loading or during sea passage, being two or more grades, over the designated cargo tanks to be loaded. Vessel's staff shall ensure that proper stability maintained during the entire operation. Charterers' nominated cargo inspector to supervise such onboard blending and vessel's staff is to follow the inspector's recommendations. In theabsence of Charterer's cargo inspector, Owners to follow Charterer's instructions subject to ship's safety. Charterers will issue L.O.I. in Owners P&I Club wording without bank guarantee or third party's signature **Blending,commingling to be complied as per SOL requirements and to be carried out only in Port.**

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15. DYE / ADDITIVE.

In case charterers request additive to be added to a cargo while in the vessel's cargo tanks owners will accept to do the operation provided it is proper/permissible and within the industry practice and charterers to provide a LOI to that effect agreeable to owners. Charterers have the option to add 'liquid dye' to cargo in vessel's tanks just prior to the commencement of loading / discharge at their risk and expense. The time and cost for the dye shall be for charterers' account. The dye can only be added with total compliance under the full instruction and supervision of the Master and/or Chief Officer who will always have final authority to how the dye is added. Charterers to indemnify owners as per owners' P&I Club wording for adding dye. Owners' standard instructions for adding dye to cargo which charterers to comply in full.All dye must only be added under direct supervision of Master and /or Chief Officer. **Any damage to tank / pipeline coatings as a result of adding dye to the cargo tanks will be for charterers account. (same to be included in P&I Club wording for adding dye)**.

16. DETENTION CLAUSE.

In the event of arrest, **which is not related to the fault of the charterer** or other sanction levied against the vessel or the Charterers arising out of the Owner's breach or any fault of the Owner, the Owner agrees to assume full responsibility for all penalties and the vessel shall be considered off-hire during any delay or detention arising therefrom. Should the vessel be seized or detained by any authority, or arrested at the suit of any party having or purporting to have a claim against any interest in the vessel, hire shall not be payable in respect of any period during which the vessel is not fully at the Charterer's use and all extra expenses shall be for the Owner's account, unless such seizure or detention is occasioned by any personal act or omission or default of the Charterer or their agents, or by reason of cargo carried.

17. NOTICE OF READINESS (NOR) CLAUSE.

At every load port and discharge port, throughout the duration of this time charter, the vessel shall tender her NOR immediately on arrival in the customary way. Until such time as the vessel is all fast at the berth/jetty, the Master shall re-tender vessel's NOR, daily, at 09:00 hours local time, to all parties if so instructed in the Charterer's load/discharge orders. If the vessel fails to issue NOR as per foregoing clauses, the vessel shall be considered off-hire till berthing.

The text of subsequent daily NOR, as above, to b

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"Without prejudice to original NOR tendered ..... Hrs on.....20.... (to be completed as appropriate), on vessel's arrival, please be advised that my vessel is/remains ready in all respects to commence loading/discharging (delete as appropriate) of the cargo of ..... (complete as appropriate)".

18. SAILING PLAN AND NOTICE OF ANY DELAY.
The Master is to notify the Charterer, before commencing next ocean passage and prior to sailing from port, his intended sailing plan, routing, estimated duration of the voyage and estimated arrival date and time at the next destination. If during the course of any voyage the vessel experiences a delay, of any nature, which will effect the Master's estimated arrival time at the next port in excess of six hours the Master is to immediately contact the Charterer by phone then follow up in writing. The Master is to provide a detailed explanation of the reason for the delay, any problems that have been caused to the vessel and provide the Charterer with a revised estimated time of arrival.

19. TAXES ON THE VESSEL OR THE HIRE. ~~N/A~~ ANY TAXES OR DUES RELATED TO OR AS A RESULT OF CHARTERERS TRADE OR INSTRUCTION, WHETHER ON VESSEL OR CARGO, SHOULD BE FOR CHARTERERS ACCOUNT INCLUDING, BUT NOT LIMITED TO, CHARTER HIRE

Any and all taxes and or dues on the vessel and or the hire payments to the Owner are to be for the Owner's account and settled directly by them.

20. PUMPING PERFORMANCE.
The Owner warrants that the vessel can load at a minimum rate of 1,750 m^3 per hour and the Owner furthermore guarantee the vessel can discharge the entire cargo within 24 (twenty four) hours or maintain a minimum *average* pressure of 100 P.S.I. at the vessel's manifolds providing shore facilities are capable of receiving the same. The vessel shall be equipped with pressure gauges at each manifold that are maintained in a proper working condition. Furthermore each gauge shall have a valid test certificate. The Owner is requested to instruct the Master to clarify by protest letter whenever the pumping time exceeds the warranted period. Failing the above, the Charterer will ~~deduct from hire~~*claim from the owners for the* excessive pumping time over and above such warranted time. If the vessel's performance is below the referenced standard and pumping is delayed, due to the vessel's deficiency, the Charterer has the right to withdraw the vessel from the berth until such deficiencies are remedied. All extra costs incurred as a result of this to be for Owner's account and all time lost as a result is to be ~~deducted from hire~~*claimed by the Charterers to the Owners*.

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At each port of discharge, the vessel is to maintain a proper and accurate discharge pumping record. This log must be countersigned by Master, Discharge Port Inspector and representative of the receiving terminal, if available. On completion of discharge, this record is to be promptly faxedor sent by e.mail to the Charterer.

21. BIMCO PIRACY CLAUSE.
Latest edition of BIMCO Piracy clause FOR TIME CHARTER PARTY 2009 shall apply.

~~22. YEMEN WAR RISK CLAUSE.~~**DELETE AS NOT APPLICABLE IN THIS FIXTURE**
~~Owners have permitted Yemen trade under prevailing levels of war risk in Yemen as from date of lifting their subjects. Charterers have the option to cancel the Charter Party if the allowed trade will become prohibited due to new sanctions and/or war and/or warlike situations in Yemen or if in Charterers reasonable estimate vessel's call to or discharge at Hodeidah port cannot be carried outthenChtrs to give redelivery approx notice of 25/20/15/10/7 days and firm notice 5/3/1 days . The hire will be remained to date of redelivery and Charterers to compensate to the Owners an amount of USD60,000 on account of earlyredeliveryIn such situation Charterers agree to redeliver ship as per agreed redelivery terms.~~

23.CARGO DOCUMENTATION CONTROL.
At discharge port, master shall not to release any cargo docs (BL, cargo manifest,cert of origin, cert of quantity, cert of quality,ullage report, etc) to discharge port agent or to any authority / 3rd party without the prior approval of the charterer . Master to advice requesting party that cargo docs have been handed over to the agent, and Master to immediately inform such request to Charterer.

24. AIS (AUTOMATED IDENTIFICATION SYSTEM).
Vessel must maintain its Automated Information System (AIS) in operation throughout the duration of their journey into and out of Yemeni Territorial waters, until arrival at the next port after Yemen. Vessels are requested to use the standard UN Location code (LOCODE) on AIS. Further, Master/Vessel to follow rules, regulation and instructions of the respective authorities and coalition war ships.

25. DOCUMENTS FOR UNVIM CLEARANCE.
For the purpose of obtaining clearance from UNVIM / Yemen Government / Saudi coalition, for trading into Yemen, Owners/Master to provide the supporting documentation and information required for vessel's clearance in the format requested by charterers within 24 hrs of each request.

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HEAD OFFICE

a) UNVIM CLEARANCE APPLICATION FORM
https://www.vimye.org/docs/UNVIM%20Request%20for%20Clearance%20Form.docx

b) FULL LIST OF REQUESTED DOCUMENTS (https://www.vimye.org/list-requested-documents)
Ship operators/Owners are requested to provide signed and stamped copies of the following
documents:

1. Manifests for cargo destined for Yemeni ports not under the control of the legitimate Government of Yemen
2. Bills of Lading for cargo destined for Yemeni ports not under the control of the
legitimate Government of Yemen, if available
3. Packing List(s) for cargo destined for Yemeni ports not under the control of the
legitimate Government of Yemen, if available
4. Last 10 Ports of Call (starting from the latest Port Clearance)
5. Port Clearance of Last Port called, if available
6. IMO Crew List with Seaman Book and Passport Numbers
7. IMO Passenger List, if applicable
8. Stowage Plan/Bay Plan for the vessel
9. List of armed guards on board, if applicable
10. Weapons and Ammunition On Board Declaration, if applicable
11. List of dangerous cargo on board, if applicable (attach respective List/Packing
certificate(s))
12. Document of Compliance for the Carriage of Dangerous Goods, if applicable
13. 5 latest Continuous Synopsis Records (CSR)
14. Certificate of Registration of Vessel
15. Trade License issued by Yemen-based Chambers of Commerce (only for break
or break-bulk cargo)
16. End User Certificate for Vehicles (except for small and medium-sized passenger cars), if applicable

26. ARMED GUARDS:
~~It is mutually agreed that Charterers will request quotes for employing armed guards from Owners' provided list of approved security companies hereunder. Owners reserve their right for whatever reason to decide for another security company, provided Owners pay the difference from th~~

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~~Charterers' obtained quote to the actual price.~~ **~~Owners always employee their security armed guards and charteres to pay negotiated price as per current market practice. The agreed rate is USD 12,000 per assignment of hiring armed guards. in addition to that all ammunition transfer costs shall be covered by charterers and have not a constant price for ammunition it will depends up on the port call.~~**

~~ARMED SECURITY ON CHTRS ACCOUNT OF VESSEL SHALL BE MAINTAINED BY THE SHIP CREW WITH EX-MILITIARY BACK GROUND AND ARMS ALREADY PROVIDED BY OWNERS AND COSTS SHALL BE TO CHARTERERS ACCOUNT. OWNERS AVERAGE COST FOR HIRING ARMED GUARDS FOR A SINGLE ASSIGNMENT IS USD 12,000. CHARTERERS SHALL COVER THIS COST ACCORDINGLY. AMMUNITION TRANSFER COSTS SHALL BE PAID DIRECTLY BY CHARTERERS VIA THEIR AGENT AS PER THE PROVIDED INVOICE TO CONCERNED BODIES ACCORDINGLY. ALTERNATIVELY CHARTERER'S OPTION TO SHALL DIRECTLY HIRE 3 ARMED GUARDS FROM A REPUTED PRIVATE MARITIME SECURITY COMPANY~~ **~~(AS PER THE ATTACHED ACCEPTED ARMED GUARDS LIST AND ISO: 28007~~** ~~CERTIFICATION)~~

~~-ARMED SECURITY ON CHTRS ACCOUNT. CHARTERER'S OPTION TO~~ **~~SHALL~~** ~~DIRECTLY HIRE 3 ARMED GUARDS FROM A REPUTED PRIVATE MARITIME SECURITY COMPANY (PMSC) FROM THE ATTACHED LIST AND~~ **~~ISO: 28007~~** ~~CERTIFICATION~~ **~~AND GOVERNED BY BIMCO GUARDCON CONTRACT.~~** ~~IF REQUIRED FOR ADDITIONAL WAR RISK OR KIDNAP AND RANSOM COVERS. AMMUNITION TRANSFER COSTS~~ **~~OF THE ABOVE CHARTERER-APPOINTED 3 ARMED GUARDS~~** ~~SHALL BE PAID DIRECTLY BY CHARTERES VIA THEIR AGENT AS PER THE PROVIDED INVOICE TO CONCERNED BODIES ACCORDINGLY.~~ **~~CHARTERERS WARRANT THAT THE GUARDS WILL BE SUPPLIED WITH ADEQUATE WEAPONS AND AMMUNITIONS WHILE VESSEL IS PASSING / STAYING IN HIGH RISK AREA,~~** ~~[COMMENT : CHTR MAINTAIN LAST. chtr already paying for all related costs for arm guards, weapons and ammunitions. We cannot pay for any additional cost related weapons over and above what is already sufficiently placed to cover the vessel, crew and cargo. For a whole year charterers have been providing 3 armed guards and adequate ammunitions for sister ship Bahir Dar. The same arrangement will be made by Charterers for Hawassa, therefore there is no need for Owners to place additional ammunition.)~~

~~REFER TO RECAP~~

More security companies can be added subject to Owners' review.

27. ASSIGNEMENT AND NOVATION.

A) Notwithstanding any other provision of this Charter Party, Charterer may assign all of its rights and obligations under this Charter Party to any affiliate of Charterer. Charterer always remaining fully responsible for the fulfillment of all terms and conditions of this Charter Party.

B) Charterer shall also have the right to sublet vessel, but in the event of a sublet, Charterer shall always remain responsible for the fulfillment of this Charter in all its terms and conditions.

C) Charterer shall have the right to Novate the C/P to any third party.

Charterer shall always remain responsible for the fulfillment of this Charter in all terms and conditions

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WITHIN THE SCOPE OF SANCTIONS CLAUSE WHICH IS TO ALWAYS BE APPLICABLE

28. Law / Arbitration

All disputes arising out of this contract which cannot be amicably solved by the parties shall be referred to arbitration in London. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party. In case of arbitration on documents, if the two arbitrators appointed are in agreement their decision shall be final. In all other cases, the arbitrators so appointed shall appoint a third arbitrator and the reference shall be ~~decision of the~~ three men tribunal thus constituted ~~or any two of them shall be final~~. ~~It~~ If either the appointed arbitrators refuses to act or is incapable of acting, the party who appointed him shall appoint a new arbitrator in his place.

This contract is governed by English law and there shall apply to all proceedings under this clause the terms of LMAA current at the time when the arbitration proceedings were commenced. All appointees shall be member of association.

29. NNBLS FOR UNVIM AND CUSTOMS CLEARANCE
IN ADDITION TO THE SHIPPER'S ORIGINAL BL & CARGO DOCS SIGNED BY MASTER (OR SIGNED BY AGENTS UNDER MASTER'S AUTHORIZATION IF EDP IS FOLLOWED), FOR UNVIM CLEARANCE PURPOSE, CHARTERERS HAVE OPTION TO ISSUE A SEPARATE SET OF NON-NEGOTIABLE CARGO DOCUMENTS (NON-NEGOTIABLE BL, MANIFEST, COO & CERT OF QUANTITY). THE ONLY CHANGES MADE TO THIS NON-NEGOTIABLE DOCS WILL BE NAMES OF SHIPPER, CONSIGNEE AND NOTIFY PARTY AND DISPORT TO READ MOK PETROENERGY FZC OWNERS AGREE THAT THIS NON-NEGOTIABLE SET OF
DOCS SHALL BE SIGNED BY MASTER OR AGENTS ON BEHALF OF MASTER. FOR THE PURPOSE OF CLARITY, IT IS UNDERSTOOD THAT MASTER OR AGENTS SHALL SIGN THIS NON-NEGOTIABLE SET OF DOCS WITHOUT CANCELLATION OF THE ORIGINAL BLS. HOWEVER IF ANY EXTRA EXPENSE DUE TO CHARTS AFORE-MENTIONED DOCUMENTATION WILL BE FOR CHARTS
ACCT

- AGREED - FOR GOOD ORDER, SAME TO BE ISSUED/SIGNED BY MASTER AGAINST OWNERS PNI CLUB WORDING.

30) FINANCIAL HOLD AGREEMENT TO BE ALLOWED

for Owners

31) Charterers shall have the option, after consultation with owners, of requiring owners to lay up the vessel at a safe place nominated by charterers. However, if the vessel remains idle for more than 20 ~~30~~ (Chrtrs can accept 20 days subj to comments below)consecutive days, then charterers to arrange vessel underwater hull cleaning at their own time and expenses to owner's satisfaction. Otherwise actual speed/consumption figures to apply irrespective of any warranted speed/consumption given in the charter party. In addition costs of fresh water consumed for the above period (first 20 days) will be on owners account by default and cost for any additional days until the date vsl moves from the idling location ~~within this period~~ will be ~~covered~~ paid by the charterers to owners at owner's last purchase price. (please specify average daily consumption of fresh water when vsl is id

== END

Roba Megerssa
Chief Executive Officer

ETHIOPIAN SHIPPING AND LOGISTICS SERVICES ENTERPRISE
HEAD OFFICE

Code word for this Charter Party "SHELLTIME 4"

Issued December 1984 amended December 2003

Time Charter Party

Dubai 02 FEB 2020

IT IS THIS DAY AGREED between **ETHIOPIAN SHIPPING AND LOGISTICS SERVICES ENTERPRISE** of KIRKOS DISTRICT, KEBELE 15 (LA GAlastRE), P.O. Box 2572, ADDIS ABABA,ETHIOPIA, (hereinafter referred to as "Owners"), being owners of the good motor **TANKER** /~~steam~~ vessel called **MT "HAWASSA"** (hereinafter referred to as the "Vessel") described as per Clause 1 hereof and [illegible] FZC, OFFICE 302E BAN [illegible] of [illegible] (hereinafter referred to as "Charterers"):

Description And Condition of Vessel

1. At the date of delivery of the vessel under this charter and throughout the charter period:
   (a) she shall be classed by a Classification Society which is a member of the International Association of Classification Societies; (AMERICAN BUREAU OF SHIPPING)
   (b) she shall be in every way fit to carry ~~crude petroleum and/or its products~~ 1 TO 2 GRADES CLEAN PETROLEUM PRODUCTS UNLEADED UNDARKER 2.5 NPA EXCLUDING CASINGHEAD/LUBES/SOLVENTS/CHEMICALS/ PENTANES/PENTANES/MTBE/PYGAS. INTENTION GASOLINE AND / OR GASOIL. CHARTERERS OPTION UPTO MAXIMUM PERMISSIBLE DEADWEIGHT;
   (c) she shall be tight, staunch, strong, in good order and condition, and in every way fit for the service, with her machinery, boilers, hull and other equipment (including but not limited to hull stress calculator, radar, computers and computer systems) in a good and efficient state;
   (d) her tanks, valves and pipelines shall be oil- tight;
   (e) she shall be in every way fitted for burning, in accordance with the grades specified in Clause 29 hereof:
      (i) at sea, fuel oil for main propulsion and fuel oil/marine diesel oil* for auxiliaries;
      (ii) in port, fuel oil/marine diesel oil* for auxiliaries;
   (f) she shall comply with the regulations in force so as to enable her to pass through the Suez and Panama Canals by day and night without delay;
   (g) she shall have on board all certificates, documents and equipment required from time to time by any applicable law to enable her to perform the charter service without delay;
   (h) she shall comply with the description in the ~~OCIMF Harmonised Vessel Particulars~~ Questionnaire 88 appended hereto as Appendix A, provided however that if there is any conflict between the provisions of this questionnaire and any other provision, including this Clause 1, of this charter such other provisions shall govern;
   (i) her ownership structure, flag, registry, classification society and management company shall not be changed;

Safety Management

   (j) Owners will operate:
      (i) a safety management system certified to comply with the International Safety Management Code ("ISM Code") for the Safe Operation of Ships and for Pollution Prevention;
      (ii) a documented safe working procedures system (including procedures for the identification and mitigation of risks);
      (iii) a documented environmental management system;
      (iv) documented accident/incident reporting system compliant with flag state requirements;
   (k) Owners shall submit to Charterers a monthly written report detailing all accidents/incidents and environmental reporting requirements, in accordance with the "Shell Safety and Environmental Monthly Reporting Template" appended hereto as Appendix B;
   (l) Owners shall maintain Health Safety Environmental ("HSE") records sufficient to demonstrate compliance with the requirements of their HSE system and of this charter. Charterers reserve the right to confirm compliance with HSE requirements by audit of Owners.
   (m) Owners will arrange at their expense for a SIRE inspection to be carried out at intervals of six months plus or minus thirty days.

Shipboard Personnel And their Duties

2. (a) At the date of delivery of the vessel under this charter and throughout the charter period:
      (i) she shall have a full and efficient complement of master, officers and crew for a vessel of her tonnage, who shall in any event be not less than the number required by the laws of the flag state and who shall be trained to operate the vessel and her equipment competently and safely;
      (ii) all shipboard personnel shall hold valid certificates of competence in accordance with the requirements of the law of the flag state;
      (iii) all shipboard personnel shall be trained in accordance with the relevant provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1995 or any additions, modifications or subsequent versions thereof;
      (iv) there shall be on board sufficient personnel with a good working knowledge of the English language to enable cargo operations at loading and discharging

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to be carried out efficiently and safely and to enable communications between the vessel and those loading the vessel or accepting discharge there from to be carried out quickly and efficiently;

(v) the terms of employment of the vessel's staff and crew will always remain acceptable to The International Transport Worker's Federation and the vessel will at all times carry a Blue Card;

(vi) the nationality of the vessel's officers given in the OCIMF Vessel Particulars Questionnaire referred to in Clause 1(h) will not change without Charterers' prior agreement.

(b) Owners guarantee that throughout the charter service the master shall with the vessel's officers and crew, unless otherwise ordered by Charterers;

(i) prosecute all voyages with the utmost despatch;

(ii) render all customary assistance; and

(iii) load and discharge cargo as rapidly as possible when required by Charterers or their agents to do so, by night or by day, but always in accordance with the laws of the place of loading or discharging (as the case may be) and in each case in accordance with any applicable laws of the flag state.

Duty to Maintain

3. (a) Throughout the charter service Owners shall, whenever the passage of time, wear and tear or any event (whether or not coming within Clause 27 hereof) requires steps to be taken to maintain or restore the conditions stipulated in Clauses 1 and 2(a), exercise due diligence so to maintain or restore the vessel.

(b) If at any ti me whilst the vessel is on hire under this charter the vessel fails to comply with the requirements of Clauses 1, 2(a) or 10 then hire shall be reduced to the extent necessary to indemnify Charterers for such failure. If and to the extent that such failure affects the time taken by the vessel to perform any services under this charter, hire shall be reduced by an amount equal to the value, calculated at the rate of hire, of the time so lost.
Any reduction of hire under this sub-Clause (b) shall be without prejudice to any other remedy available to Charterers, but where such reduction of hire is in respect of time lost, such time shall be excluded from any calculation under Clause 24.

(c) If Owners are in breach of their obligations under Clause 3(a)), Charterers may so notify Owners in writing and if, after the expiry of 30 days following the receipt by Owners of any such notice, Owners have failed to demonstrate to Charterers' reasonable satisfaction the exercise of due diligence as required in Clause 3(a), the vessel shall be off-hire, and no further hire payments shall be due, until Owners have so demonstrated that they are exercising such due diligence.

(d) Owners shall advise Charterers immediately, in writing, should the vessel fail an inspection by, but not limited to, a governmental and/or port state authority, and/or terminal and/or major charterer of similar tonnage. Owners shall simultaneously advise Charterers of their proposed course of action to remedy the defects which have caused the failure of such inspection.

(e) If, in Charterers reasonably held view:

(i) failure of an inspection, or,

(ii) any finding of an inspection,

referred to in Clause 3 (d), prevents normal commercial operations then Charterers have the option to place the vessel off-hire from the date and time that the vessel fails such inspection, or becomes commercially inoperable, until the date and time that the vessel passes a re-inspection by the same organisation, or becomes commercially operable, which shall be in a position no less favourable to Charterers than at which she went off-hire.

(f) Furthermore, at any time while the vessel is off-hire under this Clause 3 (with the exception of Clause 3(e)(ii)), Charterers have the option to terminate this charter by giving notice in writing with effect from the date on which such notice of termination is received by Owners or from any later date stated in such notice. This sub-Clause (f) is without prejudice to any rights of Charterers or obligations of Owners under this charter or otherwise (including without limitation Charterers' rights under Clause 21 hereof).

Period,

4. (a) Owners agree to let and Charterers agree to hire the vessel for a period of 06 MONTHS FIRM PERIOD. ADDITTIONAL 03 MONTHS + 03 MONTHS IN OWNER'S OPTION (OPTIONS FOR PERIOD EXTENSION TO BE DECLARED BY OWNERS 15 DAYS PRIOR TO COMPLETION OF EACH PERIOD)

Trading Limits and Safe Places

plus or minus UPTO 15 days in Charterers' option commencing from the time and date of delivery of the vessel for the purpose of carrying all lawful merchandise (subject always to Clause 28) including in particular; ALWAYS AFLOAT, ALWAYS ACCESSIBLE, VIA SAFE PORT(S), ANCHORAGE(S), BERTH(S) IN AND BETWEEN EAST OF SUEZ (INCLUDING YEMEN), ARABIAN GULF,MEDITERRANEAN, SINGAPORE, FAR EAST ASIA UPTO RUSSIA (NAKHODKA REGION) AND BLACK SEA AND AFRICA (INCLUDING EAST AFRICA, SOUTH AFRICA, WEST AFRICA, MEDITTERANEAN AFRICA) AND INCLUDING ANY OTHER REGION WORLD-WIDE NOT SPECIFIED HEREIN PROVIDED IT IS NON-SANCTIONED BY UN & EXCLUDING IRAN AND ANY ICE BOUND AREAS AS CHARTERER MAY DIRECT. YEMEN IS PERMITTED BASIS CHARTERERS ACCEPTANCE TO PAY WAR RISK INSURANCE PREMIUM.

~~in any part of the world~~, as Charterers shall direct, subject to the limits of the current British Institute Warranties and any subsequent amendments thereof. Notwithstanding the foregoing, but subject to Clause 35, Charterers may order the vessel to ice-bound waters or to any part of the world outside such limits provided that Owner's consent thereto (such consent not to be unreasonably withheld) and that Charterers pay for any insurance premium required by the vessel's underwriters as a consequence of such order.

(b) Any time during which the vessel is off-hire under this charter may be added to the char

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period in Charterers' option up to the total amount of time spent off-hire. In such cases the rate of hire will be that prevailing at the time the vessel would, but for the provisions of this Clause, have been redelivered.

(c) Charterers shall use due diligence to ensure that the vessel is only employed between and at safe places (which expression when used in this charter shall include ports, berths, wharves, docks, anchorages, submarine lines, alongside vessels or lighters, and other locations including locations at sea) where she can safely lie always afloat. Notwithstanding anything contained in this or any other clause of this charter, Charterers do not warrant the safety of any place to which they order the vessel and shall be under no liability in respect thereof except for loss or damage caused by their failure to exercise due diligence as aforesaid. Subject as above, the vessel shall be loaded and discharged at any places as Charterers may direct, provided that Charterers shall exercise due diligence to ensure that any ship - to-ship transfer operations shall conform to standards not less than those set out in the latest published edition of the ICS/OCIMF Ship - to-Ship Transfer Guide.

(d) Unless otherwise agreed, the vessel shall be delivered by Owners ~~dropping outward pilot at a port in~~ AT A SAFE ANCHORAGE IN FUJAIRAH PORT ALWAYS FREE OF CARGO AND SLOPS WITH TANKS IN FULL INERT CONDITION AND READY TO LOAD GASOIL AND GASOLINE. OWNERS SHALL ARRANGE HULL CLEANING PRIOR DELIVERY.
~~at Owners' option~~ and redelivered to Owners ~~dropping outward pilot at a port in~~ AT APS (ARRIVAL PILOT STATION) OR DLOSP (DROPPING LAST OUTWARD SEA PILOT) FUJAIRAH PORT ALWAYS FREE OF CARGO AND SLOPS. ~~at Charterers' option.~~

(e) The vessel will deliver with last 3 cargo(es) of GASOIL /GASOIL/GASOIL and will redeliver with last cargo(es)of AS PER CLS 1(B).

(f) Owners are required to give Charterers 7 DAYS TENTATIVE AND 5 / 3 / 2 /1 days prior FIRM notice of delivery and Charterers are required to give Owners 7/5 DAYS TENTATIVE AND 3 / 2 / 1 DAYS FIRM ~~days~~ prior notice of redelivery.

Laydays/ Cancelling

5. The vessel shall not be delivered to Charterers before 02 FEB 2020 0001 HRS LT and Charterers shall have the option of cancelling this charter if the vessel is not ready and at their disposal on or before 2359 HRS ON 02 FEB 2020.

Owners to Provide

6. Owners undertake to provide and to pay for all provisions, wages (including but not limited to all overtime payments), and shipping and discharging fees and all other expenses of the master, officers and crew; also, except as provided in Clauses 4 and 34 hereof, for all insurance on the vessel, for all deck, cabin and engine-room stores, and for water; for all drydocking, overhaul, maintenance and repairs to the vessel; and for all fumigation expenses and de-rat certificates. Owners' obligations under this Clause 6 extend to all liabilities for customs or import duties arising at any time during the performance of this charter in relation to the personal effects of the master, officers and crew, and in relation to the stores, provisions and other matters aforesaid which Owners are to provide and pay for and Owners shall refund to Charterers any sums Charterers or their agents may have paid or been compelled to pay in respect of any such liability. Any amounts allowable in general average for wages and provisions and stores shall be credited to Charterers insofar as such amounts are in respect of a Period when the vessel is on-hire.

Charterers to Provide

7. (a) Charterers shall provide and pay for all fuel (except fuel used for domestic services), towage and pilotage and shall pay agency fees, port charges, commissions, expenses of loading and unloading cargoes, canal dues and all charges other than those payable by Owners in accordance with Clause 6 hereof, provided that all charges for the said items shall be for Owners' account when such items are consumed, employed or incurred for Owners' purposes or while the vessel is off-hire (unless such items reasonably relate to any service given or distance made good and taken into account under Clause 21 or 22); and provided further that any fuel used in connection with a general average sacrifice or expenditure shall be paid for by Owners.

(b) In respect of bunkers consumed for Owners' purposes these will be charged on each occasion by Charterers on a "first-in- first-out" basis valued on the prices actually paid by Charterers.

(c) If the trading limits of this charter include ports in the United States of America and/or its protectorates then Charterers shall reimburse Owners for port specific charges relating to additional premiums charged by providers of oil pollution cover, when incurred by the vessel calling at ports in the United States of America and/or its protectorates in accordance with Charterers orders.

Rate of Hire

8. Subject as herein provided, Charterers shall pay for the use and hire of the vessel at the rate of United States Dollars USD 14,300 GROSS per day, and pro rata for any part of a day, PLUS CVE AT THE RATE OF USD 2,500 PER MONTH PRORATA from the time and date of her delivery (local time) to Charterers until the time and date of redelivery (local time) to Owners.

Payment of Hire

9. Subject to Clause 3 (c) and 3 (e), payment of hire shall be made in immediately available funds EVERY 30 DAYS IN ADVANCE.

to: ETHIOPIAN SHIPPING AND LOGISTIC SERVICES ENTERPRISES
BY WIRE TRANSFER

Account: ABN AMRO BANK N.V ROTTERDAM, POST BUS 749, GL 0310, 3000 AS ROTTERDAM
ACCOUNT NO. IN EURO NL 96 ABNA 0562 3929 98
ACCOUNT NO. IN USD NL 24 ABNA 0598 4170 87
BANK IDENTIFICATION CODE (BIC) ABNANL2A.

OWNERS SHALL ISSUE SIGNED HIRE INVOICES ATLEAST 2 WORKING DAYS PRIOR DUE
CHARTERERS TO REMIT HIRE IN US DOLLARS BY DEFAULT.

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IF OWNERS REQUEST FOR PAYMENT IN EUROS, THEN CHARTERERS SHALL REMIT THE INVOICED US DOLLAR HIRE AMOUNT CONVERTED TO EUROS AT THE EXCHANGE RATE of CHARTERER'S BANK ON THE 2ND WORKING DAY FOLLOWING THE DUE DATE OF INVOICE. EXCHANGE LOSS IF ANY FOR OWNERS ACCOUNT.

in United States Dollars OR EURO per calendar month in advance, less:

(i) any hire paid which Charterers reasonably estimate to relate to off-hire periods, and;

(ii) any amounts disbursed on Owners' behalf, any advances and commission thereon, and charges which are for Owners' account pursuant to any provision hereof, and;

(iii) any amounts due or reasonably estimated to become due to Charterers under Clause 3 (c) or 24 hereof,

any such adjustments to be made at the due date for the next monthly payment after the facts have been ascertained. Charterers shall not be responsible for any delay or error by Owners' bank in crediting Owners' account provided that Charterers have made proper and timely payment.

In default of such proper and timely payment:

(a)Owners shall notify Charterers of such default and Charterers shall within seven days of receipt of such notice pay to Owners the amount due, including interest, failing which Owners may withdraw the vessel from the service of Charterers without prejudice to any other rights Owners may have under this charter or otherwise; and;

(b)Interest on any amount due but not paid on the due date shall accrue from the day after that date up to and including the day when payment is made, at a rate per annum which shall be 1% above the U.S. Prime Interest Rate as published by the Chase Manhattan Bank in New York at 12.00 New York time on the due date, or, if no such interest rate is published on that day, the interest rate published on the next preceding day on which such a rate was so published, computed on the basis of a 360 day year of twelve 30-day months, compounded semi-annually.

Space Available to Charterers

10. The whole reach, burthen and dec ks on the vessel and any passenger accommodation (including Owners' suite) shall be at Charterers' disposal, reserving only proper and sufficient space for the vessel's master, officers, crew, tackle, apparel, furniture, provisions and stores, provided that the weight of stores on board shall not, unless specially agreed, exceed tonnes at any time during the charter period. Approximate intake: 32,000 M TONS GASOIL BSS S.G. 0.8236 AND TEMP 30 C. AT 9.7 METERS ARRIVAL DRAFT HODEIDAH.

Segregated Ballast

11. In connection with the Council of the European Union Regulation on the Implementation of IMO Resolution A747(18) Owners will ensure that the following entry is made on the International Tonnage Certificate (1969) under the section headed "remarks":
"The segregated ballast tanks comply with the Regulation 13 of Annex 1 of the International Convention for the prevention of pollution from ships, 1973, as modified by the Protocol of 1978 relating thereto, and the total tonnage of such tanks exclusively used for the carriage of segregated water ballast is The reduced gross tonnage which should be used for the calculation of tonnage based fees is ".

Instructions And Logs

12. Charterers shall from time to time give the master all requisite instructions and sailing directions, and the master shall keep a full and, correct log of the voyage or voyages, which Charterers or their agents may inspect as required. The master shall when required furnish Charterers or their agents with a true copy of such log and with properly completed loading and discharging port sheets and voyage reports for each voyage and other returns as Charterers may require. Charterers shall be entitled to take copies at Owners' expense of any such documents which are not provided by the master.

Bills of Lading

13. (a)The master (although appointed by Owners) shall be under the orders and direction of Charterers as regards employment of the vessel, agency and other arrangements, and shall sign Bills of Lading as Charterers or their agents may direct (subject always to Clauses 35 (a) and 40) without prejudice to this charter. Charterers hereby indemnify Owners against all consequences or liabilities that may arise;

(i) from signing Bills of Lading in accordance with the directions of Charterers or their agents, to the extent that the terms of such Bills of Lading fail to conform to the requirements of this charter, or (except as provided in Clause 13 (b) from the master otherwise complying with Charterers' or their agents' orders;

(ii) from any irregularities in papers supplied by Charterers or their agents.

(b) If Charterers by telex, facsimile or other form of written communication that specifically refers To this Clause request Owners to discharge a quantity of cargo either without Bills of Lading and/or at a discharge place other than that named in a Bill of Lading and/or that is different from the Bill of Lading quantity, then Owners shall discharge such cargo in accordance with Charterer's instructions in consideration of receiving the following indemnity which shall be deemed to be given by Charterers on each and every such occasion and which is limited in value to 200% of the CIF value of the cargo carried on board;

" (i)Charterers shall indemnify Owners and Owners' servants and agents in respect of any liability loss or damage of whatsoever nature (including legal costs as between attorney or solicitor and client and associated expenses) which Owners may sustain by reason of delivering such cargo in accordance with Charterers' request.

(ii) If any proceeding is commenced against Owners or any of Owners' servants or agents in connection with the vessel having delivered cargo in accordance with such request, Charterers shall provide Owners or any of Owners' servants or agents from time to time on demand wi[illegible] sufficient funds to defend the said proceedings.

(iii) If the vessel or any other vessel or property belonging to Owners should be arrested [illegible]

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detained, or if the arrest or detention thereof should be threatened, by reason of discharge in accordance with Charterers instruction as aforesaid, Charterers shall provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such vessel or property and Charterers shall indemnify Owners in respect of any loss, damage or expenses caused by such arrest or detention whether or not same may be justified.

(iv) Charterers shall, if called upon to do so at any time while such cargo is in Charterers' possession, custody or control, redeliver the same to Owners.

(v) As soon as all original Bills of Lading for the above cargo which name as discharge port the place where delivery actually occurred shall have arrived and/or come into Charterers' possession, Charterers shall produce and deliver the same to Owners whereupon Charterers' liability hereunder shall cease.

Provided however, if Charterers have not received all such original Bills of Lading by 24.00 hours on the day 36 calendar months after the date of discharge, that this indemnity shall terminate at that time unless before that time Charterers have received from Owners written notice that:

aaa) Some person is making a claim in connection with Owners delivering cargo pursuant to Charterers request or,

bbb) Legal proceedings have been commenced against Owners and/or carriers and/or Charterers and/or any of their respective servants or agents and/or the vessel for the same reason.

When Charterers have received such a notice, then this indemnity shall continue in force until such claim or legal proceedings are settled. Termination of this indemnity shall not prejudice any legal rights a party may have outside this indemnity.

(vi) Owners shall promptly notify Charterers if any person (other than a person to whom Charterers ordered cargo to be delivered) claims to be entitled to such cargo and/or if the vessel or any other property belonging to Owners is arrested by reason of any such discharge of cargo.

vii) This indemnity shall be governed and construed in accordance with the English law and each and any dispute arising out of or in connection with this indemnity shall be subject to the jurisdiction of the High Court of Justice of England".

(c) Owners warrant that the Master will comply with orders to carry and discharge against one or more Bills of Lading from a set of original negotiable Bills of Lading should Charterers so require.

Conduct of Vessel's Personnel 14. If Charterers complain of the conduct of the master or any of the officers or crew, Owners shall immediately investigate the complaint. If the complaint proves to be well founded, Owners shall, without delay, make a change in the appointments and Owners shall in any event communicate the result of their investigations to Charterers as soon as possible.

Bunkers at Delivery and Redelivery 15. Charterers shall accept and pay for all bunkers on board at the time of delivery, and Owners shall on redelivery (whether it occurs at the end of the charter or on the earlier termination of this charter) accept and pay for all bunkers remaining on board, at the price actually paid, on a "first-in- first-out" basis. Such prices are to be supported by paid invoices.

Vessel to be delivered to and redelivered from the charter with, at least, a quantity of bunkers on board sufficient to reach the nearest main bunkering port.

VESSEL TO BE DELIVERED ONLY WITH BUNKERS ON BOARD THAT ARE COMPLIANCE WITH IMO 2020. VESSEL SHALL NOT HAVE ANY NON - COMPLIANT (HFO) BUNKERS ON BOARD AT THE TIME OF DELIVERY. IF HFO STILL AVAILABLE ON BOARD, SAME SHALL BE DE-BUNKERED AT OWNER'S TIME AND COST BEFORE VESSEL DELIVERY.

Notwithstanding anything contained in this charter all bunkers on board the vessel shall, throughout the duration of this charter, remain the property of Charterers and can only be purchased on the terms specified in the charter at the end of the charter period or, if earlier, at the termination of the charter.

Stevedores, Pilots, Tugs 16. Stevedores, when required, shall be employed and paid by Charterers, but this shall not relieve Owners from responsibility at all times for proper stowage, which must be controlled by the master who shall keep a strict account of all cargo loaded and discharged. Owners hereby indemnify Charterers, their servants and agents against all losses, claims, responsibilities and liabilities arising in any way whatsoever from the employment of pilots, tugboats or stevedores, who although employed by Charterers shall be deemed to be the servants of and in the service of Owners and under their instructions (even if such pilots, tugboat personnel or stevedores are in fact the servants of Charterers their agents or any affiliated company); provided, however, that;

(a)the foregoing indemnity shall not exceed the amount to which Owners would have been entitled to limit their liability if they had themselves employed such pilots, tugboats or stevedores, and;

(b)Charterers shall be liable for any damage to the vessel caused by or arising out of the use of stevedores, fair wear and tear excepted, to the extent that Owners are unable by the exercise of due diligence to obtain redress therefor from stevedores.

Super-Numeraries 17. Charterers may send representatives in the vessel's available accommodation upon any voyage made under this charter, Owners finding provisions and all requisites as supplied to officers, except alcohol. Charterers paying at the rate of United States Dollars 15 (fifteen) per day for each representative while on board the vessel.

Sub-letting/ Assignment/ Novation 18. Charterers may sub -let the vessel, but shall always remain responsible to Owners for due fulfilment of this charter. Additionally Charterers may assign or novate this charter to any company of the Royal Dutch/ Shell Group of Companies.

Final Voyage 19. If when a payment of hire is due hereunder Charterers reasonably expect to redeliver the ves

the next payment of hire would fall due, the hire to be paid shall be assessed on Charterers' reasonable estimate of the time necessary to complete Charterers' programme up to redelivery, and from which estimate Charterers may deduct amounts due or reasonably expected to become due for;

(a)disbursements on Owners' behalf or charges for Owners' account pursuant to any provision hereof, and;

(b)bunkers on board at redelivery pursuant to Clause 15 .

Promptly after redelivery any overpayment shall be refunded by Owners or any underpayment made good by Charterers.

If at the time this charter would otherwise terminate in accordance with Clause 4 the vessel is on a ballast voyage to a port of redelivery or is upon a laden voyage, Charterers shall continue to have the use of the vessel at the same rate and conditions as stand herein for as long as necessary to complete such ballast voyage, or to complete such laden voyage and return to a port of redelivery as provided by this charter, as the case may be.

Loss of Vessel

20. Should the vessel be lost, this charter shall terminate and hire shall cease at noon on the day of her loss; should the vessel be a constructive total loss, this charter shall terminate and hire shall cease at noon on the day on which the vessel's underwriters agree that the vessel is a constructive total loss; should the vessel be missing, this charter shall terminate and hire shall cease at noon on the day on which she was last heard of. Any hire paid in advance and not earned shall be returned to Charterers and Owners shall reimburse Charterers for the value of the estimated quantity of bunkers on board at the time of termination, at the price paid by Charterers at the last bunkering port.

Off-hire

21. (a)On each and every occasion that there is loss of time (whether by way of interruption in the vessel's service or, from reduction in the vessel's performance, or in any other manner);

(i) due to deficiency of personnel or stores; repairs; gas- freeing for repairs; time in and waiting to enter dry dock for repairs; breakdown (whether partial or total) of machinery, boilers or other parts of the vessel or her equipment (including without limitation tank coatings); overhaul, maintenance or survey; collision, stranding, accident or damage to the vessel; or any other similar cause preventing the efficient working of the vessel; and such loss continues for more than three consecutive hours (if resulting from interruption in the vessel's service) or cumulates to more than three hours (if resulting from partial loss of service); or;

(ii) due to industrial action, refusal to sail, breach of orders or neglect of duty on the part of the master, officers or crew; or;

(iii) for the purpose of obtaining medical advice or treatment for or landing any sick or injured person (other than a Charterers' representative carried under Clause 17 hereof) or for the purpose of landing the body of any person (other than a Charterers' representative), and such loss continues for more than three consecutive hours; or;

(iv) due to any delay in quarantine arising from the master, officers or crew having had communication with the shore at any infected area without the written consent or instructions of Charterers or their agents, or to any detention by customs or other authorities caused by smuggling or other infraction of local law on the part of the master, officers, or crew; or;

(v) due to detention of the vessel by authorities at home or abroad attributable to legal action against or breach of regulations by the vessel, the vessel's owners, or Owners (unless brought about by the act or neglect of Charterers); the ";

without prejudice to Charterers' rights under Clause 3 or to any other rights of Charterers hereunder, or otherwise, the vessel shall be off-hire from the commencement of such loss of time until she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced; provided, however, that any service given or distance made good by the vessel whilst off-hire shall be taken into account in assessing the amount to be deducted from hire.

(b) If the vessel fails to proceed at any guaranteed speed pursuant to Clause 24, and such failure arises wholly or partly from any of the causes set out in Clause 21(a) above, then the period for which the vessel shall be off-hire under this Clause 21 shall be the difference between;

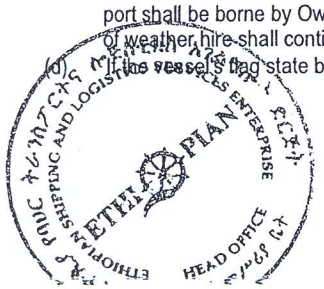
(i) the time the vessel would have required to perform the relevant service at such guaranteed speed, and;

(ii) the time actually taken to perform such service (including any loss of time arising from interruption in the performance of such service).

For the avoidance of doubt, all time included under (ii) above shall be excluded from any computation under Clause 24.

(c) Further and without prejudice to the foregoing, in the event of the vessel deviating (which expression includes without limitation putting back, or putting into any port other than that to which she is bound under the instructions of Charterers) for any cause or purpose mentioned in Clause 21(a) , the vessel shall be off-hire from the commencement of such deviation until the time when she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which the deviation commenced, provided, however, that any service given or distance made good by the vessel whilst so off-hire shall be taken into account in assessing the amount to be deducted from hire. If the vessel, for any cause or purpose mentioned in Clause 21 (a), puts into any port other than the port to which she is bound on the instructions of Charterers, the port charges, pilotage and other expenses at such port shall be borne by Owners. Should the vessel be driven into any port or anchorage by stress of weather hire shall continue to be due and payable during any time lost thereby.

(d) If the vessel's flag state becomes engaged in hostilities, and Charterers in consequence



hostilities find it commercially impracticable to employ the vessel and have given Owners written notice thereof then from the date of receipt by Owners of such notice until the termination of such commercial impracticability the vessel shall be off-hire and Owners shall have the right to employ the vessel on their own account.

(e) Time during which the vessel is off-hire under this charter shall count as part of the charter period except where Charterers declare their option to add off-hire periods under Clause 4 (b)).

(f) All references to "time" in this charter party shall be references to local time except where otherwise stated.

Periodical Drydocking

22. (a) Owners have the right and obligation to drydock the vessel at regular intervals of On each occasion Owners shall propose to Charterers a date on which they wish to drydock the vessel, not less than before such date, and Charterers shall offer a port for such periodical drydocking and shall take all reasonable steps to make the vessel available as near to such date as practicable.

Owners shall put the vessel in drydock at their expense as soon as practicable after Charterers place the vessel at Owners' disposal clear of cargo other than tank washings and residues. Owners shall be responsible for and pay for the disposal into reception facilities of such tank washings and residues and shall have the right to retain any monies received therefor, without prejudice to any claim for loss of cargo under any Bill of Lading or this charter.

(b) If a periodical drydocking is carried out in the port offered by Charterers (which must have suitable accommodation for the purpose and reception facilities for tank washings and residues), the vessel shall be off-hire from the time she arrives at such port until drydocking is completed and she is in every way ready to resume Charterers' service and is at the position at which she went off-hire or a position no less favourable to Charterers, whichever she first attains. However;

(i) provided that Owners exercise due diligence in gas-freeing, any time lost in gas-freeing to the standard required for entry into drydock for cleaning and painting the hull shall not count as off-hire, whether lost on passage to the drydocking port or after arrival there (notwithstanding Clause 21), and;

(ii) any additional time lost in further gas- freeing to meet the standard required for hot work or entry to cargo tanks shall count as off-hire, whether lost on passage to the drydocking port or after arrival there.

Any time which, but for sub-Clause (i) above, would be off-hire, shall not be included in any calculation under Clause 24.

The expenses of gas-freeing, including without limitation the cost of bunkers, shall be for Owners account.

(c) If Owners require the vessel, instead of proceeding to the offered port, to carry out periodical drydocking at a special port selected by them, the vessel shall be off-hire from the time when she is released to proceed to the special port until she next presents for loading in accordance with Charterers' instructions, provided, however, that Charterers shall credit Owners with the time which would have been taken on passage at the service speed had the vessel not proceeded to drydock. All fuel consumed shall be paid for by Owners but Charterers shall credit Owners with the value of the fuel which would have been used on such notional passage calculated at the guaranteed daily consumption for the service speed, and shall further credit Owners with any benefit they may gain in purchasing bunkers at the special port.

(d) Charterers shall, insofar as cleaning for periodical drydocking may have reduced the amount of tank-cleaning necessary to meet Charterers' requirements, credit Owners with the value of any bunkers which Charterers calculate to have been saved thereby, whether the vessel drydocks at an offered or a special port.

Ship Inspection

23. Charterers shall have the right at any time during the charter period to make such inspection of the vessel as they may consider necessary. This right may be exercised as often and at such intervals as Charterers in their absolute discretion may determine and whether the vessel is in port or on passage. Owners affording all necessary co-operation and accommodation on board provided, however:

(a) that neither the exercise nor the non-exercise, nor anything done or not done in the exercise or non-exercise, by Charterers of such right shall in any way reduce the master's or Owners' authority over, or responsibility to Charterers or third parties for, the vessel and every aspect of her operation, nor increase Charterers' responsibilities to Owners or third parties for the same; and;

(b) that Charterers shall not be liable for any act, neglect or default by themselves, their servants or agents in the exercise or non -exercise of the aforesaid right.

Detailed Description and Performance

24. (a) Owners guarantee that the speed and consumption of the vessel shall be as follows:-

Average speed in knots	Maximum average bunker consumption per day main propulsion fuel oil/ diesel oil tonnes	auxiliaries fuel oil/diesel oil tonnes
Laden	/	/
12.0	21.8/ 0.0	3.5/ 0.1
Ballast	/	/
12.0	20.5/ 0.0	3.5/ 0.1

NOTE: CONSUMPTION FIGURES IS BASED ON WINDS UPTO AND INCL. BEAUFORT FORCE FIVE (5) A

ETHIOPIAN SHIPPING AND LOGISTICS SERVICES ENTERPRISE

for Owners

DOUGLAS SEA STATE 4 FROM SEABUOY TO SEABOUY EXCLUDING HARBOUR MANOEUVERING, CANAL TRANSIT, RESTRICTED PASSAGE.

OTHER BUNKER CONSUMPTIONS (PER 24 HRS)

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ALL FIGURES ABOUT GIVEN IN GOOD FAITH WITHOUT GUARANTEE AND NOT TO BE USED FOR PERFORMANCE CALCULATION / CLAIM:

1. IN PORT IDLE : 3.5 MTONS IFO 380 (A/E) + 3.2 MTONS IFO 380 (BOILER) + 0.2 MT MGO

2. IN PORT LOADING INCLUDING DEBALLASTING : 5.5 MTONS IFO 380 (A/E) + 3.2 MTONS IFO 380 (BOILER) + 0.2 MT MGO

3. IN PORT DISCHARGING : 5.5 MTONS IFO 380 (A/E) + 25.0 MTONS IFO 380 (BOILER) + 0.2 MT MGO

4. ALL OTHER CONSUMPTIONS PLEASE REFER TO ATTACHED PERFORMANCE SHEET.

VESSEL SHALL USE FUEL OIL BUNKER CONSUMPTIONS DURING IDLE, LOAD, DISCHARGE WHERE PERMITTED BY PORT REGULATIONS.

The foregoing bunker consumptions are for all purposes except cargo heating and tank cleaning and shall be pro-rated between the speeds shown.
The service speed of the vessel is 12.0 knots laden and 12.0 knots in ballast and in the absence of Charterers' orders to the contrary the vessel shall proceed at the service speed. However if more than one laden and one ballast speed are shown in the table above Charterers shall have the right to order the vessel to steam at any speed within the range set out in the table (the "ordered speed").
If the vessel is ordered to proceed at any speed other than the highest speed shown in the table, and the average speed actually attained by the vessel during the currency of such order exceeds such ordered speed plus 0.5 knots (the "maximum recognised speed"), then for the purpose of calculating a decrease of hire under this Clause 24 the maximum recognised speed shall be used in place of the average speed actually attained.
For the purposes of this charter the "guaranteed speed" at any time shall be the then-current ordered speed or the service speed, as the case may be.
The average speeds and bunker consumptions shall for the purposes of this Clause 24 be calculated by reference to the observed distance from pilot station to pilot station on all sea passages during each period stipulated in Clause 24 (c) , but excluding any time during which the vessel is (or but for Clause 22 (b) (i) would be) off-hire and also excluding "Adverse Weather Periods", being;

(i) any periods during which reduction of speed is necessary for safety in congested waters or in poor visibility;
(ii) any days, noon to noon, when winds exceed force 8 on the Beaufort Scale for more than 12 hours.

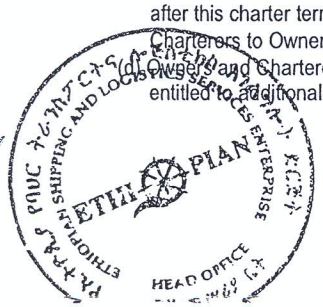
(b) If during any year from the date on which the vessel enters service (anniversary to anniversary) the vessel falls below or exceeds the performance guaranteed in Clause 24 (a) then if such shortfall or excess results;

(i) from a reduction or an increase in the average speed of the vessel, compared to the speed guaranteed in Clause 24 (a), then an amount equal to the value at the hire rate of the time so lost or gained, as the case may be, shall be included in the performance calculation;
(ii) from an increase or a decrease in the total bunkers consumed, compared to the total bunkers which would have been consumed had the vessel performed as guaranteed in Clause 24 (a), an amount equivalent to the value of the additional bunkers consumed or the bunkers saved, as the case may be, based on the average price paid by Charterers for the vessel's bunkers in such period, shall be included in the performance calculation.

The results of the performance calculation for laden and ballast mileage respectively shall be adjusted to take into account the mileage steamed in each such condition during Adverse Weather Periods, by dividing such addition or deduction by the number of miles over which the performance has been calculated and multiplying by the same number of miles plus the miles steamed during the Adverse Weather Periods, in order to establish the total performance calculation for such period.
Reduction of hire under the foregoing sub-Clause (b) shall be without prejudice to any other remedy available to Charterers.

(c) Calculations under this Clause 24 shall be made for the yearly periods terminating on each successive anniversary of the date on which the vessel enters service, and for the period between the last such anniversary and the date of termination of this charter if less than a year. Claims in respect of reduction of hire arising under this Clause during the final year or part year of the charter period shall in the first instance be settled in accordance with Charterers' estimate made two months before the end of the charter period. Any necessary adjustment after this charter terminates shall be made by payment by Owners to Charterers or by Charterers to Owners as the case may require.

(d) Owners and Charterers agree that this Clause 24 is assessed on the basis that Owners entitled to additional hire for performance in excess of the speeds and consumptions g



this Clause 24.

Salvage

25. Subject to the provisions of Clause 21 hereof, all loss of time and all expenses (excluding any damage to or loss of the vessel or tortious liabilities to third parties) incurred in saving or attempting to save life or in successful or unsuccessful attempts at salvage shall be borne equally by Owners and Charterers provided that Charterers shall not be liable to contribute towards any salvage payable by Owners arising in any way out of services rendered under this Clause 25 .
All salvage and all proceeds from derelicts shall be divided equally between Owners and Charterers after deducting the master's, officers' and crew's share.

Lien

26. Owners shall have a lien upon all cargoes and all freights, sub- freights and demurrage for any amounts due under this charter; and Charterers shall have a lien on the vessel for all monies paid in advance and not earned, and for all claims for damages arising from any breach by Owners of this charter.

Exceptions

27. (a) The vessel, her master and Owners shall not, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure arising or resulting from any act, neglect or default of the master, pilots, mariners or other servants of Owners in the navigation or management of the vessel; fire, unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the sea; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery; provided, however, that Clauses 1, 2, 3 and 24 hereof shall be unaffected by the foregoing. Further, neither the vessel, her master or Owners, nor Charterers shall, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, lock-outs, riots, restraints of labour, civil commotions or arrest or restraint of princes, rulers or people.

(b) The vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress and to deviate for the purpose of saving life or property.

(c) Clause 27(a) shall not apply to, or affect any liability of Owners or the vessel or any other relevant person in respect of;

(i) loss or damage caused to any berth, jetty, dock, dolphin, buoy, mooring line, pipe or crane or other works or equipment whatsoever at or near any place to which the vessel may proceed under this charter, whether or not such works or equipment belong to Charterers, or;

(ii) any claim (whether brought by Charterers or any other person) arising out of any loss of or damage to or in connection with cargo. Any such claim shall be subject to the Hague-Visby Rules or the Hague Rules or the Hamburg Rules, as the case may be, which ought pursuant to Clause 38 hereof to have been incorporated in the relevant Bill of Lading (whether or not such Rules were so incorporated) or, if no such Bill of Lading is issued, to the Hague-Visby Rules unless the Hamburg Rules compulsorily apply in which case to the Hamburg Rules.

(d) In particular and without limitation, the foregoing subsections (a) and (b) of this Clause shall not apply to or in any way affect any provision in this charter relating to off-hire or to reduction of hire.

Injurious Cargoes

28. No acids, explosives or cargoes injurious to the vessel shall be shipped and without prejudice to the foregoing any damage to the vessel caused by the shipment of any such cargo, and the time taken to repair such damage, shall be for Charterers' account. No voyage shall be undertaken, nor any goods or cargoes loaded, that would expose the vessel to capture or seizure by rulers or governments.

Grade of Bunkers

29. Charterers shall supply fuel oil with a maximum viscosity of centistokes at 50 degrees centigrade and/or marine diesel oil for main propulsion and fuel oil with a maximum viscosity of centistokes at 50 degrees centigrade and/or diesel oil for the auxiliaries. If Owners require the vessel to be supplied with more expensive bunkers they shall be liable for the extra cost thereof.
Charterers warrant that all bunkers provided by them in accordance herewith shall be of a quality complying with ISO Standard 8217 for Marine Residual Fuels and Marine Distillate Fuels as applicable. TYPE AND QUALITY OF FUEL WILL BE AS PER IMO REGULATION FOR GLOBAL AND EMISSION CONTROL AREA (ECA)

Disbursements

30. Should the master require advances for ordinary disbursements at any port, Charterers or their agents shall make such advances to him, in consideration of which Owners shall pay a commission of two and a half per cent, and all such advances and commission shall be deducted from hire.

Laying -up

31. Charterers shall have the option, after consultation with Owners, of requiring Owners to lay up the vessel at a safe place nominated by Charterers, in which case the hire provided for under this charter shall be adjusted to reflect any net increases in expenditure reasonably incurred or any net saving which should reasonably be made by Owners as a result of such lay up. Charterers may exercise the said option any number of times during the charter period.

Requisition

32. Should the vessel be requisitioned by any government, de facto or de jure, during the period of this charter, the vessel shall be off-hire during the period of such requisition, and any hire paid by such governments in respect of such requisition period shall be for Owners' account. Any such requisition period shall count as part of the charter period.

Outbreak of War

33. If war or hostilities break out between any two or more of the following countries: U.S.A., the countries or republics having been part of the former U.S.S.R (except that declaration of war or hostilities solely between any two or more of the countries or republics having been part of the former USSR shall be exempted), P.R.C., U.K., Netherlands, then both Owners and Charterers have the right to cancel this charter.

ETHIOPIAN SHIPPING AND LOGISTICS SERVICES ENTERPRISE

Additional War Expenses

34. If the vessel is ordered to trade in areas where there is war (de facto or de jure) or threat of war, Charterers shall reimburse Owners for any additional insurance premia, crew bonuses and other expenses which are reasonably incurred by Owners as a consequence of such orders, provided that Charterers are given notice of such expenses as soon as practicable and in any event before such expenses are incurred, and provided further that Owners obtain from their insurers a waiver of any subrogated rights against Charterers in respect of any claims by Owners under their war risk insurance arising out of compliance with such orders.
Any payments by Charterers under this clause will only be made against proven documentation. Any discount or rebate refunded to Owners, for whatever reason, in respect of additional war risk premium shall be passed on to Charterers.

WHILE VESSEL IS TRADING TO HIGH RISK / JWC WAR LISTED AREAS:

A. ADDITTIONAL WAR RISK INSURANCE PREMIUM SHALL BE FOR CHARTERERS ACCOUNT. **CHARTERERS** OPTION TO PROVIDE COMPETITIVE AWRC QUOTE FROM WAR UNDERWRITERS.
CHARTERER HAS ALREADY PROVIDED A COMPETITIVE QUOTATION FROM TRAVELLERS VIA MR. NICK OF BROKERS CR WHO IS CURRENTLY UNDER DISCUSSION WITH EIC. IN THE COVER, CHRTRS HAVE OBTAINED AND SHARED WITH OWNERS A QUOTE FOR 6 MONTHS MIN - 12 MONTHS MAX, TO FULLY COVER THE SHIP TO AVOID ANY EXPOSURE TO THE SHIP, WHICH CHARTERER REQUEST OWNERS TO CONFIRM AND ACCEPT THE QUOTATION LATEST BY 31/JAN/2020 IN WRITING. ON THE OTHER HAND IF OWNERS HAVE A MORE COMPETITIVE AWRP COVER PLEASE SHARE BEFORE 31/JAN/2020 TO AVOID COMPLICATION IN DOING SMOOTH BUSINESS. IF OWNERS CANNOT OBTAIN A MORE COMPETITIVE AWRP COVER BY 31/JAN/2020, THE TRAVELLERS' QUOTATION OBTAINED/SHARED BY CHARTERERS TO BE IN FORCE FROM THE DATE OF DELIVERY OF THE VESSEL TO CHARTERER..

B. KIDNAP & RANSOM PREMIUM CREW WAR BONUS FOR CHARTERERS ACCOUNT.(OWNERS OPTION TO PROVIDE COMPETITIVE KIDNAP & RANSOM COVER QUOTE FROM WAR UNDERWITERS) .....

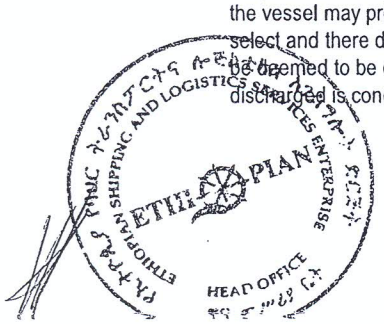
C. ARMED SECURITY ON CHTRS ACCOUNT. CHARTERER'S SHALL DIRECTLY HIRE 3 ARMED GUARDS FROM A REPUTED PRIVATE MARITIME SECURITY COMPANY (PMSC) FROM THE ATTACHED LIST AND ISO: 28007 CERTIFICATION AND GOVERNED BY BIMCO GUARDCON CONTRACT. IF REQUIRED FOR ADDITIONAL WAR RISK OR KIDNAP AND RANSOM COVERS. AMMUNITION TRANSFER COSTS OF THE ABOVE CHARTERER-APPOINTED 3 ARMED GUARDS SHALL BE PAID DIRECTLY BY CHARTERES VIA THEIR AGENT AS PER THE PROVIDED INVOICE TO CONCERNED BODIES ACCORDINGLY.AMMUNITION TRANSFER COST RELATED TO OWNER'S GUARDS FOR OWNERS ACCOUNT. THE GUARDS EMPLOYED BY CHARTERERS WARRANT THAT THE GUARDS WILL BE SUPPLIED WITH ADEQUATE WEAPONS AND AMMUNITIONS WHILE VESSEL IS PASSING / STAYING IN HIGH RISK AREA.

War Risks

35. (a) The master shall not be required or bound to sign Bills of Lading for any place which in his or Owners' reasonable opinion is dangerous or impo ssible for the vessel to enter or reach owing to any blockade, war, hostilities, warlike operations, civil war, civil commotions or revolutions.

(b) If in the reasonable opinion of the master or Owners it becomes, for any of the reasons set out in Clause 35(a) or by the operation of international law dangerous, impossible or prohibited for the vessel to reach or enter, or to load or discharge cargo at, any place to which the vessel has been ordered pursuant to this charter (a "place of peril"), then Charterers or their agents shall be immediately notified in writing or by radio messages, and Charterers shall thereupon have the right to order the cargo, or such part of it as may be affected, to be loaded or discharged, as the case may be, at any other place within the trading limits of this charter (provided such other place is not itself a place of peril). If any place of discharge is or becomes a place of peril, and no orders have been received from Charterers or their agents within 48 hours after dispatch of such messages, then Owners shall be at liberty to discharge the cargo or such part of it as may be affected at any place which they or the master may in their or his discretion select within the trading limits of this charter and such discharge shall be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo so discharged is concerned.

(c) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any other wise whatsoever given by the government of the state under whose flag the vessel sails or any other government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations anything is done or is not done, such shall not be deemed a deviation.
If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to any place of discharge to which she has been ordered pursuant to this charter, the vessel may proceed to any place which the master or Owners in his or their discretion select and there discharge the cargo or such part of it as may be affected. Such discharge shall be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo s discharged is concerned.



for Owners

Charterers shall procure that all Bills of Lading issued under this charter shall contain the Chamber of Shipping War Risks Clause 1952.

Both to Blame Collision Clause

36. If the liability for any collision in which the vessel is involved while performing this charter falls to be determined in accordance with the laws of the United States of America, the following provision shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the cargo carried hereunder will indemnify the carrier against all loss, or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said cargo, paid or payable by the other or non-carrying ship or her owners to the owners of the said cargo and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier."

"The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact."

Charterers shall procure that all Bills of Lading issued under this charter shall contain a provision in the foregoing terms to be applicable where the liability for any collision in which the vessel is involved falls to be determined in accordance with the laws of the United States of America.

New Jason Clause

37. General average contributions shall be payable according to York/Antwerp Rules, 1994, as amended from time to time, and shall be adjusted in London in accordance with English law and practice but should adjustment be made in accordance with the law and practice of the United States of America, the following position shall apply:

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo."

"If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery."

Charterers shall procure that all Bills of Lading issued under this charter shall contain a provision in the foregoing terms, to be applicable where adjustment of general average is made in accordance with the laws and practice of the United States of America.

Clause Paramount

38. Charterers shall procure that all Bills of Lading issued pursuant to this charter shall contain the following:

"(1)Subject to sub-clause (2) or (3) hereof, this Bill of Lading shall be governed by, and have effect subject to, the rules contained in the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25th August 1924 (hereafter the "Hague Rules") as amended by the Protocol signed at Brussels on 23rd February 1968 (hereafter the "Hague-Visby Rules"). Nothing contained herein shall be deemed to be either a surrender by the carrier of any of his rights or immunities or any increase of any of his responsibilities or liabilities under the Hague-Visby Rules."

"(2)If there is governing legislation which applies the Hague Rules compulsorily to this Bill of Lading, to the exclusion of the Hague-Visby Rules, then this Bill of Lading shall have effect subject to the Hague Rules. Nothing therein contained shall be deemed to be either a surrender by the carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the Hague Rules."

"(3) If there is governing legislation which applies the United Nations Convention on the Carriage of Goods by Sea 1978 (hereafter the "Hamburg Rules") compulsorily to this Bill of Lading, to the exclusion of the Hague-Visby Rules, then this Bill of Lading shall have effect subject to the Hamburg Rules. Nothing therein contained shall be deemed to be either a surrender by the carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the Hamburg Rules."

"(4)If any term of this Bill of Lading is repugnant to the Hague-Visby Rules, or Hague Rules, or Hamburg Rules, as applicable, such term shall be void to that extent but no further."

"(5)Nothing in this Bill of Lading shall be construed as in any way restricting, excluding or waiving the right of any relevant party or person to limit his liability under any available legislation and/or law."

Insurance/ ITOPF

39. Owners warrant that the vessel is now, and will, throughout the duration of the charter:

(a) be owned or demise chartered by a member of the International Tanker Owners Pollution Federation Limited;

(b) be properly entered in P & I Club, being a member of the International Group of P and I Clubs;

(c) have in place insurance cover for oil pollution for the maximum on offer through the International Group of P&I Clubs but always a minimum of United States Dollars 1,000,000,000 (one thousand million);

(d)have in full force and effect Hull and Machinery insurance placed through reputable brokers on Institute Time Clauses or equivalent for the value of United States Dollars

ETHIOPIAN SHIPPING AND LOGISTICS SERVICES ENTERPRISE

for Smb

time to time may be amended with Charterers' approval, which shall not be unreasonably withheld.

Owners will provide, within a reasonable time following a request from Charterers to do so, documented evidence of compliance with the warrantie s given in this Clause 39 .

Export Restrictions

40. The master shall not be required or bound to sign Bills of Lading for the carriage of cargo to any place to which export of such cargo is prohibited under the laws, rules or regulations of the country in which the cargo was produced and/or shipped.

Charterers shall procure that all Bills of Lading issued under this charter shall contain the following clause:

"If any laws rules or regulations applied by the government of the country in which the cargo was produced and/or shipped, or any relevant agency thereof, impose a prohibition on export of the cargo to the place of discharge designated in or ordered under this Bill of Lading, carriers shall be entitled to require cargo owners forthwith to nominate an alternative discharge place for the discharge of the cargo, or such part of it as may be affected, which alternative place shall not be subject to the prohibition, and carriers shall be entitled to accept orders from cargo owners to proceed to and discharge at such alternative place. If cargo owners fail to nominate an alternative place within 72 hours after they or their agents have received from carriers notice of such prohibition, carriers shall be at liberty to discharge the cargo or such part of it as may be affected by the prohibition at any safe place on which they or the master may in their or his absolute discretion decide and which is not subject to the prohibition, and such discharge shall constitute due performance of the contract contained in this Bill of Lading so far as the cargo so discharged is concerned".

The foregoing provision shall apply mutatis mutandis to this charter, the references to a Bill of Lading being deemed to be references to this charter.

Business Principles

41. Owners will co-operate with Charterers to ensure that the "Business Principles", as amended from time to time, of the Royal Dutch/Shell Group of Companies, which are posted on the Shell Worldwide Web (www.Shell.com), are complied with.

Drugs and Alcohol

42. (a) Owners warrant that they have in force an active policy covering the vessel which meets or exceeds the standards set out in the "Guidelines for the Control of Drugs and Alcohol On Board Ship" as published by the Oil Companies International Marine Forum (OCIMF) dated January 1990 (or any subsequent modification, version, or variation of these guidelines) and that this policy will remain in force throughout the charter period, and Owners will exercise due diligence to ensure the policy is complied with.

(b) Owners warrant that the current policy concerning drugs and alcohol on board is acceptable to ExxonMobil and will remain so throughout the charter period.

Oil Major Acceptability

43. If, at any time during the charter period, the vessel becomes unacceptable to any Oil Major, Charterers shall have the right to terminate the charter.

Pollution and Emergency Response

44. Owners are to advise Charterers of organisational details and names of Owners personnel together with their relevant telephone/facsimile/e-mail/telex numbers, including the names and contact details of Qualified Individuals for OPA 90 response, who may be contacted on a 24 hour basis in the event of oil spills or emergencies.

ISPS Code/US MTSA 2002

45. (a) (i) From the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) and the US Maritime Transportation Security Act 2002 (MTSA) in relation to the Vessel and thereafter during the currency of this charter, Owners shall procure that both the Vessel and "the Company" (as defined by the ISPS Code) and the "owner"(as defined by the MTSA) shall comply with the requirements of the ISPS Code relating to the Vessel and "the Company" and the requirements of MTSA relating to the vessel and the "owner". Upon request Owners shall provide documentary evidence of compliance with this Clause 45(a) (i) .

(ii) Except as otherwise provided in this charter, loss, damage, expense or delay, caused by failure on the part of Owners or "the Company"/"owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for Owners' account.

(b) (i) Charterers shall provide Owners/Master with their ful style contact details and shall ensure that the contact details of all sub-charterers are likewise provided to Owners/Master. Furthermore, Charterers shall ensure that all sub-charter parties they enter into during the period of this charter contain the following provision:

"The Charterers shall provide the Owners with their full style contact details and, where sub-letting is permitted under the terms of the charter party, shall ensure that the contact details of all sub-charterers are likewise provided to the Owners".

(ii) Except as otherwise provided in this charter, loss, damage, expense or delay, caused by failure on the part of Charterers to comply with this sub-Clause 45(b) shall be for Charterers' account.

(c) Notwithstanding anything else contained in this charter costs or expenses related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be for Charterers' account, unless such costs or expenses result solely from Owners' negligence in which case such costs or expenses shall be for Owners' account. All measures required by Owners to comply with the security plan required by the ISPS Code/MTSA shall be for Owners' account.

(d)Notwithstanding any other provision of this charter, the vessel shall not be off-hire where the is a loss of time caused by Charterererers' failure to comply with the ISPS Code/MTSA(whe force).

ETHIOPIAN SHIPPING AND LOGISTICS SERVICES ENTERPRISE

(e)If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.

Law and Litigation

46. (a) This charter shall be construed and the relations between the parties determined in accordance with the laws of England.

(b)All disputes arising out of this charter shall be referred to Arbitration in London in accordance with the Arbitration Act 1996 (or any re-enactment or modification thereof for the time being in force) subject to the following appointment procedure:

(i) The parties shall jointly appoint a sole arbitrator not later than 28 days after service of a request in writing by either party to do so.

(ii) If the parties are unable or unwilling to agree the appointment of a sole arbitrator in accordance with (i) then each party shall appoint one arbitrator, in any event not later than 14 days after receipt of a further request in writing by either party to do so. The two arbitrators so appointed shall appoint a third arbitrator before any substantive hearing or forthwith if they cannot agree on a matter relating to the arbitration.

(iii) If a party fails to appoint an arbitrator within the time specified in (ii) (the "Party in Default"), the party who has duly appointed his arbitrator shall give notice in writing to the Party in Default that he proposes to appoint his arbitrator to act as sole arbitrator.

(iv) If the Party in Default does not within 7 days of the notice given pursuant to (iii) make The required appointment and notify the other party that he has done so the other party may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.

(v) Any Award of the arbitrator(s) shall be final and binding and not subject to appeal.

(vi) For the purposes of this clause 46(b)any requests or notices in writing shall be sent by fax, e-mail or telex and shall be deemed received on the day of transmission.

(c) It shall be a condition precedent to the right of any party to a stay of any legal proceedings in which maritime property has been, or may be, arrested in connection with a dispute under this charter, that that party furnishes to the other party security to which that other party would have been entitled in such legal proceedings in the absence of a stay.

Confidentiality

47. All terms and conditions of this charter arrangement shall be kept private and confidential

Construction

48. The side headings have been included in this charter for convenience of reference and shall in no way affect the construction hereof.

Appendix A: ~~OCIMF Vessel Particulars~~ QUESTIONNAIRE 88 for the vessel, as attached, shall be incorporated herein.

~~Appendix B:~~ ~~Shell Safety and Environmental Monthly Reporting Template, as attached, shall be incorporated herein.~~

Additional Clauses: As attached, shall be incorporated herein.

A. CHARTERER'S RIDER CLAUSES 1-31 AS ATTACHED & AMENDED
B. VESSEL'S SPEED, BUNKER CONSUMPTION AND PERFORMANCE SHEET
C. PMSC APPROVED LIST FOR ARMED GUARDS AND ISO: 28007 CERTIFICATION
D. LAST 10 PORTS OF CALL

Commission

2.50% ON ALL HIRES EARNED DEDUCTED AT SOURCE FROM OWNERS INVOICES AND PAYABLE BY CHARTERERS TO OCEANBZ OIL DMCC, DUBAI.

SIGNED FOR OWNERS

for

Roba Megerssa
Chief Executive Officer

ETHIOPIAN SHIPPING AND LOGISTICS SERVICES ENTERPRISE
ETHIOPIAN SHIPPING HEAD OFFICE

SIGNED FOR CHARTERERS

HOUSE OF LORDS SESSION 2007–08

[2008] UKHL 48

on appeal from: [2007] EWCA Civ 901

OPINIONS
OF THE LORDS OF APPEAL
FOR JUDGMENT IN THE CAUSE

Transfield Shipping Inc (Appellants) *v* Mercator Shipping Inc (Respondents)

Appellate Committee

Lord Hoffmann
Lord Hope of Craighead
Lord Rodger of Earlsferry
Lord Walker of Gestingthorpe
Baroness Hale of Richmond

Counsel

Appellant:
Dominic Kendrick QC
Benjamin Parker

(Instructed by Swinnerton Moore LLP)

Respondent:
Simon Croall QC
Ruth Hosking

(Instructed by Bentleys Stokes & Lowless)

Hearing date:
1 MAY 2008

ON
WEDNESDAY 9 JULY 2008

HOUSE OF LORDS

OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT IN THE CAUSE

Transfield Shipping Inc (Appellants) *v* Mercator Shipping Inc (Respondents)

[2008] UKHL 48

LORD HOFFMANN

My Lords,

1. The *Achilleas* is a single-decker bulk carrier of some 69,000 dwt built in 1994. By a time charter dated 22 January 2003 the owners let her to the charterers for about five to seven months at a daily hire rate of US$13,500. By an addendum dated 12 September 2003 the parties fixed the vessel for a further five to seven months at a daily rate of US$16,750. The latest date for redelivery was 2 May 2004.

2. By April 2004, market rates had more than doubled compared with the previous September. On 20 April 2004 the charterers gave notice of redelivery between 30 April and 2 May 2004. On the following day, the owners fixed the vessel for a new four to six month hire to another charterer, following on from the current charter, at a daily rate of US$39,500. The latest date for delivery to the new charterers, after which they were entitled to cancel, was 8 May 2004.

3. With less than a fortnight of the charter to run, the charterers fixed the vessel under a subcharter to carry coals from Quingdao in China across the Yellow Sea to discharge at two Japanese ports, Tobata and Oita. If this voyage could not reasonably have been expected to allow redelivery by 2 May 2004, the owners could probably have refused to perform it: see *Torvald Klaveness A/S v Arni Maritime Corpn* (*The Gregos)* [1995] 1 Lloyd's Rep 1. But they made no objection. The vessel completed loading at Quingdao on 24 April. It discharged at

Tobata, went on to Oita, but was unfortunately delayed there and not redelivered to the owners until 11 May.

4. By 5 May it had become clear to everyone that the vessel would not be available to the new charterers before the cancelling date of 8 May. By that time, rates had fallen again. In return for an extension of the cancellation date to 11 May, the owners agreed to reduce the rate of hire for the new fixture to $31,500 a day.

5. The owners claimed damages for the loss of the difference between the original rate and the reduced rate over the period of the fixture. At US$8,000 a day, that came to US$1,364,584.37. The charterers said that the owners were not entitled to damages calculated by reference to their dealings with the new charterers and that they were entitled only to the difference between the market rate and the charter rate for the nine days during which they were deprived of the use of the ship. That came to $158,301.17.

6. The arbitrators, by a majority, found for the owners. They said that the loss on the new fixture fell within the first rule in *Hadley v Baxendale* (1854) 9 Exch 341, 354 as arising "naturally, ie according to the usual course of things, from such breach of contract itself". It fell within that rule because it was damage "of a kind which the [charterer], when he made the contract, ought to have realised was not unlikely to result from a breach of contract [by delay in redelivery]": see Lord Reid in *C Czarnikow Ltd v Koufos* (*The Heron II)* [1969] 1 AC 350, 382-383. The dissenting arbitrator did not deny that a charterer would have known that the owners would very likely enter into a following fixture during the course of the charter and that late delivery might cause them to lose it. But he said that a reasonable man in the position of the charterers would not have understood that he was assuming liability for the risk of the type of loss in question. The general understanding in the shipping market was that liability was restricted to the difference between the market rate and the charter rate for the overrun period and "any departure from this rule [is] likely to give rise to a real risk of serious commercial uncertainty which the industry as a whole would regard as undesirable."

7. The majority arbitrators, in their turn, did not deny that the general understanding in the industry was that liability was so limited. They said (at para 17):

> "The charterers submitted that if they had asked their lawyers or their Club what damages they would be liable for if the vessel was redelivered late, the answer would have been that they would be liable for the difference between the market rate and the charter rate for the period of the late delivery. We agree that lawyers would have given such an answer".

8. But the majority said that this was irrelevant. A broker "in a commercial situation" would have said that the "not unlikely" results arising from late delivery would include missing dates for a subsequent fixture, a dry docking or the sale of the vessel. Therefore, as a matter of law, damages for loss of these types was recoverable. The understanding of shipping lawyers was wrong.

9. On appeal from the arbitrators, Christopher Clarke J [2007] 1 Lloyd's Rep 19 and the Court of Appeal (Ward, Tuckey and Rix LJJ) [2007] 2 Lloyd's Rep 555 upheld the majority decision. The case therefore raises a fundamental point of principle in the law of contractual damages: is the rule that a party may recover losses which were foreseeable ("not unlikely") an external rule of law, imposed upon the parties to every contract in default of express provision to the contrary, or is it a prima facie assumption about what the parties may be taken to have intended, no doubt applicable in the great majority of cases but capable of rebuttal in cases in which the context, surrounding circumstances or general understanding in the relevant market shows that a party would not reasonably have been regarded as assuming responsibility for such losses?

10. Before I come to this point of principle, I should say something about the authorities upon which the understanding of shipping lawyers was based. There is no case in which the question now in issue has been raised. But that in itself may be significant. This cannot have been the first time that freight rates have been volatile. There must have been previous cases in which late redelivery caused the loss of a profitable following fixture. But there is no reported case in which such a claim has been made. Instead, there has been a uniform series of dicta over many years in which judges have said or assumed that the damages for late delivery are the difference between the charter rate and the market rate: see for examples Lord Denning MR in *Alma Shipping Corpn of Monrovia v Mantovani* (*The Dione*) [1975] 1 Lloyd's Rep 115, 117-118; Lord Denning MR in *Arta Shipping Co Ltd v Thai Europe Tapioca Service Ltd* (*The Johnny)* [1977] 2 Lloyd's Rep 1, 2; Bingham LJ in

Hyundai Merchant Marine Co Ltd v Gesuri Chartering Co Ltd (*The Peonia*) [1991] 1 Lloyd's Rep 100, 118. Textbooks have said the same: see Scrutton on *Charterparties* 20th ed (1996), pp 348-349; Wilford and others *Time Charters* 5th ed (2003), at para 4.20. Nowhere is there a suggestion of even a theoretical possibility of damages for the loss of a following fixture.

11. The question of principle has been extensively discussed in the literature. Recent articles by Adam Kramer ("An Agreement-Centred Approach to Remoteness and Contract Damages") in *Cohen and McKendrick (ed), Comparative Remedies for Breach of Contract* (2004) pp 249-286 Andrew Tettenborn ("Hadley v Baxendale Foreseeability: a Principle Beyond its Sell-by Date") in (2007) 23 Journal of Contract Law 120-147) and Andrew Robertson ("The basis of the remoteness rule in contract") (2008) 28 Legal Studies 172-196) are particularly illuminating. They show that there is a good deal of support in the authorities and academic writings for the proposition that the extent of a party's liability for damages is founded upon the interpretation of the particular contract; not upon the interpretation of any particular language in the contract, but (as in the case of an implied term) upon the interpretation of the contract as a whole, construed in its commercial setting. Professor Robertson considers this approach somewhat artificial, since there is seldom any helpful evidence about the extent of the risks the particular parties would have thought they were accepting. I agree that cases of departure from the ordinary foreseeability rule based on individual circumstances will be unusual, but limitations on the extent of liability in particular types of contract arising out of general expectations in certain markets, such as banking and shipping, are likely to be more common. There is, I think, an analogy with the distinction which Lord Cross of Chelsea drew in *Liverpool City Council v Irwin* [1977] AC 239, 257-258 between terms implied into all contracts of a certain type and the implication of a term into a particular contract.

12. It seems to me logical to found liability for damages upon the intention of the parties (objectively ascertained) because all contractual liability is voluntarily undertaken. It must be in principle wrong to hold someone liable for risks for which the people entering into such a contract in their particular market, would not reasonably be considered to have undertaken.

13. The view which the parties take of the responsibilities and risks they are undertaking will determine the other terms of the contract and in particular the price to be paid. Anyone asked to assume a large and

unpredictable risk will require some premium in exchange. A rule of law which imposes liability upon a party for a risk which he reasonably thought was excluded gives the other party something for nothing. And as Willes J said in *British Columbia Saw Mill Co Ltd v Nettleship* (1868) LR 3 CP 499, 508:

> "I am disposed to take the narrow view, that one of two contracting parties ought not to be allowed to obtain an advantage which he has not paid for."

14. In their submissions to the House, the owners said that the "starting point" was that damages were designed to put the innocent party, so far as it is possible, in the position as if the contract had been performed: see *Robinson v Harman* (1848) 1 Exch 850, 855. However, in *Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd (sub nom South Australia Asset Management Corpn v York Montague Ltd*) [1997] AC 191, 211, I said (with the concurrence of the other members of the House):

> "I think that this was the wrong place to begin. Before one can consider the principle on which one should calculate the damages to which a plaintiff is entitled as compensation for loss, it is necessary to decide for what kind of loss he is entitled to compensation. A correct description of the loss for which the valuer is liable must precede any consideration of the measure of damages."

15. In other words, one must first decide whether the loss for which compensation is sought is of a "kind" or "type" for which the contract-breaker ought fairly to be taken to have accepted responsibility. In the *South Australia* case the question was whether a valuer, who had (in breach of an implied term to exercise reasonable care and skill) negligently advised his client bank that property which it proposed to take as security for a loan was worth a good deal more than its actual market value, should be liable not only for losses attributable to the deficient security but also for further losses attributable to a fall in the property market. The House decided that he should not be liable for this kind of loss:

> "In the case of an implied contractual duty, the nature and extent of the liability is defined by the term which the law implies. As in the case of any implied term, the process is one of construction of the agreement as a whole in its commercial setting. The contractual duty to provide a valuation and the known purpose of that valuation compel the conclusion that the contract includes a duty of care. The scope of the duty, in the sense of the consequences for which the valuer is responsible, is that which the law regards as best giving effect to the express obligations assumed by the valuer: neither cutting them down so that the lender obtains less than he was reasonably entitled to expect, nor extending them so as to impose on the valuer a liability greater than he could reasonably have thought he was undertaking." (p 212)

16. What is true of an implied contractual duty (to take reasonable care in the valuation) is equally true of an express contractual duty (to redeliver the ship on the appointed day). In both cases, the consequences for which the contracting party will be liable are those which "the law regards as best giving effect to the express obligations assumed" and "[not] extending them so as to impose on the [contracting party] a liability greater than he could reasonably have thought he was undertaking".

17. The effect of the *South Australia* case was to exclude from liability the damages attributable to a fall in the property market notwithstanding that those losses were foreseeable in the sense of being "not unlikely" (property values go down as well as up) and had been caused by the negligent valuation in the sense that, but for the valuation, the bank would not have lent at all and there was no evidence to show that it would have lost its money in some other way. It was excluded on the ground that it was outside the scope of the liability which the parties would reasonably have considered that the valuer was undertaking.

18. That seems to me in accordance with the careful way in which Robert Goff J stated the principle in *Satef-Huttenes Albertus SpA v Paloma Tercera Shipping Co SA* (*The Pegase*) [1981] Lloyd's Rep 175, 183, where the emphasis is upon what a reasonable person would have considered to be the extent of his responsibility:

> "The test appears to be: have the facts in question come to the defendant's knowledge in such circumstances that a reasonable person in the shoes of the defendant would, if he had considered the matter at the time of making the contract, have contemplated that, in the event of a breach by him, such facts were to be taken into account when considering his responsibility for loss suffered by the plaintiff as a result of such breach."

19. A similar approach was taken by the Court of Appeal in *Mulvenna v Royal Bank of Scotland plc* [2003] EWCA Civ 1112, mentioned by Professor Robertson in the article to which I have referred. This was an application to strike out a claim for damages for the loss of profits which the claimant said he would have made if the bank had complied with its agreement to provide him with funds for a property development. The Court of Appeal held that even on the assumption that the bank knew of the purpose for which the funds were required and that it was foreseeable that he would suffer loss of profit if he did not receive them, the damages were not recoverable. Sir Anthony Evans said:

> "The authorities to which we were referred…demonstrate that the concept of reasonable foreseeability is not a complete guide to the circumstances in which damages are recoverable as a matter of law. Even if the loss was reasonably foreseeable as a consequence of the breach of duty in question (or of contract, for the same principles apply), it may nevertheless be regarded as 'too remote a consequence' or as not a consequence at all, and the damages claim is disallowed. In effect, the chain of consequences is cut off as a matter of law, either because it is regarded as unreasonable to impose liability for that consequence of the breach (*The Pegase* [1981] 1 Lloyd's Rep 175 Robert Goff J), or because the scope of the duty is limited so as to exclude it (*Banque Bruxelles SA v. Eagle Star* [1997] AC 191), or because as a matter of commonsense the breach cannot be said to have caused the loss, although it may have provided the opportunity for it to occur…"

20. By way of explanation for why in such a case liability for lost profits is excluded, Professor Robertson (at p 183) offers what seem to me to be some plausible reasons:

> "It may be considered unjust that the bank should be held liable for the loss of profits simply because the bank knew of the proposed development at the time the refinancing agreement was made. The imposition of such a burden on the bank may be considered unjust because it is inconsistent with commercial practice for a bank to accept such a risk in a transaction of this type, or because the quantum of the liability is disproportionate to the scale of the transaction or the benefit the bank stood to receive."

21. It is generally accepted that a contracting party will be liable for damages for losses which are unforeseeably large, if loss of that type or kind fell within one or other of the rules in *Hadley v Baxendale*: see, for example, Staughton J in *Transworld Oil Ltd v North Bay Shipping Corpn* (*The Rio Claro*) [1987] Lloyd's Rep 173, 175 and *Jackson v Royal Bank of Scotland plc* [2005] 1 WLR 377. That is generally an inclusive principle: if losses of that type are foreseeable, damages will include compensation for those losses, however large. But the *South Australia* and *Mulvenna* cases show that it may also be an exclusive principle and that a party may not be liable for foreseeable losses because they are not of the type or kind for which he can be treated as having assumed responsibility.

22. What is the basis for deciding whether loss is of the same type or a different type? It is not a question of Platonist metaphysics. The distinction must rest upon some principle of the law of contract. In my opinion, the only rational basis for the distinction is that it reflects what would have been reasonable and have been regarded by the contracting party as significant for the purposes of the risk he was undertaking. In *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528, where the plaintiffs claimed for loss of the profits from their laundry business because of late delivery of a boiler, the Court of Appeal did not regard "loss of profits from the laundry business" as a single type of loss. They distinguished (at p 543) losses from "particularly lucrative dyeing contracts" as a different type of loss which would only be recoverable if the defendant had sufficient knowledge of them to make it reasonable to attribute to him acceptance of liability for such losses. The vendor of the boilers would have regarded the profits on these contracts as a different and higher form of risk than the general risk of loss of profits by the laundry.

23. If, therefore, one considers what these parties, contracting against the background of market expectations found by the arbitrators, would

reasonably have considered the extent of the liability they were undertaking, I think it is clear that they would have considered losses arising from the loss of the following fixture a type or kind of loss for which the charterer was not assuming responsibility. Such a risk would be completely unquantifiable, because although the parties would regard it as likely that the owners would at some time during the currency of the charter enter into a forward fixture, they would have no idea when that would be done or what its length or other terms would be. If it was clear to the owners that the last voyage was bound to overrun and put the following fixture at risk, it was open to them to refuse to undertake it. What this shows is that the purpose of the provision for timely redelivery in the charterparty is to enable the ship to be at the full disposal of the owner from the redelivery date. If the charterer's orders will defeat this right, the owner may reject them. If the orders are accepted and the last voyage overruns, the owner is entitled to be paid for the overrun at the market rate. All this will be known to both parties. It does not require any knowledge of the owner's arrangements for the next charter. That is regarded by the market as being, as the saying goes, *res inter alios acta*.

24. The findings of the majority arbitrators shows that they considered their decision to be contrary to what would have been the expectations of the parties, but dictated by the rules in *Hadley v Baxendale* as explained in *The Heron II* [1969] 1 AC 350. But in my opinion these rules are not so inflexible; they are intended to give effect to the presumed intentions of the parties and not to contradict them.

25. The owners submit that the question of whether the damage is too remote is a question of fact on which the arbitrators have found in their favour. It is true that the question of whether the damage was foreseeable is a question of fact: see *Monarch Steamship Co Ltd v Karlshamns Oljefabriker (A/B)* [1949] AC 196. But the question of whether a given type of loss is one for which a party assumed contractual responsibility involves the interpretation of the contract as a whole against its commercial background, and this, like all questions of interpretation, is a question of law.

26. The owners say that the parties are entirely at liberty to insert an express term excluding consequential loss if they want to do so. Some standard forms of charter do. I suppose it can be said of many disputes over interpretation, especially over implied terms, that the parties could have used express words or at any rate expressed themselves more clearly than they have done. But, as I have indicated, the implication of

a term as a matter of construction of the contract as a whole in its commercial context and the implication of the limits of damages liability seem to me to involve the application of essentially the same techniques of interpretation. In both cases, the court is engaged in construing the agreement to reflect the liabilities which the parties may reasonably be expected to have assumed and paid for. It cannot decline this task on the ground that the parties could have spared it the trouble by using clearer language. In my opinion, the findings of the arbitrators and the commercial background to the agreement are sufficient to make it clear that the charterer cannot reasonably be regarded as having assumed the risk of the owner's loss of profit on the following charter. I would therefore allow the appeal.

LORD HOPE OF CRAIGHEAD

My Lords,

27. My initial impression at the end of the excellent argument with which we were presented by counsel on both sides was that, on the facts found proved by the majority arbitrators, this appeal must fail. But, having had the benefit of reading in draft the opinions of my noble and learned friends Lord Hoffmann, Lord Rodger of Earlsferry and Lord Walker of Gestingthorpe, I have come to the conclusion that their decision was based on an error of law and that the view of this case that was taken by the minority arbitrator was right.

28. The majority arbitrators based their approach on their understanding of the test of remoteness as explained in *The Heron II* [1969] 1 AC 350, and in particular by Lord Reid at pp 382-383, as being to ask whether the loss in question was

> "of a kind which the defendant, when he made the contract, ought to have realised was not unlikely to result from [the] breach."

This had the result, as they put it, that the parties' knowledge of the markets within which they operated at the date of the addendum which extended the original charter period was more than sufficient for the loss claimed to be within their contemplation. Counsel for the charterers had agreed in exchanges with members of the tribunal that the "not unlikely"

results arising from the late delivery of the vessel would include missing dates for a subsequent fixture. The majority then asked themselves what was within the contemplation of the parties as a not unlikely result of a breach which resulted in missing such a date, bearing in mind that it was agreed that the market rates for tonnage go up and down, sometimes quite rapidly. They answered this question in the owners' favour. On the facts, they said, the need to adjust the relevant dates for the subsequent employment of the vessel through the revised terms agreed with the new charterers was within the contemplation of the parties as a not unlikely result of the breach. It might be that the precise amount of the loss could be seriously affected by market factors such as a sharp drop of the rate for the particular type of vessel during the relevant period. But the type of loss was readily identifiable.

29. The minority arbitrator pointed out that this would be to impose on the charterers a completely unquantifiable risk in what is a relatively common situation – late delivery under a time charter – given the exigencies of the shipping industry. If the test was what a reasonable man in the position of the charterers would have understood at the time of entering into the charter, it was impossible to conclude that they would or should have understood that they were assuming responsibility for the risk of loss of a particular follow-on fixture concluded by the owners. They had no knowledge of or control over the duration of any follow-on fixture which the owners might conclude. The fundamental problem that he had with the owners' argument was that if damages of this type were recoverable without particular knowledge sufficient to justify an assumption of risk it was difficult to see where a line was to be drawn, and there was a real risk of serious commercial uncertainty which the industry as a whole would regard as undesirable.

30. Both approaches share a common, and as it seems to me an entirely orthodox, starting point. They ask what should fairly and reasonably be regarded as having been in the contemplation of the parties at the time when the contract was entered into. The refinement that, on the facts of this case, the relevant date was the date of the addendum is not of any practical significance. Both parties were experienced in the market within which they were operating. Late delivery under a time charter is a relatively common situation, and it is not difficult to conclude that the parties must have had in contemplation when they entered into the contract that this might occur. Nor it is difficult to conclude – indeed this was conceded by counsel for the charterers – that in a market where owners expect to keep their assets in continuous employment dates late delivery will result in missing the date for a subsequent fixture. The critical question however is whether

the parties must be assumed to have contracted with each other on the basis that the charterers were assuming responsibility for the consequences of that event. It is at this point that the two approaches part company.

31. Assumption of responsibility, which forms the basis of the law of remoteness of damage in contract, is determined by more than what at the time of the contract was reasonably foreseeable. It is important to bear in mind that, as Lord Reid pointed out in *The Heron II* [1969] 1 AC 350, 385, the rule that applies in tort is quite different and imposes a much wider liability than that which applies in contract. The defendant in tort will be liable for any type of loss and damage which is reasonably foreseeable as likely to result from the act or omission for which he is held liable. Reasonable foreseeability is the criterion by which the extent of that liability is to be judged, and it may result in his having to pay for something that, although reasonably foreseeable, was very unusual, not likely to occur and much greater in amount than he could have anticipated. In contract it is different and, said Lord Reid, at p 386, there is good reason for the difference:

> "In contract, if one party wishes to protect himself against a risk which to the other party would appear unusual, he can direct the other party's attention to it before the contract is made, and I need not stop to consider in what circumstances the other party will then be held to have accepted responsibility in that event."

32. The point that Lord Reid was making here was that the more unusual the consequence, the more likely it is that provision will be made for it in the contract if it is to result in liability. Account may be taken of it in the rates that are provided for in the contract. Or terms may be written into the contract to provide for the extent, if any, of the liability. That is the way that commercial contracts are entered into. As Blackburn J said in *Cory v Thames Ironworks Co* (1868) LR 3 QB 181, 190-191, if the damage were exceptional and unnatural it would be hard on a party to be made liable for it because, had he known what the consequences would be, he would probably have stipulated for more time or made greater exertions if he had known the extreme mischief that would follow from the non-fulfilment of his contract. The fact that the loss was foreseeable – the kind of result that the parties would have had in mind, as the majority arbitrators put it – is not the test. Greater precision is needed than that. The question is whether the loss was a

type of loss for which the party can reasonably be assumed to have assumed responsibility.

33. How then is this question to be addressed? The statement of principle by Robert Goff J in *The Pegase* [1981] 1 Lloyd's Rep 175, 183 asks whether, if he had considered the matter, at the time of making the contract, the defendant would have contemplated that, in the event of a breach by him, the facts in question would be taken into account in considering his responsibility for loss suffered as a result of the breach. This depends on the degree of relevant knowledge held by him at the time of entering into the contract. Alderson B in *Hadley v Baxendale* (1854) 9 Exch 341, 354-355, distinguished between special circumstances that were wholly unknown to the party breaking the contract and the amount of injury which would arise generally and in the great multitude of cases not affected by any special circumstances. Losses in the latter category are losses which the parties may be taken to have in contemplation and to make provision for, in one way or another, in their contract. Losses in the former are losses which the party in breach was unable to contemplate when considering the terms on which he could agree to enter into the contract. These statements direct attention to the extent of the charterer's knowledge of the facts that are in question in this case.

34. In this case it was within the parties' contemplation that an injury which would arise generally from late delivery would be loss of use at the market rate, as compared with the charter rate, during the relevant period. This something that everybody who deals in the market knows about and can be expected to take into account. But the charterers could not be expected to know how, if – as was not unlikely – there was a subsequent fixture, the owners would deal with any new charterers. This was something over which they had no control and, at the time of entering into the contract, was completely unpredictable. Nothing was known at that time about the terms on which any subsequent fixture might be entered into – how short or long the period would be, for example, or what was to happen should the previous charter overrun and the owner be unable to meet the new commencement date. It is true that neither party had any control over the state of the market. But in the ordinary course of things rates in the market will fluctuate. So it can be presumed that the party in breach has assumed responsibility for any loss caused by delay which can be measured by comparing the charter rate with the market rate during that period. There can be no such presumption where the loss claimed is not the product of the market itself, which can be contemplated, but results from arrangements entered into between the owners and the new charterers, which cannot.

35. In the Court of Appeal [2007] 2 Lloyd's Rep 555, para 117 Rix LJ observed that the doctrine of remoteness is ultimately designed to reflect the public policy of the law. Developing this theme, he said in para 119 that it would be undesirable and uncommercial for damages for late delivery to be limited to the period of the overrun unless the owners could show that they had given their charterers special information of their follow-on fixture. It was undesirable, he said because this would put the owners too much at the mercy of their charterers at time of raised market rates. That seems to me, with respect, to overstate the position. The owners too are in the market and can at least expect to be compensated at market rates for the period of any delay. But he also said that it was uncommercial, because a new fixture would in all probability not be fixed until at or about the time of the redelivery. So the demand would be for information that the owner could not provide when entering into the contract.

36. In my opinion the commercial considerations point the other way. This was the crucial point in the case which led the minority arbitrator to dissent from the majority. As he pointed out, a party cannot be expected to assume responsibility for something that he cannot control and, because he does not know anything about it, cannot quantify. It is not enough for him to know in general and on open-ended terms that there is likely to be a follow-on fixture. This was the error which lies at the heart of the decision of the majority. What he needs is some information that will enable him to assess the extent of any liability. The policy of the law is that effect should be given to the presumed intention of the parties. That is why the damages that are recoverable for breach of contract are limited to what happens in ordinary circumstances – in the great multitude of cases, as Alderson B put it in *Hadley v Baxendale* – where an assumption of responsibility can be presumed, or what arises from special circumstances known to or communicated to the party who is in breach at the time of entering into the contract which because he knew about he can be expected to provide for. This is a principle of general application. We are dealing in this case with a highly specialised area of commercial law. But the principle by which the issue must be resolved is that which applies in the law of contract generally.

37. For these reasons, which owe much to my noble and learned friends' careful review of the authorities, I too would allow the appeal.

LORD RODGER OF EARLSFERRY

My Lords,

38. Mercator Shipping Inc, the respondents in this appeal, were at all material times the owners of the bulk carrier "Achilleas". In January 2003 they entered into a time charter-party in terms of which they let the Achilleas to the appellants, Transfield Shipping Inc ("the charterers"). On 12 September 2003 the charter period was extended for a further five-seven months, the exact period in charterers' option. In terms of the addendum, the terminal date for redelivery of the vessel to the owners was midnight on 2 May 2004.

39. In the event, the charterers did not redeliver the Achilleas to the owners until 0815 on 11 May 2004. It is common ground that, by failing to return the vessel by midnight on 2 May, the charterers were in breach of contract and are accordingly liable in the appropriate sum of damages for that breach. The dispute is about what constitutes the appropriate sum of damages. As a result of an agreement between the parties, the arbitrators and the courts have been faced with a stark choice between two fixed figures.

40. The charterers contend that their liability in damages is confined to the difference between the market rate of hire and the charter-party rate for the period from midnight on 2 May till 0815 on 11 May. That would amount to US$158,301.17. The owners contend that in the circumstances the charterers' liability extends further, however, so as to include the owners' loss of profit under a follow-on fixture.

41. On a date which is not identified by the arbitrators in their award, the charterers sub-chartered the vessel for a final voyage. She was to load a cargo of coal at Quingdao in China for discharge at Tobata and Oita in Japan. There is nothing in the findings made by the arbitrators to suggest that, if all had gone to plan, this final voyage would have prevented the charterers from redelivering the vessel, in accordance with their contractual obligation, by 2 May. In these circumstances, it must be presumed that the final voyage was legitimate.

42. On 20 April the charterers gave a 10 day estimated notice of redelivery between 30 April and 2 May. After receiving that notice, on

or about 21 April the owners fixed a follow-on time charter for about four-six months with Cargill International SA ("Cargill"). Cargill was entitled to cancel that charter-party if the Achilleas had not arrived at the delivery point by 8 May.

43. By 24 April the vessel had finished loading the coal at Quingdao. On 30 April she reached Oita, having discharged the relevant part of her load at Tobata. At Oita she experienced delays. Previously, on 27 April the charterers had given a revised notice of redelivery on 4/5 May – which, though involving a breach of contract, would still have been in time for the vessel to be delivered to Cargill within the laycan.

44. By 5 May the owners had recognised, however, that the vessel was going to be redelivered too late for her to be delivered to Cargill by 8 May. They therefore entered into discussions with Cargill to obtain an extension of the cancelling date under their charter. Cargill agreed to extend it to 11 May. At some point between the date when the Cargill charter was fixed (on or about 21 April) and 5 May, the market rate of hire for such vessels had fallen sharply, however. Therefore, in return for the extension of the cancelling date, Cargill insisted on the original rate of US$39,500 per day being reduced to US$31,500 per day. The charterers make no criticism of the steps taken by the owners.

45. At 0815 on 11 May, when Transfield redelivered the vessel to the owners at Oita, the owners immediately delivered her to Cargill under their charter. Cargill redelivered the vessel to the owners at 0815 on 18 November 2004.

46. In these circumstances the owners claim damages (agreed at US$1,364,584.17) for their loss of profit as a result of having to reduce the daily rate of hire under the Cargill fixture by US$8,000, when they obtained the extension of the cancelling date which they needed in order to accommodate the charterers' delay in redelivering the vessel. Clearly, the owners incurred that loss in the wake of the charterers' breach of contract. Nevertheless, in respectful disagreement with Christopher Clarke J and the Court of Appeal, I have come to the conclusion that the charterers are not liable in damages for the owners' loss of profit.

47. Today, as for more than 150 years, the starting-point for determining the measure of damages for breach of contract is the

judgment of Alderson B in *Hadley v Baxendale* (1854) 9 Exch 341. The story is well known. The plaintiff owners of a flour mill in Gloucester arranged for the defendant common carriers (the firm of Pickfords) to take their broken mill shaft to a firm in Greenwich which was to use it as a pattern to produce a new shaft. Unknown to the defendants – as the court held - the plaintiffs had no other shaft and so could not operate their mill until they got the new one. In breach of contract, the defendants delayed in transporting the broken shaft. The plaintiffs sued the defendants for the profits which they lost from being unable to operate their mill during the period of delay. The Court of Exchequer held that they could not recover the loss of profits.

48. Frequently only one sentence from the judgment of Alderson B is quoted as enshrining the principle with which the case is synonymous. But it is preferable to have regard to slightly more of what Alderson B said, at pp 354-355:

> "Now we think the proper rule in such a case as the present is this: Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i e, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract, which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances, from such a breach of contract. For, had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case, and of this advantage it would be very unjust

> to deprive them. Now the above principles are those by which we think the jury ought to be guided in estimating the damages arising out of any breach of contract."

It was by referring back to the language of the third sentence in this passage that Alderson B went on to hold, at p 356, that, in the circumstances, the defendants were not liable for the loss of profits:

> "But it is obvious that, in the great multitude of cases of millers sending off broken shafts to third persons by a carrier under ordinary circumstances, such consequences would not, in all probability, have occurred, and these special circumstances were here never communicated by the plaintiffs to the defendants. It follows, therefore, that the loss of profits here cannot reasonably be considered such a consequence of the breach of contract as could have been fairly and reasonably contemplated by both the parties when they made this contract."

49. The entire passage containing the applicable principles was quoted with approval by Viscount Sankey LC in *Banco de Portugal v Waterlow & Sons Ltd* [1932] AC 452, 474-475. In *Monarch Steamship Co Ltd v Karlshamns Oljefabriker (A/B)* [1949] AC 196, 221, Lord Wright identified the distinction drawn by Alderson B as being "between damages arising naturally (which means in the normal course of things), and cases where there were special and extraordinary circumstances beyond the reasonable prevision of the parties..." Like Lord Hodson in *C Czarnikow Ltd v Koufos (The Heron II)* [1969] 1 AC 350, 411A-C, I find guidance in Alderson B's use of the expression "in the great multitude of cases". In the words of Lord Hodson, it indicates

> "that the damages recoverable for breach of contract are such as flow naturally in most cases from the breach, whether under ordinary circumstances or from special circumstances due to the knowledge either in the possession of or communicated to the defendants. This expression throws light on the whole field of damages for breach of contract and points to a different approach from that taken in tort cases."

50. The same idea is, of course, to be found, more compactly, in other well-known statements by celebrated commercial judges. For

example, in *Horne v Midland Railway Co* (1872) LR 7 CP 583, 590, Willes J said that, in contract, "damages are to be limited to those that are the natural and ordinary consequences" of the breach, while in *Cory v Thames Ironworks Co* (1868) LR 3 QB 181, 190, Blackburn J said that the measure of damages is "what might be reasonably expected in the ordinary course of things to flow from the non-fulfilment of the contract, not more than that …"

51. In *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528, 539-540, Asquith LJ explained that "Everyone, as a reasonable person, is taken to know the 'ordinary course of things' and consequently what loss is liable to result from a breach of contract in that ordinary course." He went on to say that, for loss to be recoverable, the defendant did not need to foresee that a breach must necessarily result in that loss: "It is in enough if he could foresee it was likely so to result. It is indeed enough, to borrow from the language of Lord du Parcq in the [*Monarch Steamship*] case, at p 158, if the loss (or some factor without which it would not have occurred) is a 'serious possibility' or a 'real danger.' For short, we have used the word 'liable' to result."

52. As Lord Reid pointed out in *The Heron II* [1969] 1 AC 350, 389E-G, by referring to foreseeability, Asquith LJ cannot have been intending to assimilate the measure of damages in contract and tort. Moreover, there might appear to be a certain tension between the idea that, to be recoverable, a loss must be something which would result from the breach in the ordinary course and the idea that it is enough that the loss is just something which is liable to result. Lord Reid therefore surmised that Asquith LJ might have meant that the loss was foreseeable as a likely result. That appears to be an appropriate way of reconciling the two aspects of Asquith LJ's opinion. In any event, amidst a cascade of different expressions, it is important not to lose sight of the basic point that, in the absence of special knowledge, a party entering into a contract can only be supposed to contemplate the losses which are *likely* to result from the breach in question – in other words, those losses which will generally happen in the ordinary course of things if the breach occurs. Those are the losses for which the party in breach is held responsible – the stated rationale being that, other losses not having been in contemplation, the parties had no opportunity to provide for them.

53. In the present case, the arbitrators found that - as conceded by counsel then acting for the charterers – missing a date for a subsequent fixture was a "not unlikely" result of the late redelivery of a vessel.

That concession has been criticised elsewhere, but the House must proceed on the basis that, when they entered into the addendum, the parties could reasonably have contemplated that it was not unlikely that the owners would miss a date for a subsequent fixture if the Achilleas were redelivered late. The majority of the arbitrators also found that, at the time of contracting, the parties, who were both engaged in the business of shipping, would have known that market rates for tonnage go up and down, sometimes quite rapidly. Nevertheless, as Rix LJ himself pointed out [2007] 2 Lloyd's Rep 555, 577, para 120 - when seeking to combat any criticism that the Court of Appeal's decision would throw the situation in general into confusion because late redelivery and changing market conditions are common occurrences - "It requires extremely volatile market conditions to create the situation which occurred here." In other words, the extent of the relevant rise and fall in the market within a short time was actually unusual. The owners' loss stemmed from that unusual occurrence.

54. The obligation of the charterers was to redeliver the vessel to the owners by midnight on 2 May. Therefore, the charterers are taken to have had in contemplation, at the time when they entered into the addendum, the loss which would generally happen in the ordinary course of things if the vessel were delivered some nine days late so that the owners missed the cancelling date for a follow-on fixture. Obviously, that would include loss suffered as a result of the owners not having been paid under the contract for the charterers' use of the vessel for the period after midnight on 2 May. So, as both sides agree, the owners had to be compensated for that loss by the payment of damages. But the parties would also have contemplated that, if the owners lost a fixture, they would then be in a position to enter the market for a substitute fixture. Of course, in some cases, the available market rate would be lower and, in some cases, higher, than the rate under the lost fixture. But the parties would reasonably contemplate that, for the most part, the availability of the market would protect the owners if they lost a fixture. That I understand to be the thinking which lies behind the dicta to the effect that the appropriate measure of damages for late redelivery of a vessel is the difference between the charter rate and the market rate if the market rate is higher than the charter rate for the period between the final terminal date and redelivery: *Hyundai Merchant Marine Co Ltd v Gesuri Chartering Co Ltd* (*The Peonia*) [1991] 1 Lloyd's Rep 100, 108. In that passage Bingham LJ was adopting the approach which had been indicated in earlier authorities: *Alma Shipping Corpn of Monrovia v Mantovani (The Dione)* [1975] 1 Lloyd's Rep 115, 117-118, per Lord Denning MR, and *Arta Shipping Co Ltd v Thai Europe Tapioca Service Ltd (The Johnny)* [1977] 2 Lloyd's Rep 1, 2, per Lord Denning MR.

55. More particularly, this understanding of the general position lies behind the observations of Lord Mustill in *Torvald Klaveness A/S v Arni Maritime Corpn* (*The Gregos*) [1995] 1 Lloyd's Rep 1. In that case, when the charterers insisted on proceeding with a voyage which had become illegitimate by the time it was due to commence, the owners refused. The owners began to negotiate a replacement fixture with a concern named Navios, involving a higher rate of freight plus a bonus. In the event, the parties to the original charter-party reached a without prejudice agreement under which the owners would perform the voyage and, if in subsequent proceedings it were held that they had been justified in refusing to perform it, they would be entitled to a sum reflecting the difference between the chartered rate of hire and the more advantageous terms of the proposed substitute fixture with Navios. The sum in question was roughly US$300,000.

56. In these circumstances the House did not need to deal with the measure of damages in a case of late redelivery. Nevertheless, Lord Mustill said that the obligation of the charterers was to redeliver the vessel on or before the final date or to pay damages for breach of contract. He added [1995] 1 Lloyd's Rep 1, 5, "On damages, see ... *The Peonia*...." – so endorsing, en passant, what Bingham LJ had said in that case.

57. In the Court of Appeal in *The Gregos* Hirst LJ had drawn attention to what he described as "the charterers' windfall damages" under the without prejudice agreement by comparison with the damages which would have been awarded simply in respect of a few days' late redelivery: [1993] 2 Lloyd's Rep 335, 348. Lord Mustill said this [1995] 1 Lloyd's Rep 1, 10:

> "At first sight, this apparently anomalous result is a good reason for questioning whether the claim for repudiation was soundly based. On closer examination, however, the anomaly consists, not so much in the size of the damages, but in the fact that damages were awarded at all. Imagine that the without prejudice agreement had not been made, and that the owners, having treated the charter as wrongfully repudiated, had accepted a substitute fixture with Navios. If one then asked what loss had the repudiation caused the owners to suffer, the answer would be – None. On the contrary, the charterers' wrongful act would have enabled the owners to make a profit. Even if they had not accepted the substitute employment they

> might very well have suffered no loss, since they would have been in the favourable position of having their ship free in the right place at the right time to take a spot fixture on a rising market. In neither event would the owners ordinarily recover any damages for the wrongful repudiation."

The implication from this passage is that, ordinarily, the appropriate measure of damages will be that set out by Bingham LJ in *The Peonia*, since owners will be able to obtain substitute employment for their vessel.

58. I would enter two caveats. First, it may be that, at least in some cases, when concluding a charter-party, a charterer could reasonably contemplate that late delivery of a vessel of that particular type, in a certain area of the world, at a certain season of the year would mean that the market for its services would be poor. In these circumstances, the owners might have a claim for some general sum for loss of business, somewhat along the line of the damages for the loss of business envisaged by the Court of Appeal in *Victoria Laundry (Windsor)Ltd v Newman Industries Ltd* [1949] 2 KB 528, 542-543. Because of the agreement on figures, the matter was not explored in this case and I express no view on it. But, even if some such loss of business could have been reasonably contemplated, as *Victoria Laundry* shows, this would not mean that the owners' particular loss of profit as a result of the re-negotiation of the Cargill fixture should be recoverable. To hold otherwise would risk undermining the first limb of *Hadley v Baxendale*, which limits the charterers' liability to "the amount of injury" that would arise "ordinarily" or "generally".

59. Secondly, the position on damages might also be different, if, for example - when a charter-party was entered into - the owners drew the charterers' attention to the existence of a forward charter of many months' duration for which the vessel had to be delivered on a particular date. The charterers would know that a failure to redeliver the vessel in time to allow the owners to deliver it under that charter would be liable to result in the loss of that fixture. Then the second rule or limb in *Hadley v Baxendale* might well come into play. But the point does not arise in this case.

60. Returning to the present case, I am satisfied that, when they entered into the addendum in September 2003, neither party would reasonably have contemplated that an overrun of nine days would "in

the ordinary course of things" cause the owners the kind of loss for which they claim damages. That loss was not the "ordinary consequence" of a breach of that kind. It occurred in this case only because of the extremely volatile market conditions which produced both the owners' initial (particularly lucrative) transaction, with a third party, and the subsequent pressure on the owners to accept a lower rate for that fixture. Back in September 2003, this loss could not have been reasonably foreseen as being likely to arise out of the delay in question. It was, accordingly, too remote to give rise to a claim for damages for breach of contract.

61. Rix LJ objects, [2007] 2 Lloyd's Rep 555, 577, para 119, that such an approach is uncommercial because to demand that, before the charterers are held liable, they would need to know more than they already do in the ordinary course of events, is to demand something that cannot be provided. But that is simply to criticise the long-standing rule of the English law of contract under which a party is not liable for this kind of loss, precisely because it arises out of unusual circumstances which are not – indeed, cannot be - within the contemplation of the parties when they enter into the contract. In any event, it would not, in my view, make good commercial sense to hold a charterer liable for such a potentially extensive loss which neither party could quantify at the time of contracting.

62. Rix LJ also describes the charterers as "happily [draining] the last drop and more of profit at a time of raised market rates": [2007] 2 Lloyd's Rep 555, 577, para 119. But, in reality, at the outset the sub-contract and the final voyage amounted to nothing more than a legitimate use of the vessel which the charterers had hired until 2 May and for which they were paying the owners the agreed daily rate. The delay which led to the breach of contract was caused by supervening circumstances over which the charterers had no control. The charterers' legitimate actions under their contract provide no commercial or legal justification for fixing them with liability for the owners' loss of profit, due to the effects of an "extremely volatile market" in relation to an arrangement with a third party about which the charterers knew nothing.

63. I have not found it necessary to explore the issues concerning *South Australia Asset Management Corpn v York Montague Ltd* [1997] AC 191 and assumption of responsibility, which my noble and learned friend, Lord Hoffmann, has raised. Nevertheless, I am otherwise in substantial agreement with his reasons as well as with those to be given by Lord Walker of Gestingthorpe. I would allow the appeal.

LORD WALKER OF GESTINGTHORPE

My Lords,

Introduction

64. In *James Finlay & Co Ltd v Kwik Hoo Tong HM* [1929] 1 KB 400, 417 Sankey LJ (echoing a submission of counsel) said of the decision of this House in *Re Hall Limited's & Pim (Jr) & Co's arbitration* (1928) 139 LT 30, that it had

> "astonished the Temple and surprised St Mary Axe."

It is now generally regarded as a sound decision on its special facts (see for instance Sir Roy Goode, *Commercial Law*, 3rd ed (2004) pp 385-386).

65. In this appeal your Lordships are faced with concurrent judgments of judges of great commercial experience (Christopher Clarke J at first instance and Rix LJ with the agreement of Ward LJ and Tuckey LJ in the Court of Appeal, upholding a majority award by experienced arbitrators) which are said to have upset an old and well-established commercial understanding (see John Weale, [2008] LMCLQ 6; the author suggests that the outcome of the case was influenced by the charterers' concessions, and the dissenting arbitrator seems to have taken a similar view). The charterers have been the appellants at every stage of the appeal process. While conceding that the point is not squarely covered by precedent, they urge your Lordships to restore the general understanding which has prevailed in the shipping world, so as to uphold commercial certainty. The respondent shipowners concede that there is no clear precedent in their favour, but put this down to the comparatively recent clarification (in *Hyundai Merchant Marine Co Ltd v Gesuri Chartering Co Ltd (The Peonia)* [1991] 1 Lloyd's Rep 100) of the law as to a charterer's liability for damages for delay after a "legitimate last voyage". The shipowners say that the judgments below were correct applications of the general principles laid down in *Hadley v Baxendale* (1854) 9 Exch 341 and later decisions refining those principles, including *Victoria Laundry (Windsor) Ltd v Newman*

Industries Ltd [1949] KB 528 and *C Czarnikow Ltd v Koufos (The Heron II)* [1969] 1 AC 350.

The rule in Hadley v Baxendale

66. In these circumstances your Lordships have to revisit some important general issues. These are all aspects of how the rule in *Hadley v Baxendale* has been developed or modified by 150 years of case law. This topic was reviewed by Robert Goff J in *Satef-Huttenes Albertus SpA v Paloma Tercera Shipping Co SA (The Pegase)* [1981] 1 Lloyd's Rep 175, 181-183. He observed (at p181)

> "Although the principle stated in *Hadley v Baxendale* remains the fons et origo of the modern law, the principle itself has been analysed and developed, and its application broadened, in the 20th century."

After referring to the *Victoria Laundry* case and to *The Heron II*, Robert Goff J stated (at p 182):

> "The general result of the two cases is that the principle in *Hadley v Baxendale* is now no longer stated in terms of two rules, but rather in terms of a single principle—though it is recognised that the application of the principle may depend on the degree of relevant knowledge held by the defendant at the time of the contract in the particular case. This approach accords very much to what actually happens in practice; the courts have not been over-ready to pigeon-hole the cases under one or other of the so-called rules in *Hadley v Baxendale*, but rather to decide each case on the basis of the relevant knowledge of the defendant."

67. The recognition of the rule as a single principle accords with the reality that even under the first limb, the defendant often needs some particular knowledge (for instance Mr Baxendale's firm had to know, as Lord Pearce pointed out in *The Heron II*, at p 416, that the article accepted for carriage from Gloucester to Greenwich was a broken millshaft). The degree of knowledge assumed under the first limb depends on the nature of the business relationship between the contracting parties. The different outcomes of *Hadley v Baxendale* and the *Victoria Laundry* case depended in part (though only in part) on the

fact that the defendant in the latter case was an engineering company supplying a specialised boiler, and not merely a carrier of goods with which it had no particular familiarity.

68. Another consequence of the (at least partial) assimilation of the two limbs is to raise doubt as to whether the notion of assumption of responsibility (as a precondition for liability for a larger measure of damages) is necessarily confined to second limb cases. That notion appears to be a watered-down version of the proposition (originating in *British Columbia Saw Mill Co v Nettleship* (1868) LR 3 CP 499, 509 and rejected by Lord Upjohn in *The Heron II* [1969] 1 AC 350, 422) that the defendant is liable for a larger measure of damages only if that has been made a term of the contract. Diplock LJ in *Robophone Facilities Ltd v Blank* [1966] 1 WLR 1428, 1448 described this as an implied undertaking given by the defendant to the plaintiff to bear the larger measure of loss, derived from (a) the defendant's knowledge of special circumstances and (b) the further factor

> "that he should have acquired this knowledge from the plaintiff, or at least that he should know that the plaintiff knew that he was possessed of it at the time the contract was entered into and so could reasonably foresee at that time that an enhanced loss was liable to result from a breach."

69. It may be that this rather precise formulation of the notion of assumption of responsibility applies (if at all) only to what are recognisably second limb cases. But the underlying idea—what was the common basis on which the parties were contracting?—seems to me essential to the rule in *Hadley v Baxendale* as a whole. Businessmen who are entering into a commercial contract generally know a fair amount about each other's business. They have a shared understanding (differing in precision from case to case) as to what each can expect from the contract, whether or not it is duly performed without breach on either side. No doubt they usually expect the contract to be performed without breach, but they are conscious of the possibility of breach. These points are repeatedly made in the authorities: it is sufficient to refer to the much-quoted speech of Lord Wright in *Monarch Steamship Co Ltd v Karlshamns Oljefabriker (A/B)* [1949] AC 196, 220-223, and to Robert Goff J in *The Pegase* at pp 182-183 (part of this passage is quoted by my noble and learned friend Lord Hoffmann in para 16 of his opinion).

70. The consequence is that although the fundamental principle in *Hadley v Baxendale* applies to contracts of every sort (at any rate since the abolition in 1989 of the rule in *Bain v Fothergill* (1874) LR 7 HL 158) particular types of contract in regular use in different areas of commercial, industrial and financial life (such as charterparties, construction contracts, and agreements for the sale and purchase of a controlling shareholding in a large company) have inevitably become specialised subjects. They are dealt with by specialist lawyers acting for well-informed businessmen. Anything that causes surprise in Essex Court is likely to cause surprise in St Mary Axe also. When the majority arbitrators stated in para 17 of their reasons, that a lawyer and "a broker in a commercial situation" would have given different answers to the same question they were in my opinion assuming, incorrectly, that two different questions were the same. I shall come back to this point.

The Heron II

71. *The Heron II* [1969] 1 AC 350 calls for close attention because, although decided over 40 years ago, it is the most recent full discussion of *Hadley v Baxendale* in your Lordships' House. It was concerned with a charterparty for the carriage of sugar from the Black Sea port of Constanza to the Iraqi port of Basrah, where there was a sugar market. The cargo was delivered late and the charterers claimed (and were awarded) damages for their market loss of about £1.40 per ton on about 3,000 tons of sugar. In dismissing the appeal the Court declined to follow *The Parana* (1877) 2 PD 118, a decision from what "was still the golden age of sail" (Lord Upjohn, at p 428). But the real importance of the case is in its discussion of general principles.

72. The House's decision was unanimous but each member of the Appellate Committee gave a full opinion, and unfortunately none of them in terms expressed either agreement or disagreement with any of the others. Their Lordships treated the decision of the Court of Appeal in the *Victoria Laundry* case with "varying degrees of enthusiasm" (Donaldson J in *Aruna Mills Ltd v Dhanrajmal Gobindram* [1968] 1 QB 655, 668). They themselves expressed differing views as to the requisite degree of probability of loss if it was to be recoverable following a breach of contract.

73. Lord Reid observed, at p 385:

> "I am satisfied that the court [in *Hadley v Baxendale*] did not intend that every type of damage which was reasonably foreseeable by the parties when the contract was made should either be considered as arising naturally, ie in the usual course of things, or be supposed to have been in the contemplation of the parties. Indeed the decision makes it clear that a type of damage which was plainly foreseeable as a real possibility but which would only occur in a small minority of cases cannot be regarded as arising in the usual course of things or be supposed to have been in the contemplation of the parties: the parties are not supposed to contemplate as grounds for the recovery of damage any type of loss or damage which on the knowledge available to the defendant would appear to him as only likely to occur in a small minority of cases.
>
> In cases like *Hadley v Baxendale* or the present case it is not enough that in fact the plaintiff's loss was directly caused by the defendant's breach of contract. It clearly was so caused in both. The crucial question is whether, on the information available to the defendant when the contract was made, he should, or the reasonable man in his position would, have realised that such loss was sufficiently likely to result from the breach of contract to make it proper to hold that the loss flowed naturally from the breach or that loss of that kind should have been within his contemplation."

Here, Lord Reid saw the law as applying an objective test, and one which reflects the realities of the business transaction entered into by the contracting parties.

74. Lord Reid then considered the *Victoria Laundry* case and disapproved of it so far as what Asquith LJ had said went beyond previous authorities. Lord Reid stated, at p 389:

> "To bring in reasonable foreseeability appears to me to be confusing measure of damages in contract with measure of damages in tort. A great many extremely unlikely results are reasonably foreseeable: it is true that Lord Asquith may have meant foreseeable as a likely result, and if that is all he meant I would not object further than to say that I think that the phrase is liable to be misunderstood. For the same reason I would take exception to the phrase 'liable to

> result' in paragraph (5). Liable is a very vague word but I think that one would usually say that when a person foresees a very improbable result he foresees that it is liable to happen."

75. Lord Reid also disapproved of the expressions "a serious possibility", "a real danger" and "on the cards". He said, at p 390:

> "If the tests of 'real danger' or 'serious possibility' are in future to be authoritative then the *Victoria Laundry* case would indeed be a landmark because it would mean that *Hadley v Baxendale* would be differently decided today. I certainly could not understand any court deciding that, on the information available to the carrier in that case, the stoppage of the mill was neither a serious possibility nor a real danger. If those tests are to prevail in future then let us cease to pay lip service to the rule in *Hadley v Baxendale*. But in my judgment to adopt these tests would extend liability for breach of contract beyond what is reasonable or desirable. From the limited knowledge which I have of commercial affairs I would not expect such an extension to be welcomed by the business community and from the legal point of view I can find little or nothing to recommend it."

76. Their Lordships were unanimous in disapproving the expression "on the cards" but Lord Morris of Borth-y-Gest, Lord Pearce and Lord Upjohn (at pp 400, 415 and 425 respectively) approved the expressions "real danger" and "serious possibility". Lord Hodson preferred the expression "liable to result". Lord Pearce and Lord Upjohn both expressed the view that *Hadley v Baxendale* would have been decided the same way on a "real danger" or "serious possibility" test.

77. The diversity of opinion in the House as to the most appropriate language is no doubt partly a matter of linguistic taste. Lord Reid's apparent preference for "not unlikely" as against "likely" cannot be ascribed to an uncharacteristic preference for a double negative rather than a simple word. A few years later he made some famous observations in *Davies v Taylor* [1974] AC 207, 213 (a case concerned with quantification of damages under the Fatal Accidents Acts):

> "You can prove that a past event happened, but you cannot prove that a future event will happen and I do not think that the law is so foolish as to suppose that you can. All you can do is to evaluate the chance. Sometimes it is virtually 100 per cent: sometimes virtually nil. But often it is somewhere in between. And if it is somewhere in between I do not see much difference between a probability of 51 per cent and a probability of 49 per cent."

It would not be a normal use of English to say that an eventuality with a probability of 51 per cent is likely and one with a probability of 49 per cent is unlikely (although in other fields, notably in connection with the civil standard of proof of past events, the law does make such a distinction). In ordinary discourse, there is a middle ground (say, for illustration, between 60 per cent and 40 per cent probability) within which an event would not normally be described as either likely or unlikely. Lord Reid's choice of language reflects his view (shared by the rest of the House) that the outcome need not be an odds-on chance.

78. To my mind, however, the diversity of opinion in *The Heron II* has another and more important significance. Other passages in the speeches show that their Lordships had well in mind (but did not, perhaps, spell out at length) that it is not simply a question of probability. It is also a question of what the contracting parties must be taken to have had in mind, having regard to the nature and object of their business transaction. If a manufacturer of lightning conductors sells a defective conductor and the customer's house burns down as a result, the manufacturer will not escape liability by proving that only one in a hundred of his customers' buildings had actually been struck by lightning. The need to take account of the nature and object of the contract is recognised, I think, in the passage (at p 385) from Lord Reid's speech which I have already quoted; in Lord Morris's speech at pp 398-399; in Lord Pearce's speech at pp 416-417 (with the example of the court ceiling collapsing during a sitting); and in Lord Upjohn's speech at pp 424-425. The need for the loss suffered to be within the horizon of the parties' contemplation (Lord Pearce at p 416) makes it less important to define its degree of probability with any precision. Arguably a vague expression (such as "real possibility") is actually preferable, because it is more flexible, once it is understood that what is most important is the common expectation, objectively assessed, on the basis of which the parties are entering into their contract.

79. My Lords, I had reached this point in drafting my opinion when my noble and learned friend Lord Hoffmann drew to my attention the articles by Adam Kramer, Professor Tettenborn, and Professor Robertson, not cited in argument, that are mentioned in Para 11 of Lord Hoffmann's opinion. These scholars develop ideas about *Hadley v Baxendale* which, although differently formulated, share some common ground. They demonstrate that foreseeability by itself is not a satisfactory test, and Kramer and Tettenborn emphasise the importance of what I have rather imprecisely referred to as the nature and object of the contract entered into by the parties. Both refer to a possible analogy with the restriction of damages in tort under the *SAAMCO principle* (see *South Australia Asset Management Corpn v York Montague Ltd* [1997] AC 191). Robertson is against approaching allocation or assumption of risk as a matter of contractual interpretation. I have found all these materials very helpful.

The majority arbitrators' decision

80. The arbitrators took seriously their task as the fact-finding tribunal, recognising (at the outset of the majority's reasons) that there were issues of law which might be taken to appeal. The majority identified (para 7) a difference between the parties as to whether, and how far, *The Heron II* had reformulated the rule in *Hadley v Baxendale*. The majority did not in terms resolve that difference, but seem to have adopted the "not unlikely" test. In para 8 they stated:

> "As [counsel for the charterers] agreed in exchanges with members of the Tribunal the "not unlikely" results arising from the late redelivery of a vessel were not numerous, but would include missing dates for (a) a subsequent fixture, (b) a dry docking and (c) a sale of the vessel."

They then carried this forward, to my mind out of context, to the discussion in para 17 of the answers that would have been given by a lawyer or by a broker.

81. In para 9, after a reference to *The Rio Claro* [1987] 2 Lloyd's Rep. 173, 175, they continued:

> "We consider on the facts that the type or kind of loss suffered by the Owners, i.e. the need to adjust relevant dates for the subsequent employment of the vessel through the revised Cargill terms, was within the contemplation of the parties as a not unlikely result of the breach. The fact that the extent of the loss was greater than anticipated is not relevant: see *Hill v Ashington Piggeries* [1969] 3 All ER 1496 (Davies LJ at p 1524 F)."

82. I have some difficulties with these passages. There seems to be a gap in reasoning between the bare fact of missing a fixture (an eventuality which would not, in a rising market, occasion any financial loss) and the very heavy financial loss for which the owners claimed (and recovered) damages in this case. *Ashington Piggeries* was a case of physical damage (the claimant's pigs died from disease caused by mouldy feed, which was in turn caused by defective feed hoppers). A much closer authority would have been the *Victoria Laundry* case, in which the Court of Appeal declined to award damages for the loss of unusually profitable dyeing contracts, but indicated that recovery for some loss of profition such contracts would be possible ([1949] 2 KB 528, 543):

> "We agree that in order that the plaintiffs should recover specifically and as such the profits expected on these contracts, the defendants would have had to know, at the time of their agreement with the plaintiffs, of the prospect and terms of such contracts. We also agree that they did not in fact know these things. It does not however, follow that the plaintiffs are precluded from recovering some general (and perhaps conjectural) sum for loss of business in respect of dyeing contracts to be reasonably expected, any more than in respect of laundering contracts to be reasonably expected."

The loss of unusually profitable contracts, unknown to the vendor of specialised equipment at the time of the sale contract, will often be a "serious possibility" or "real danger"; but it was held not to be within the reasonable contemplation of the parties to the sale contract.

83. So in this case it was open to the arbitrators to conclude that for the owners to miss a fixture was a "not unlikely" result of the delay, but it did not follow from that the charterers were liable for an exceptionally large loss (measured by the entire term of the fixture) when the market

fell suddenly and sharply (apparently, from the rates renegotiated with Cargill, by about 20%) between 21 April and 8 May 2004. As Rix LJ said in the Court of Appeal (para 120), "It requires extremely volatile conditions to create the situation which occurred here".

84. The majority arbitrators referred to a number of authorities, cited by the charterers, to the effect that the normal measure of damages for late delivery is the market rate (if higher than the charter rate) for the period from the latest date for re-delivery under contract until the date of actual re-delivery. They made a passing reference to the discussion of this point by Lord Mustill in *Torvald Klaveness AS v Arni Maritime Corpn, (The Gregos)* [1995] 1 Lloyd's Rep 1, 10, on which Rix LJ commented in paras 58-59 of his judgment. The majority regarded these authorities as giving the charterers only very limited assistance. Ultimately they accepted and applied the owners' submission that "what mattered was that the type of loss claimed was foreseeable" (para 18 of the majority reasons). That was in my opinion too crude a test, and it was an error of law to adopt it. What mattered was whether the common intention of reasonable parties to a charterparty of this sort would have been that in the event of a relatively short delay in re-delivery an extraordinary loss, measured over the whole term of renewed fixture, was, in Lord Reid's words,

> "sufficiently likely to result from the breach of contract to make it proper to hold that the loss flowed naturally from the breach or that loss of that kind should have been within [the defaulting party's] contemplation."

Lord Mustill's dictum in *The Gregos* indicates that that would not have been the common intention of reasonable contracting parties, and I respectfully agree.

85. In the Commercial Court Christopher Clarke J relied on the *Ashington Piggeries* case and (though he made a passing reference to *Victoria Laundry*) did not consider what was said in that case about loss of extraordinary profit. He found no error in the "foreseeable" test stated in para 18 of the majority arbitrators' reasons.

86. Rix LJ did refer to what was said in the *Victoria Laundry* case about extraordinary profit. In para 89 he cited the passage which I have set out above. But in a later passage he seems to have discounted it, either because the arbitrator had been faced with a choice between two

agreed figures (para 106) or because the owners made the Cargill fixture "at an appropriate time" (para 107- the reference to *The Pegase* should, I think, be to *Koch Marine Inc v D'Amica Societa Di Navigazione ARL* (*The Elena d'Amico*) [1980] 1 Lloyd's Rep 75). No doubt the fixture was made at an appropriate time (Rix LJ did not say of the owners, as he chose to say of the charterers, at para 96, that they were "keen to squeeze the last drop of profit … from what was a particularly strong market": see also para 119, referred to by my noble and learned friend Lord Rodger of Earlsferry). But it was contrary to the principle stated in the *Victoria Laundry* case, and reaffirmed in *The Heron II*, to suppose that the parties were contracting on the basis that the charterers would be liable for any loss, however large, occasioned by a delay in re-delivery in circumstances where the charterers had no knowledge of, or control over, the new fixture entered into by the new owners.

87. For these reasons, and for the further reasons given by my noble and learned friend Lord Hoffmann, Lord Hope and Lord Rodger, whose opinions I have had the advantage of reading in draft, I would allow this appeal.

BARONESS HALE OF RICHMOND

My Lords,

88. Ship-owners let out their ship for a period of five to seven months, to end no later than midnight on 2 May 2004. The charterers notified the ship-owners that the ship would be back no later than then. The ship-owners therefore contracted to let the ship to new charterers for a period of about four to six months, promising that they could have the ship no later than 8 May 2004. The agreed price of hire was $39,500 a day. The ship was delayed on its last voyage and the owners did not get their ship back until 11 May 2004. The new charterers agreed to take the ship, but by then the market had fallen and they would only take it at a reduced price of $31,500 a day. Are the first charterers liable to pay only for the use of the ship for the number of days that they were late at the market rate then prevailing? Or are they liable to pay the difference between what the owners would have got from the new charter had the ship been returned in time and what the owners in fact got?

89. My Lords, this could be an examination question. Although the context is a specialised one, the answer has mainly to be found in the general principles to be derived from the well-known authorities to which your Lordships have all referred, principally *Hadley v Baxendale* (1854) 9 Exch 341, *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528 and, above all, *C Czarnikow Ltd v Koufos (The Heron II)* [1969] 1 AC 350. There is no obviously right answer: two very experienced commercial judges have reached one answer, your lordships have reached another. There is no obviously just answer: the charterer's default undoubtedly caused the owner's loss, but a loss for which no-one has ever had to pay before. The examiners would surely have given first class marks to all the judges who have answered the question so far.

90. In common with my noble and learned friend, Lord Hope of Craighead, I was at first inclined to agree with the very full and thoughtful judgments in the courts below which arrived at the second answer. Their careful reviews of the shipping cases show that, although the normal measure of damages is undoubtedly the first, there is no case in which a claim to the second has been rejected. The fact that no-one has thought to make such a claim before now does not mean that it is unfounded. The question was unlikely to arise if the last voyage on which the charterer wished to send the ship was illegitimate, because the owner could then refuse to undertake it and the first charter would come to a premature end (or he might undertake it without prejudice as happened in *The Gregos* [1995] 1 Lloyd's Rep 1). And until the decision in *The Peonia* [1991] 1 Lloyd's Rep 100 it would not arise if the last voyage was legitimate, because the charterer was not liable at all for delay which was not his fault. So the novelty of the claim is no answer. It is not novel in principle. The object of damages for breach of contract is to put the claimants in the position in which they would have been had the contract been properly performed. Had this contract not been broken in the way that it was, the claimants would have had the benefit of the next fixture at the original rate. Putting them in the position in which they would have been had the contract been performed in accordance with its terms entails paying them the difference. No-one has suggested that it was at all unusual or unlikely for the owners to commit their ship to a new fixture to begin as soon as possible after the ship was free from the first. It was conceded before the arbitrators that missing dates for a subsequent fixture was a "not unlikely" result of late redelivery. Both parties would have been well aware of that at the time when the contract was made. They would also have been well aware that a new charter was likely to commit that particular ship rather than to allow the ship-owner to go into the market and find a substitute to fulfil his next commitment if his ship was late back. Charterparties allowing the owner

to substitute a different vessel are unusual. Above all, if the parties wish to exclude liability for consequential loss of this kind then it will be very simple to insert such a clause into future charterparties. It would take a much more complicated piece of drafting, following some complicated negotiations, to impose liability for this sort of loss. To rule out a whole class of loss, simply because the parties had not previously thought about it, risks as much uncertainty and injustice as letting it in.

91. That argument cuts both ways. We are looking here at the general principles which limit a contract breaker's liability when the contract itself does not do so. The contract breaker is not inevitably liable for all the loss which his breach has caused. Loss of the type in question has to be "within the contemplation" of the parties at the time when the contract was made. It is not enough that it should be foreseeable if it is highly unlikely to happen. It would not then arise "in the usual course of things": see *The Heron II* [1969] 1 AC 350, 385, per Lord Reid. So one answer to our question, given as I understand it by my noble and learned friend, Lord Rodger of Earlsferry, is that these parties would not have had this particular type of loss within their contemplation. They would expect that the owner would be able to find a use for his ship even if it was returned late. It was only because of the unusual volatility of the market at that particular time that this particular loss was suffered. It is one thing to say, as did the majority arbitrators, that missing dates for a subsequent fixture was within the parties' contemplation as "not unlikely". It is another thing to say that the "extremely volatile" conditions which brought about this particular loss were "not unlikely".

92. Another answer to the question, given as I understand it by my noble and learned friends, Lord Hoffmann and Lord Hope, is that one must ask, not only whether the parties must be taken to have had this *type of loss* within their contemplation when the contract was made, but also whether they must be taken to have had *liability for this type of loss* within their contemplation then. In other words, is the charterer to be taken to have undertaken legal responsibility for this type of loss? What should the unspoken terms of their contract be taken to be? If that is the question, then it becomes relevant to ask what has been the normal expectation of parties to such contracts in this particular market. If charterers would not normally expect to pay more than the market rate for the days they were late, and ship-owners would not normally expect to get more than that, then one would expect something extra before liability for an unusual loss such as this would arise. That is essentially the reasoning adopted by the minority arbitrator.

93. My Lords, I hope that I have understood this correctly, for it seems to me that it adds an interesting but novel dimension to the way in which the question of remoteness of damage in contract is to be answered, a dimension which does not clearly emerge from the classic authorities. There is scarcely a hint of it in *The Heron II*, apart perhaps from Lord Reid's reference, at p 385, to the loss being "sufficiently likely to result from the breach of contract *to make it proper* to hold that the loss flowed naturally from the breach or that loss of that kind should have been within his contemplation" (emphasis supplied). In general, *The Heron II* points the other way, as it emphasises that there are no special rules applying to charterparties and that the law of remoteness in contract is not the same as the law of remoteness in tort. There is more than a hint of it in the judgment of Waller LJ in *Mulvenna v Royal Bank of Scotland plc* [2003] EWCA Civ 1112, but in the context of the "second limb" of *Hadley v Baxendale* where knowledge of an unusual risk is posited. To incorporate it generally would be to introduce into ordinary contractual liability the principle adopted in the context of liability for professional negligence in *South Australia Asset Management Corpn v York Montague Ltd* [1997] AC 191, 211. In an examination, this might well make the difference between a congratulatory and an ordinary first class answer to the question. But despite the excellence of counsels' arguments it was not explored before us, although it is explored in academic textbooks and other writings, including those cited by Lord Hoffmann in paragraph 11 of his opinion. I note, however, that the most recent of these, Professor Robertson's article on "The basis of the remoteness rule in contract" (2008) 28 Legal Studies 172 argues strongly to the contrary. I am not immediately attracted to the idea of introducing into the law of contract the concept of the scope of duty which has perforce had to be developed in the law of negligence. The rule in *Hadley v Baxendale* asks what the parties must be taken to have had in their contemplation, rather than what they actually had in their contemplation, but the criterion by which this is judged is a factual one. Questions of assumption of risk depend upon a wider range of factors and value judgments. This type of reasoning is, as Lord Steyn put it in *Aneco Reinsurance Underwriting Ltd v Johnson & Higgins Ltd* [2002] 1 Lloyd's Rep 157, para 186, a "deus ex machina". Although its result in this case may be to bring about certainty and clarity in this particular market, such an imposed limit on liability could easily be at the expense of justice in some future case. It could also introduce much room for argument in other contractual contexts. Therefore, if this appeal is to be allowed, as to which I continue to have doubts, I would prefer it to be allowed on the narrower ground identified by Lord Rodger, leaving the wider ground to be fully explored in another case and another context.

CHARTERING PROCEDURE

Contents

CHARTERING PROCEDURE

1. Introduction

Chartering is an agreement, whereby one party, the owner, puts a ship or a part of it at the disposal of another party, the charterer, for the carriage of goods between named ports.

The charterer can in turn, sublet the ship or a part of it to a third party, who now becomes the "Disponent Owner". The chartering agreement is contained in a document, called "Charter Party". In most countries, chartering agreements are governed by local legislation. A vessel might also be chartered to carry passengers on a journey.

Below are main types of charter:-

- Voyage charter;
- Time charter;
- Bareboat Charter

The Voyage Charter

The voyage charter is a contract for the carriage of a stated quantity and type of cargo and specific lay can by a named vessel between named ports against an agreed price, called freight. It is the most widespread form of chartering.

The Time charter

The time charter is a contract for the hire of a named vessel for a specified period of time, during which time charters may use the vessel as he wishes (exceptions considered of course).

Chartering and marketing Division, organized under commercial department, is mainly responsible to handle all chartering duties with the help of other concerned units in the organization.

Bareboat Charter

By this type of charter, the ship owner leases his entire vessel and the charterer has the responsibility of operating it as though it were his own vessel. As the name implies, the bare vessel is chartered. The ship owner has, for the period covered by the charter party, lost control of his vessel. The charterer pays all expenses: fuel, stores, provisions, harbor dues, pilotage, etc. and employs and pays the crew. There may, however, be a clause in the charter party that the master and the chief engineer must be approved by the ship owner. The charterer is responsible for the upkeep, preservation and safety of the vessel. Before delivery to the charterer the vessel is surveyed by representatives of both parties and the same is done on redelivery. The charter party will stipulate that the vessel must be redelivered in the same good order and condition as when delivered, ordinary wear and tear excepted. On redelivery the owner's representatives, usually the port captain and port engineer may check the logbooks for information pertaining to groundings, striking objects and collisions.

Chartering - In

Chartering-In is to a hire a ship from a ship owner. This expression is sometimes used more specifically to denote that the ship is being chartered for a specific voyage or purpose, supplementing a shipping company's fleet whose ships are fully committed or profitably employed elsewhere.

Chartering - out

Chartering–out is to hire a ship out to a charterer. This expression is sometimes used to denote, more specifically, the hiring out of a ship which is temporarily surplus to the requirement of a ship owner or shipping company.

2. Key Participants in the chartering Business

2.1. Charters

The firm charter applies to those who charter ships to carry commodities. There are many kinds of charters, from individuals operating Small Corporation and concerned only with the carriage of a particular commodity, through to major international trading houses.

2.2. Ship owners

Ship owners are companies who owned carriers with different capacities and number of fleets.

2.3. Ship brokers

The individual or corporation acting as brokers in the middle of this market place of charters, ship owner and operators of all corporate sizes and of many nationalities identify supply and demand for ships and cargoes.

3. Main terms in chartering business

3.1. Chartering Negotiation

Negotiations need to be conducted with maximum care and attention to detail as there must be complete agreement between the two principals for an enforceable contract to come in to being.

3.2. Offering and counter offering

The art of offering and counter offering is governed both by legal dictates as well as by a code of professional conduct professionally, one is expected to maintain the offer, unaltered, until it if either countered or accepted or until its time limitation has expired.

3.3. Charter party

It is a maritime contract between a ship-owner and a charterer for the hire of a ship for the carriage of cargo. It is usually only when

negotiations are under way they have successfully reached the stage of main terms being negotiated that the charter party upon which the charterer wishes to base the fixture is made available to the ship owner and owner's broker.

3.4. The anatomy of charter party

Voyage Charter Party

- Date
- Names of the parties
- Name of the ship with some description
- Loading port
- Cargo nature and quantity
- Discharging port
- Lay days and Cancelling dates
- Rate of freight and manner of payment
- Loading/Discharging costs
- Speed of Loading and Discharging (laytime)
- Demurrage rate
- Brokerages (Commissions)

Time Charter Party

- Date
- Names of the parties
- Ship's name and particulars
- Speed and fuel consumption
- Duration
- Places of delivery and redelivery
- Trading area/limitations
- Rate of hire
- Laydays/Cancelling
- Commissions

4. Delegation of Authority

- Delegation of Authority for DCO and Directors is as per delegation of authority manual of the company.
- CO approves deployment of vessel on time charter in/out of ships.
- Depending on period of time charter, shipping sector DCEO approves for period up to 6 months with the knowledge of CO and CO approves for above 6 months of time charter.
- Charter market rate and request of period offer from a broker on RFQ basis as per ESLSE shipping acquisition, deposal and procurement manual.
- Whenever a cargo prospect and offer request comes from a specific known broker, the purchase of the service will be direct purchase and the negotiation will exclusively be only with that specific broker, as per ESLSE shipping acquisition disposal and procurement manual Article 27.2.6
- When the charter payment amount by RFQ or direct purchase is up to the USD 1,500,000 threshold the charter party will be approved

by the DCEO of the shipping service sector but if the amount exceed, USD 1,500,000 it will be approved by the CEO.

- Signature of charter party agreement/fixture not should be as per ESLSE delegation of authority directive.

6. Source of Brokers

6.1. Purpose

- ❖ To identify and Select Brokers
- ❖ To maintain list of brokers

6.2. Pre-requisites (Eligibility Criteria)

- ❖ Brokers request
- ❖ List of Brokers proposed by our liner agents

6.3. Procedure statement

6.3.1. All brokers submit their request to Shipping Service DCEO or brokers from BIMCO website identified or our liner agents could nominate dependable broker and presented to DCEO for approval.

6.3.2. DCEO directs the request to commercial department for additional information and verification where the department passes same to Chartering and marketing Division.

6.3.3. Commercial department shall verify and passes to DCEO all relevant information with the verification for approval.

6.3.4. DCEO approves the Broker and instruct commercial Department to include in the approved Broker list.

6.3.5. Commercial Department instructs Marketing and chartering Division to include in the Brokers list for future considerations

6.4. Process Time

- 2 man hours required to verify brokers

7. Chartering - In Procedure

7.1. Purpose

- To transport cargo to port of destination
- To load /discharge based on the contract of Affreightment

7.2. Pre-requisites (Eligibility Criteria)

- Confirmed Booking
- Non-availability of own ships for the particular shipment

7.4. Procedure statement

7.4.1. Commercial Director directs all charter requests, initiated by cargo owner or respective trade routes to chartering Division. The request should contain all terms and conditions to be fulfilled, including POL, latest shipment date, total cargo weight, etc. Same shall be referred to the respective coordinator/sr. officers.

7.4.2. By checking basically the type of cargo, weight, lay can, POL/POD, and including other main terms & conditions assigned officer floats the available cargo by e-mail to all recognized brokers, copying the e-mail to all Division's personnel including Director & DCEO office.

7.4.3. Brokers expected to summit their offer within 24 hours with the given terms and condition.

7.4.4. Assigned sr. officer received all offers, checks each e-mails, against the requested terms & conditions, checking current market and compile same and prepare comparison table with summary in accordance with the requested terms, conditions, current market rate and the given rate from brokers/owners.

7.4.5. Comparison table along with e-mails should be submitted to the Co-coordinator & the Manger for checking and signature, and same shall be sent to the Director's counter offer request. The Director gives indication rate interval for counter offer negotiation.

7.4.6. As per the given counter offer indications by the Director, assigned officer, in consultation with the Division Manager and depending on the cost build up and current market rate, provides counter offer for those brokers who sent 1st offer (from owners) within 12 hours.

7.4.7. Sr. Officers compile counter offered rates & submit to the co-coordinator and Manager for next counter offer. The officer, in consultation with Division manager and coordinator, is given mandate to negotiate until reached final agreed rate and conditions.

7.4.8. Depending on the last offers, terms and conditions which are accepted by the Director, summery of approval sheet both for buying and selling prices (by considering cost build up) shall be prepared for DCEO approval; if cargo is firm.

7.4.9. As per signed approval Sheet, official letter stating rates, main terms & conditions etc. shall be sent to the cargo owners requesting to confirm the selling rate and other terms and conditions within 24 hours. If cargo is not firm last rate and other terms and conditions, approved by the Director can be notified to cargo receivers as indication with the validity date.

7.4.10. Once approval sent from the cargo owners, assigned officer/coordinator/CM Division Manager sends confirmation for acceptance of rates, terms & conditions to owners (through the broker).

7.4.11. Once agreed with cargo owner on rates, demurrages, and other terms and conditions, Broker requested to send all vessel documents and certificates for verification. Assigned officer, in consultation with super cargo/Ship planning Division Mnager, verifies all certificates and documents are in order and vessel is sea worthy and same documents and certificates shall be sent to cargo owner for confirmation.

7.4.12. If the vessel is accepted, assigned officer requested owners (through the broker) to send final Recap and draft C/P.

7.4.13. Once documents and certificates are accepted, the C/P shall be finalized and signed by cargo owners.

7.4.14. Once accepted & counter signed by the cargo owners, C/P with vessel owners shall be signed and sent for counter signature, and vessel will be fixed.

7.4.15. Both charter parties should be signed and countersigned by the respective entities and finalized. Charter party signed with ship owner and cargo owner must have a careful back to back arrangement.

7.4.16. Assigned officer informed notice of the vessel nomination to respective ESLSE Liner agents to do the needful arrangement, and official memo with enclosed signed C/P shall be sent to the respective Trade Routes and concerned Departments for further arrangements and copy of the C/P will be sent to MTS timely, if the discharging point is Djibouti.

7.4.17. Assigned officer opens files which records all correspondences made during negotiations, comparison tables, approval sheets, signed C/P both ends; and for all relevant/main further correspondences, load/discharge reports, LTCs, payment requests, approved payment authorization etc., till case gets closed.

7.4.18. Assigned officer intensively follow-up and Communicates continuously with broker/ships command during cargo loading to ascertain safe loading and notifies vessel's arrival, loading status, protest letters etc. to the cargo receivers and all concerned parties timely.

7.4.19. Once loading completed the respective Trade Route checks and approves to the agent the loading document (B/L & cargo/freight Manifests, Letter of Indemnity - LOI) as per the C/P. Any amendment/ cargo release requests should be handled by this Trade Route.

7.4.20. As per the C/P terms & conditions and based on Mate's Receipt, NOR/SOF reports sent from agent, the Sr. officer commences processing payment request and the coordinator checks and signs & present to the Manager for approval. Once approved by

authorized person, it will be sent to Finance Dept., for remittance, and Sr. officers will follow-up the remittance.

7.4.21. Sr. Officer notifies status of vessel arrival/discharging protest letters, short/damage reports etc. to the cargo receivers and concerned parties timely.

7.4.22. Vessel owner calculates the lay time as per SOF, NOR and mates receipt and sends to chartering Division. The assigned officer cross check the lay time with SOF, NOR and other relevant documents and passed to the coordinator and Manager for verification.

7.4.23. Copy of LTC should be sent to cargo receivers for acceptance/comment.

7.4.24. Remaining balance payment request should be checked, against demurrage/dispatch based on the Lay time calculation sent from owners & NOR/SOF reports sent from agents.

7.4.25. Once LTC agreed by both ends, Sr. Chartering officer prepares payment request authorization and Debit/Credit Notes and same checked & signed by the Co-coordinator & the Manager for approval request.

7.4.26. Sr. chartering officer compiles outstanding demurrage/dispatch payments under the name of Cargo Owners. Same should be notified to respective cargo owners, and needs Follow-up by e-mail/letter for timely remittance.

7.4.27. Once the case gets finalized file will be closed, otherwise intensive follow-up should be made to close the file. If the case needs other Dept.'s intervention, it should be notified accordingly.

7.4.28. All email communications/correspondences on chartering-in of ships will be copied to the Commercial Department Director, the respective Division Manager, Team leader and to all Senior Chartering Officers.

7.5. Process time

Three man hour & 35 minutes is required per fixture note/CP.

8. Chartering - Out Procedure

8.1. Purpose

- To employ own ships which do not have committed employment
- To make ships load cross trade cargo to share costs on their ballast outward voyage ex-Djibouti

8.2. Pre-requisites (Eligibility Criteria)

- Cargo in the charter market
- Confirmed charter hire

This interview is made to collect relevant data for LLM research Titled *standard charter party contracts; The Law and Practice in Ethiopia*

1. What are the most widely used standard charter party contracts in your company?
2. How do you negotiate and sign charter party contracts?
3. Do you make significant change to the standard contract? What are the most common additional clauses you made on the standard contract? For legal department
4. How do you ensure that the vessels your company charter's out and in are seaworthy? Which P&I club gives insurance coverage for your vessel? Do you enter insurance coverage when you are a charterer? Lega, Insurance and Claims department?
5. How do you perform loading and unloading operations what is the role of MTS? How do you handle demurrage and detention claims?
6. On whose behalf you commonly conclude charter parties as a charterer? How do you ensure the cargo receiver takes the responsibilities that may arise from charter party?
7. Which law is commonly used to govern charter parties? Do you think that Ethiopian Law is compatible to the standard charter party contracts? How do you handle legal controversies emanating from charter party contracts? (Legal Department)

Thank You, For Your corporation.

ቃለጉባኤ እና የድርድር ውጤት ማጠቃለያ ሪፖርት

የስብሰባዎቹ ቦታ .....ሺፒንግ አ/ዘ/ም/ዋ/ስ/አ መሰብሰቢያ አዳራሽ

የስብሰባዎቹ ቀን .....ከሚያዝያ 19 ቀን እስከ ሚያዚያ 30 ቀን 2012 ዓ.ም

በስብሰባዎቹ እና ድርድሮቹ ላይ የተገኙ አባላት

1. ካፒቴን ተፈራ በዳሳ.....የሺፒንግ አገልግሎት ዘፍር ምክትል ዋና ስራ አስፈፃሚ(ሰብሳቢ)
2. አቶ ያሬድ ሽፈራው.....የሕግ፣ ኢንሹራንስና ክሌምስ መምሪያ ዳይሬክተር(አባል)
3. አቶ ሲራጅ አብዱላሂ.....የኮሜርሻል መምሪያ ዳይሬክተር(አባል)
4. አቶ ግርማ መኮንን.....ማርኬቴንግ እና ቻርተሪንግ ዋና ክፍል(አባል)
5. አቶ ወንድወሰን ሰይፉ.....ማርኬቴንግ እና ቻርተሪንግ አስተባባሪ(አባል)
6. አቶ ዮሐንስ አሰፋ ..... ሕግ፣ ኢንሹራንስና ክሌምስ መምሪያ የሕግ ባለሙያ(ፀሐፊ)

አጀንዳ፡- [redacted]t የተባለ መርከብ አቅራቢ ድርጅታችንን የጠየቃቸውን የተለያዩ ክፍያ ጥያቄዎች ጋር በተያያዘ የተካሄዱ ቃለ ጉባኤዎች እና [redacted] እና ከባለመርከቡ ጋር የተደረጉ ድርድሮች ማጠቃለያ ሪፖርት፡፡

የሪፖርቱ ዓላማ በርዕሱ የተጠቀሰው የመርከብ ባለቤት ድርጅት ከድርጅታችን ጋር በፈፀመው የመርከብ ኪራይ ውል አፈፃፀም ጋር በተያያዘ በአምስት የተለያዩ መርከቦች ላይ ያቀረባቸውን የተለያዩ የ Demurrage, Detention እና Dead freight ክፍያ ጥያቄዎችን በሚመለከት የመርከቡ ባለቤት በቀጣይ የተጫኑ ጭነቶች በመያዣነት ጭነት ላለማራገፍ የሚያደርጉትን ማስፈራሪያ (threat) አስመልክቶ በድርጅት ደረጃ ወጥ የሆነ አቋም ለመያዝ እና ተጨማሪ የክፍያ ጥያቄዎች (claim)እንዳይመጡ ለመከላከል ከባለመርከቡ እና ከ Supplier ጋር የተደረጉ ድርድሮች የማጠቃለያ ሪፖርት ነው፡፡

በዚህም መሠረት በእያንዳንዱ የክፍያ ጥያቄ ላይ በዝርዝር ውይይት እና ድርድር ከተደረገ በኋላ ከዚህ በታች በዝርዝር በተመለከተው መሠረት የክፍያ ጥያቄው እንዲስተናገድ ከመግባባት ላይ ተደርሷል፡፡