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Preamble

It is agreed between the party mentioned in **Box 3** as Owners of the Vessel named in **Box 5** (hereinafter referred to as "the Owners") and the party mentioned in **Box 4** as Charterers (hereinafter referred to as "the Charterers") that:

The ~~said~~ Vessel ~~being tight, staunch and strong and in every way fit for the voyage~~ shall, as soon as her prior commitments have been completed, proceed to the loading port or place stated in **Box 7** or so near thereto as she may safely get and there load alongside the berth as nominated or allocated by the Charterers, where she can lie always safe and safely afloat, a full and complete cargo as described in **Box 6** which the Charterers bind themselves to ship, and being so loaded the Vessel shall with all reasonable despatch proceed to the discharging port or place stated in **Box 8** as ordered on signing Bills of Lading or so near thereto as she may safely get, and there deliver the cargo alongside the berth as nominated or allocated by Charterers, where she can lie always safe and safely afloat.

Notes - Preamble

The second paragraph of the preamble has been amended to be consistent with the wording used in GENCON 94. Under English law when the charter party contains an ETA or cancelling date, there is a strict obligation on the part of the owners to ensure that the vessel sets out on the ballast voyage in time to reach the loading port within ETA or before the cancelling date.

Whilst the exception clauses in a charter party may protect the owners for delays which occurs after the vessel sets out for the ballast voyage, they may not offer similar protection for delays which may result from the previous voyage(s) and against which the owners may have had no influence whatsoever. Therefore, in order to rectify this position the words "as soon as her prior commitments have been completed" have been incorporated.

VESSEL

1. Vessel

~~The Vessel shall be of the type and shall conform to the description stated in PART I and PART II and shall be equipped to meet the technical requirements as specified in APPENDIX "A".~~

(a) The Owners shall exercise due diligence:

(i) before and at the beginning of the loaded voyage to make the Vessel seaworthy and in every way fit for the voyage and in the trade for which the Vessel is employed;

(ii) throughout the currency of this Charter Party to ensure that the Vessel and her Master and crew comply with all safety, health and other applicable laws and regulations of the Vessel's flag State and of the places where she trades necessary to secure the safe and unhindered loading of the

cargo, performance of the voyage and discharging of the cargo.

- (b) The Vessel shall be:
- (i) classed as stated in **Appendix A or B** and the Owners warrant that this class shall be maintained throughout the currency of this Charter Party;
 - (ii) fully insured in respect of loss of or damage to the cargo by a Protection and Indemnity Club or liability underwriter as stated in **Appendix A or B** and the Owners shall provide, on request, evidence of such insurance;
 - (iii) insured for Hull and Machinery and basic War Risks purposes.
 - (iv) suitable for loading of the cargo in accordance with **Clause 8 (Loading Methods and Costs)** or **Clause 43 (Loading)** and capable of receiving the cargo at the rate (if any) specified in **Box 18** and suitable for discharge in accordance with **Clause 14 (Discharging Methods and Costs)** or **Clause 44 (Self-Discharge)** at the rate (if any) specified in **Box 25**;
 - (v) equipped to meet the technical requirements if and as specified in **Appendix A or B**.

Notes – Vessel

Clause 1 of CEMENTVOY has been re-written to set out clearly the responsibilities and obligations of the owners; firstly in respect of the exercise of due diligence to make the vessel seaworthy and to ensure compliance with applicable laws and regulations; and secondly in respect of the classification, insurance and suitability of the vessel.

In sub-clause 1(b) the owners' obligation to maintain the vessel's class throughout the currency of the charter party is an absolute warranty. The vessel must also be fully insured against loss of or damage to the cargo and the owners must provide to the charterers evidence of such insurance on request.

It should also be noted that sub-clause 1(b) requires only that the vessel be "classed" and that the class of the vessel at the commencement of the charter should be maintained throughout the charter period. No attempt has been made to require the vessel's classification society to be a member of IACS or to conform to the Institute Classification Clause definition of the commonly used term "Lloyd's 100 A1 or equivalent". In BIMCO's view, such a narrow definition of an acceptable classification society is unduly restrictive and penalises some smaller classification societies who have, over the years, demonstrated the very highest standards of quality. For this reason, it is left to the charterers to establish, as part of their pre-fixture safety and quality considerations to establish whether the vessel is of sufficient quality and if its class is of a commercially acceptable standard.

LAYDAYS DATE / CANCELLING DATE, etc.

2. Laydays Date etc.

Laydays shall not commence before ~~06.00 hours on~~ the date stated in **Box 9**. However, notice of readiness may be ~~given~~tendered before that date and notice time shall run forthwith.

Notes – Laydays Date

This Clause deals with when laydays commence and how notice time is dealt with if the vessel tenders notice of readiness before the commencement date. It should be noted that the Clause has been amended such that the parties can agree the time and date when laydays commence instead of the previous 0600 restriction. If the parties do not enter a time in Box 9 then laydays will commence at 0000 hours on the stated date.

3. Cancelling Date

Should the Vessel not have ~~given~~tendered notice of readiness to load ~~according to~~ in accordance with **Clause 5 (Notice of Readiness to Load and Counting of Laytime)**, by the cancelling date agreed in **Box 10**, the Charterers shall have the option of cancelling this Charter Party.

- (a) Should Owners anticipate ~~with reasonable certainty~~ 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 probable 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.
- (b) The Charterers' option shall be declared within 2 working days of receipt of such notice. If the Charterers do not then exercise their option of cancelling, the second day after the new date of readiness indicated in the Owners' notice shall be regarded as the new cancelling date.

Notes – Cancelling Date

The provisions of the Cancelling Date Clause contain the traditional right of the charterers to cancel the charter party if the vessel does not tender notice of readiness before the agreed time and date.

The purpose of the "interpellation" provisions of sub-clauses (a) and (b) is that the vessel should not have to proceed on a long ballast voyage towards the loading port not knowing whether or not the charterers will accept the vessel once it arrives. The "interpellation" provisions strike a balance between the parties in this difficult situation in as much as the owners may avoid setting out on a long ballast voyage to no avail, whereas the charterers are, at the same time, to declare whether or not they wish to cancel the charter party.

LOADING

4. Advance Notices

The Owners shall give the Charterers and their agents at the loading port (as per **Boxes 4** and **30(i)** respectively) the following notices and information:

- (a) the number of days E.T.A. day's notice of Estimated Time of Arrival ("ETA") as per **Box 11**;
- (b) 7 days' notice of expected readiness to load ETA together with approximate quantity of cargo required;
- (c) 5/3/2/1 days notice of expected readiness to load. The ETA; and
- (d) the Master shall declare on arrival at the loading port the quantity of cargo required and shall provide a stowage plan in accordance with Clause 7 (Utilization of Holds and Hatches) as soon as practically possible but no later than the number of days stated in Box 12 prior to the arrival at the loading port.

Notes – Advance Notices

The Advance Notices Clause for loading has been re-structured to enumerate the sequence of notices to be given by the owners. It should be noted that the notice requirements have been changed from "expected readiness to load" to "estimated time of arrival" at the loading port.

In sub-clause (d) the quantity of cargo and stowage plan requirement has been modified to reflect the fact that the charterers may need on occasion to have a cargo quantity and stowage plan in advance of the vessel's arrival at the loading port. This would be needed in cases where the cargo is brought by barges and has to be ordered in advance. However, recognising that the Master cannot practically provide stowage plans too far in advance of arrival, the provision is modified to reflect the practicality of submitting a stowage plan while ensuring that the parties can agree a minimum number of days in advance of arrival at the loading port when the stowage plan and cargo quantity can be given.

5. Notice of Readiness to Load and Counting of Laytime

Notice of readiness shall not be tendered until the Vessel is alongside the berth and in all respects ready to load. However, should the berth be occupied or should the Charterers or shippers prevent the Vessel from proceeding to the berth after her arrival at or off the port, notice of readiness may be tendered on arrival at or off the port, whether in berth or not, whether in port or not, whether in Free Pratique or not, and whether in Customs Clearance or not. Actual time lost in obtaining Free Pratique or Customs Clearance shall not count as laytime.

- (a) *Notice of readiness may be tendered at any time of the day, night, unless otherwise agreed and stated in Box 13, Sundays (or local equivalent) and holidays included with the effect that laytime shall commence to count 6 hours after such notice has been tendered ("SHINC").
- (b) *Notice of readiness may be tendered between 07.00 - 1718.00 hours unless otherwise agreed and stated in Box 1814, Sundays (or local equivalent) and holidays expected with the effect that laytime excluded ("SHEX").

Laytime shall commence to count 6 hours after such notice has been tendered.

Time used in shifting from waiting place to the loading berth shall not count as laytime. Time actually used before commencement of laytime shall count as half time.

Laytime shall not count when the loading of cargo into the Vessel under this Charter is prevented by adverse weather conditions.

*Note: (a) and (b) are alternatives; indicate alternative agreed in **Box 13**. If no alternative is stated in **Box 13** then sub-clause (a) shall apply.

Notes – NOR and counting of laytime

CEMENTVOY is a berth charter party and notice of readiness should be presented on arrival at the designated berth when the vessel has arrived and is in all respects ready to load. NOR is to be tendered according to whether the parties have agreed and stated in Box 13 whether SHINC or SHEX applies. Office hours for SHEX are, by default, 7am to 6pm. The parties may however choose alternative office hours if they so wish. The Clause provides the usual 6 hours turn time to the charterers as is customary in the cement trade.

To avoid the problems associated with use of terms such as "weather working days" and "weather permitting", Clause 5 relies on the more readily interpreted phrase "adverse weather conditions" in respect of weather conditions when laytime will not count.

6. Cleanliness of Vessel

At loading port before tendering notice of readiness, the Owners and the Master shall ensure that the Vessel's holds are clean and dry and in all respects suitable to receive the cargo.

If, after tendering notice of readiness, the Vessel is nevertheless found by the Charterers' Surveyor not to be clean and dry, the time from the Vessel being found not to be clean and dry until she is in fact clean and dry shall not count as laytime or, if the Vessel is already on demurrage, as time on demurrage. The Owners shall be responsible for unavoidable standby charges for trucks, railcars, barges and gangs incurred directly due to the resulting delay in loading.

If, in the Owners' opinion, acceptance of the holds is unreasonably withheld, the parties shall appoint jointly an independent Surveyor whose decision shall be final.

- (a) If the independent Surveyor considers that the holds are insufficiently clean and dry to receive the cargo, then they shall be further cleaned and dried at the Owners' expense and laytime shall cease to count from the time she is rejected by the Charterers' surveyor until she is accepted by the independent Surveyor whose fees and expenses shall be paid by the Owners.
- (b) If the independent Surveyor considers that the holds are sufficiently clean and dry to receive the cargo, his fees and expenses shall be borne by the Charterers and time to count as laytime.

Notes – Vessel Cleanliness

Hold cleanliness is an important aspect of the cement trade and particular attention should be paid to this Clause. The vessel's holds should be clean and dry on arrival and this obligation is reflected in the opening paragraph of the Clause. If the vessel's hold are found not to be clean and dry after NOR has been tendered then time from when the discovery is made until the holds are actually clean and dry will not count as laytime.

In a situation where the vessel arrives in an unclean state and the charterers have trucks, railcars, barges and gangs on standby, the Clause provides for the owners to be responsible any unavoidable standby charges (i.e., whereby the charterers are unable to cancel the arrangements at such short notice without charge).

Sub-clauses (a) and (b) deal with disputes as to the vessel's cleanliness and permits the appointment of a joint independent surveyor to assess the condition of the vessel's holds.

7. Utilization of Holds and Hatches

If requested by the Charterers, the Owners shall distribute~~comply with the Charterers' request as to distribution of~~ the cargo in the Vessel's holds utilizing the smallest possible number of holds but always subject to the Master's approval and only to the extent of the Vessel's trim and seaworthiness and the declared cargo quantity.~~Such approval shall not be unreasonably withheld.~~

Notes – Hold & Hatches

This Clause has been re-worded to avoid any possible conflict with the stowage plan provisions of Clause 4(d). The new wording ensures that compliance with the charterers' request to use the minimum number of holds in no way affects the cargo intake.

8. Loading Methods and Costs

The Charterers shall ensure that when they load and spout-trim the Vessel, it shall be done in accordance with the Master's instructions. The Vessel shall be loaded using the method stated in **Box 17** and further described below.

(a) *By Shore Equipment through open hatches. – The Charterers shall load through open hatches and shall have the liberty of demanding that such hatches be opened only sufficiently to allow entry of the loading spout, but only to the extent made possible by the design of hatches. If the Charterers consider it necessary they shall provide tarpaulins or covers to be laid to cover the remainder of the opening, free of expense to the Owners and affixed in the Charterers' time.

(b) By Shore Equipment through holes in hatch covers.

(i) *Using existing holes - The Charterers shall make use of existing holes in each hatch cover for the introduction of loading equipment and for the escape of trapped air. The Owners warrant that the hatch cover of each hold into which cargo is to be loaded is fitted with the number and dimension (in mm) of holes as stated in **Appendix A**.

(ii) *Charterers cutting new holes - the Charterers shall cut the necessary number of holes in each hatch cover of the dimension (in mm) stated in **Box 17(ii)**.

All costs, risks and liabilities connected with the cutting, closing, welding or bolting of such holes, which shall be done under the supervision of a surveyor appointed by the Vessel's Classification Society, shall be borne by the Charterers and time shall count during such operations.

(iii) *Owners cutting new holes – the Owners shall cut the necessary number of holes in each hatch cover of the dimension (in mm) stated in **Box 17(ii)**.

All costs, risks and liabilities connected with the cutting, closing, welding or bolting of such holes, which shall be done under the supervision of a surveyor appointed by the Vessel's Classification Society, shall be borne by the Owners and time shall not count during such operations.

(c) By the Vessel's own cranes and grabs operated by:

(i) *Charterers' crane operators - The cargo shall be loaded into the Vessel's holds free of risk, liability and expense to the Owners by the Vessel's cranes and grabs, which shall be provided free of expense to the Charterers, at the rate as stated in **Box 18(ii)**. In case of time lost due to breakdown or deficiency of the Vessel's gear or any other causes under the control of the Owners, the time so lost – pro rata the total number of cranes/grabs required at that time for the loading of cargo under this Charter Party - shall be added to the laytime allowed for loading.

(ii) *Owners' crane operators - The cargo shall be loaded into the Vessel's holds, at the Owners' risk, liability and expense, by the Vessel's cranes and grabs. The Owners shall provide the necessary crane operators for the loading of the Vessel for every shift required by the Charterers, subject to the maximum of crane hours per day as stated in **Box 17(iii)**. The Charterers shall provide cargo to the Vessel's equipment at a rate equivalent to the loading rate stated in **Box 18(ii)** on the basis of which laytime allowed shall be calculated. However, if the Vessel is unable to achieve the loading rate stated in **Box 18(ii)** due to any reason under the Owners' control, such time lost shall not count as laytime or time on demurrage.

*(a), (b)(i), (b)(ii), (b)(iii), (c)(i), and (c)(ii) are alternatives; indicate alternative agreed in **Box 17(i)**. If no alternative is stated in **Box 17(i)** then Clause 8(a) shall apply.

Notes – Loading Methods & Costs

This Clause along with Clause 14 (Discharging Methods and Costs) warrants particular attention. A number of different loading methods are provided – loading by shore equipment through open hatches or holes cut in hatches and loading using the vessel's cranes either with the owners' or the charterers' crane operators.

In respect of using holes cut in hatch covers, the parties can agree to use existing holes if present or they can agree to cut new holes. The owners must provide details of existing holes and ensure that they are of the correct diameter and number for the loading operation. If no holes are present or they are not of the appropriate specification, the parties have the option of cutting new holes under the supervision of a surveyor from the vessel's classification society.

If the holes are cut by the charterers then they must bear the costs associated with cutting and closing the holes and time used for this purpose will count as laytime or if the vessel is on demurrage then demurrage will accrue.

If the parties decide that the holes are to be cut by the owners then time will not count during the operation and the

owners will bear the cost.

When using the vessel's own cranes for the loading process the parties have the option either to employ crane operators provided by the charterers or for the owners to provide crane operators. It is common practice in the cement trade for owners to employ shore crane operators rather than using crew for this purpose.

Particular note should be paid to the provision relating to the breakdown of the vessel's cranes when operated by the charterers' crane operators – in such circumstances the time lost, if any, must be pro rated against the number of cranes actually required by the charterers at the time the breakdown occurred.

Note should also be taken of the charterers' obligation in sub-clause 8(c)(ii) to provide cargo at a rate equivalent to the agreed loading rate and for the owners when using their own crane operators to load at that rate, failing which time lost will not count.

By default, if the parties fail to choose a loading method then loading through open hatches using shore equipment will apply.

9. Rate of Loading

- (a) *The cargo shall be loaded at the rate (in metric tons)_as stated in **Box 18(ii)** per day of 24 consecutive hours, ~~Sundays and holidays included (SHINC)~~.
- (b) *The cargo shall be loaded at the rate (in metric tons) as stated in **Box 18(ii)** per day of 24 consecutive hours, ~~Sundays and holidays excepted (SHEX)~~, unless used, in which event half time used shall count.

~~Weather hindrances.—Laytime shall not count when the loading of cargo into the Vessel under this Charter is actually prevented by adverse weather conditions.~~

(a) and (b) are alternatives: Indicate alternative agreed in **Box 18(i). If no alternative is stated in **Box 18(i)** then Sub-clause (a) shall apply.*

Notes – Rate of Loading

By default the rate of loading is on the basis of an agreed rate of metric tonnes SHINC. The parties have the option to select a SHEX rate if they so wish. It should be noted that the provision relating to laytime during periods of adverse weather has been moved to Clause 5 (Notice of Readiness to Load and Counting of Laytime) because it was considered to be a more appropriate location for it.

10. Risk, Liability and Expense of Loading and Trimming

Unless otherwise stated in **Clause 8 (Loading Methods and Costs)**, the cargo shall be loaded in accordance with applicable environmental regulations and spout-trimmed into the Vessel's holds, free of risk, liability and expense to the Owners.

Notes – Risk, Liability & Expense

This Clause has been renamed to make its application clearer as it previously only referred to costs. A reference to compliance with "environmental regulations" has been introduced to cover requirements to minimise dust and spillage at the loading and discharging ports. As a result of this amendment Clause 30 of CEMENTVOY (Pollution Caused by Cement and Cement Clinker Cargoes) has been deleted from the form.

DISCHARGING

11. Advance Notices

On sailing from the loading port the Owners/Master shall advise/give the Charterers and the agents at the discharging port (~~cable and telex address~~ as per **Boxes 4** and **30(ii)** respectively) the following information:

- (a) the date of departure;~~;~~
- (b) the bill of lading quantity ~~and;~~
- (c) the number of holds utilized;~~;~~ and date of
- (d) the Vessel's expected arrival ETA at the discharging port ~~followed by the number of days as per Box 22 notices of E.T.A.~~

Thereafter the Owners/Master shall give the Charterers and discharging port agents the notices of ETA as per **Box 19**.

Notes – Advance Notices

The Advance Notices Clause for discharging has been re-structured to enumerate the sequence of notices to be given by the owners. As per the original CEMENTVOY provision is made for the parties to agree on the frequency of subsequent ETA notices given en route to the discharge port.

12. Notice of Readiness to Discharge and Counting of Laytime

Notice of readiness shall not be tendered until the Vessel is alongside the berth and in all respect ready to discharge. However, should the berth be occupied or should the Charterers or receivers prevent the Vessel from proceeding to the berth after her arrival at or off the port, notice of readiness may be tendered on arrival at or off the port, whether in berth or not, whether in port or not, whether in Free Pratique or not, and whether ~~in~~ Customs clearance~~cleared~~ or not.

- (a) *Notice of readiness may be tendered at any time of the day, night, ~~Sundays and holidays included with the effect that laytime~~unless otherwise agreed and stated in Box 20, SHINC.
- (b) *Notice of readiness may be tendered between 07.00 - 18.00 hours SHEX unless otherwise stated in Box 21.

Laytime shall commence ~~to count~~ 6 hours after such notice has been tendered.

Time used in shifting from the waiting place to the discharging berth shall not count as laytime. Time actually used before commencement of laytime shall count as half time.

Actual time lost in obtaining Free Pratique or Customs Clearance shall not count as laytime.

Laytime shall not count when the discharging of cargo from the Vessel is prevented by adverse weather conditions.

*Note: (a) and (b) are alternatives; indicate alternative agreed in Box 20. If no alternative is stated in Box 20 then Sub-clause (a) shall apply.

Notes – NOR & Counting of Laytime

Clause 12 provides the parties with a choice of laytime provisions – either SHINC or SHEX. If the parties choose SHEX terms they can either elect to have the notice of readiness tendered within the fixed office hours of between 7am and 6pm or choose alternative office times to suit the characteristics of their trade.

The revised form retains the balance of the original form in that time used before the commencement of laytime counts as half time.

In order to avoid recurring disputes on the interpretation of the traditional expressions "weather working day" and "weather permitting" CEMENTVOY uses a simple reference to "adverse weather" to mark time when laytime will not count during discharge.

13. Rate of Discharging

- (a) The cargo shall be discharged at the rate (in metric tons) as stated in **Box 25 (ii)** per day of 24 consecutive hours, ~~Sundays and holidays included (SHINC).~~
- (b) The cargo shall be discharged at the rate (in metric tons) as stated in **Box 26**~~25 (ii)~~ per days of 24 consecutive hours, ~~Sundays and holidays expected (SHEX),~~ unless used, in which event half time used shall count.

*Note: (a) and (b) are alternatives; indicate alternative agreed in Box 25(i). If no alternative is stated in Box 25(i) then Sub-clause (a) shall apply.

Notes – Rate of Discharging

By default the rate of discharge is on the basis of an agreed rate of metric tonnes SHINC. The parties have the option to select a SHEX rate if they so wish.

14. Discharging Methods and Costs

The Charters shall ensure that when they discharge the Vessel, it shall be done in accordance with the Master's instructions.

- (a) ~~*By shore equipment.~~ - The cargo shall be discharged from the Vessel's holds free of risk, liability and expense to the Vessel at the rate (in metric tons) as stated in **Box 25(ii)**.
- (b) ~~By the Vessel's own cranes and grabs operated by shore drivers.;~~
- (i) ~~*Charterers' crane operators.~~ - The cargo shall be discharged and taken away from the Vessel's holds free of risk, liability and expense to the Vessel by the Vessel's cranes and grabs which shall be provided free of expense to the Charterers ~~at the rate as stated in Box 26.~~ In case of ~~stoppages-time lost~~ due to ~~inefficiency~~~~breakdown or deficiency~~ of the Vessel's gear or any other causes under the control of the Owners, the time so lost ~~shall be calculated pro rate in relation to the - pro rata the total~~ number of cranes/grabs ~~at the hatches utilized~~ ~~required at that time~~ for the ~~carriedischarging~~ of this cargo ~~on the Vessel and such time lost shall under this Charter Party - shall~~ be added to the laytime allowed for discharging.
- (ii) ~~* Owners' crane operators.~~ - The cargo shall be discharged from the Vessel's holds at the Owners' risk, liability and expense ~~to the ship's rail only, otherwise free of risk, liability and expense to the Vessel as fact as can~~ by the Vessel's cranes and grabs ~~or pneumatic equipment operated by crew.~~ It is understood that the Owners shall provide the necessary ~~crew~~~~crane operators~~ for the discharging of the Vessel for every shift required by the Charterers, subject to the maximum of crane hours per day as stated in **Box 24(ii)**. The Charterers shall receive the cargo from the Vessel's equipment at the take-away rate stated in **Box 25(ii)** on the basis of which laytime allowed shall be calculated. However, if the ~~Vessel's crew-Vessel~~ is unable to achieve a discharging rate equivalent to the take-away rate stated in **Box 25 (ii)** ~~due to any reason under the OwnersOwners' control, such time lost~~ shall not ~~be entitled to claim-count as laytime or time on~~ demurrage ~~for the time so lost. In case of stoppage due to inefficiency of the Vessel's gear,;~~

~~*Note: (a), (b)(i) and (b)(ii) are alternatives; indicate alternative agreed in Box 24(i). If no alternative is stated in Box 24(i) then Clause 14(a) shall apply.~~

Notes – Discharging Methods & Costs

This Clause along with Clause 8 (Loading Methods and Costs) warrants particular attention. Three different discharging options are provided – by shore equipment; by using the vessel's cranes operated either with the owners' or the charterers' crane operators.

It is common practice in the cement trade for owners to employ independent shore crane operators rather than using crew to operate the vessel's cranes.

Particular note should be paid to the provision relating to the breakdown of the vessel's cranes when operated by the charterers' crane operators – in such circumstances the time lost, if any, must be pro rated against the number of cranes actually required by the charterers at the time the breakdown occurred.

Note should also be taken of the charterers' obligation in sub-clause 14(b)(i) to provide cargo at a rate equivalent to the agreed loading rate and for the owners when using their own crane operators to load at that rate, failing which time lost will not count.

In sub-clause 14(b)(ii), where the owners provide the crane operators for the vessel's cranes, the charterers are obliged to ensure that cargo is removed/received from the vessel's discharge equipment at the agreed take-away rate.

By default, if the parties fail to choose a discharging method then the discharging will be done using shore equipment.

15. Cleaning after Discharging

After the Charterers' shore discharging equipment or the Vessel's grabs have removed as much cargo as possible, to facilitate the discharging of the remaining cargo residues, the Charterers shall supply free of risk, liability and expense to the Owners, suitable trimming equipment, including bulldozers, and labour. The discharging will be considered completed and laytime shall cease when the Vessel has been shovel cleaned and all the Charterers' equipment has been returned to the shore ~~and laytime shall then cease to count.~~

Notes – Cleaning

Cleaning of cargo holds and removal of cargo residues after discharging is another area which often causes problems in practice and is a matter which, therefore, of necessity must be addressed in a modern charter party. Great care has been taken in drafting suitable provisions which in a reasonable and balanced manner attempt to take care of this problem and thus, hopefully, will assist in avoiding or reducing the scope for disputes. A careful study of the provisions contained in this clause is recommended.

LOADING AND DISCHARGING

16. Demurrage and Despatch Money

~~Demurrage shall be paid by the Charterers at the rate stated in Box 27 per day or pro rate for any part of a day the Vessel is detained beyond the laytime allowed for discharging.~~

~~Should the Vessel remain on demurrage at the discharging port for a period in excess of 14 days, the Charterers shall pay to the Owners demurrage every 14 days.~~

~~*) Despatch Money (if agreed in Box 28) shall be paid by the Owners at half the demurrage rate for all laytime saved.~~

~~Demurrage/Despatch Money shall be finally settled and paid within 30 days of submission of claims supported by all relevant documents.~~

~~The Owners shall endeavour to present Statement of Facts not later than 30 days after completion of discharging.~~

(a) Loading

Demurrage shall be paid by the Charterers at the rate stated in **Box 15** per day or pro rata for any part of a day the Vessel is detained beyond the laytime allowed for loading.

If the Vessel has been on demurrage for 15 days or more and no cargo has been loaded, the Owners shall have the option of cancelling this Charter Party. If the Owners exercise such option the Charterers shall pay the Owners the demurrage accrued before cancellation and no other claim against the Charterers shall be prejudiced thereby.

*Despatch Money (if agreed in **Box 16**) shall be paid by the Owners at half the demurrage rate for all laytime saved.

(b) Discharging

Demurrage shall be paid by the Charterers at the rate stated in **Box 22** per day or pro rata for any part of a day the Vessel is detained beyond the laytime allowed for discharging.

*Despatch Money (if agreed in **Box 23**) shall be paid by the Owners at half the demurrage rate for all laytime saved.

(c) Payment

Demurrage shall be due from the Charterers day by day and shall be paid promptly on receipt of the Owners' invoice.

Should the Charterers dispute any part of the demurrage claim they shall present promptly their reasons therefor. The disputed part of the demurrage, if any, shall be discussed and settled soonest thereafter. Despatch Money shall be paid promptly on receipt of the Charterers' invoice.

(d) Time Bar

Demurrage and dispatch claims, if any, shall be presented not later than 90 days after completion of discharge with available supporting documents. Any claim received later than 90 days after completion shall be considered null and void by both parties.

* Note: Optional, only applicable if agreed and stated in **Box 16** and/or **Box 23**.

Notes – Demurrage & Despatch

Clause 17 provides a consolidated provision dealing with the settlement of demurrage and despatch. In the original CEMENTVOY demurrage and despatch was dealt with in Clauses 11 and 17.

Clause (a) provides for demurrage and despatch for loading. The second paragraph deals with undue delay whereby the owners are provided with the option of cancelling the charter party if no cargo has been loaded and the vessel has

been sitting on demurrage for 15 days or more. The owners entitlement to demurrage accrued prior to cancellation is not prejudiced by the exercise of this option.

Note that the payment of despatch money is optional at both loading and discharging ports and only applies if the appropriate boxes in Part I have been correctly filled in.

Sub-clause (c) provides for the payment of demurrage which from a practical point of view, although it falls due day by day, is payable by the charterers on receipt of the owners' invoice.

The second paragraph of sub-clause (c) deals with disputed demurrage claims and requires the charterers to provide the owners with their reasons for disputing any part of the demurrage claim and for the parties to resolve amicably the issue as soon as possible afterwards.

Finally, sub-clause (d) provides a 90 day time bar for the presentation of all demurrage and despatch claims.

17. Warping

To facilitate the loading or discharging operation, the Vessel shall be moved alongside the loading/discharging berth as reasonably required at Owners' risk and expense, but time so used shall count as laytime. Linesmen for warping shall always be for the Charterers' account if compulsory according to local regulations.

Notes – Warping

The Warping provision is unchanged from the original CEMENTVOY.

18. Vacating Berth

Subject to weather and navigation conditions and Port Authorities' instructions, the Vessel shall make the best endeavours to leave the loading/discharging berth as soon as reasonably possible after the loading/discharging operation has been completed.

Notes – Vacating Berth

This Clause is unchanged from the original CEMENTVOY charter party. It emphasises the need for the vessel to vacate the berth as soon as possible after cargo operations have ceased to optimise the use of cement berths.

19. Draft Survey

The weight of cargo taken on board shall be determined for bill of lading purposes by draft survey at the loading ~~berth~~port.

Notes – Draft Survey

The Draft Survey provision has been amended to refer to "port" instead of "berth" to allow the survey to be done, if necessary, at a topping-off anchorage.

20. Opening and Closing of Hatches

The Vessel's hatches shall be opened and closed by the crew in accordance with the Charterers' request, at the Owners' expense unless local regulations prohibit the crew from doing such work, in which case the Charterers shall employ shore labour at their expense.

Notes – Hatches

This Clause is unchanged from the original CEMENTVOY and deals simply with the issue of the opening and closing of the vessel's hatches by the crew in accordance with the requests of the charterers.

21. Ballasting, etc.

At the loading/discharging berth the Master shall not take on board or pump out ballast or switch oil from tank to tank, affect trim and/or draft without advising the Charterers ~~and the~~ The Master shall co-operate at all times with the ~~Charterers to~~ Charterers' reasonable requests regarding ballasting and/or trimming.

Notes – Ballasting

This Clause is designed to ensure the highest possible level of co-operation and communication between the Master and the charterers during ballasting/de-ballasting and trimming operations in port.

22. Handling of Equipment on Board

The Vessel's cranes, if any, shall within ~~their~~ Safe ~~Work~~Working Load lift on board and ashore the Charterers' equipment including any anti-pollution equipment and including any mechanical shovel/front-end loader free of expense to the Charterers but at the Charterers' risk and in their time. If required by the Charterers and If permitted by Port Authorities and union regulations, the Vessel's crew shall assist in erecting and dismantling any special equipment on board required for the loading or discharging operation, but such equipment shall always be erected, operated, maintained and dismantled at the risk, liability and expense of the Charterers and in their time. Any damage caused to the Vessel or her crew shall be for the Charterers' account.

Notes – Equipment Handling

This Clause is largely unchanged from the original version found in CEMENTVOY. The provisions are aimed at allocating, in a reasonable manner, the risks and costs in handling any special equipment provided by the charterers, as may be required for loading or discharging operations.

23. Stevedore Damage*

- (a) The Charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the Vessel caused by Stevedores at both ends. Such damage, as soon as apparent, ~~but in any case before the Vessel sails~~ shall be notified ~~in writing~~immediately by the Master to the Charterers or ~~the their port~~ agents and to ~~the their~~ Stevedores. The Owners/Master shall endeavour to obtain the ~~Stevedores'~~Stevedores' written acknowledgment of ~~liability and to settle stevedore~~the damage ~~claims direct with the Stevedores including any compensation for time lost for repairing such damage~~caused.

~~24.2. The Charterers shall have the right to perform any repairs of stevedore damage at any time prior to or~~

- (b) ~~Stevedore damage affecting seaworthiness or the proper working of the Vessel and/or her equipment shall be repaired without delay before the Vessel sails from the port where such damage was caused and shall be paid for by the Charterers. Other repairs shall be done before the completion of the voyage, unless where practicable, or otherwise at a place mutually agreed, but must repair stevedore damage affecting between the Vessel's seaworthiness before the Vessel sails from the port where such damage was caused. Time used for such repairs shall count as laytime parties. All costs of such repairs shall also be for the Charterers' account and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.~~

~~*if option 8(c)(ii) and/or 14(b)(ii) have been selected then this Clause shall not apply to the loading and/or discharging operation as the case may be.~~

Notes – Stevedore Damage

The provisions of sub-clause (a) have been amended so that the owners no longer have to try to obtain the stevedores' written acknowledgement of liability for damage or try to settle stevedore damage claims directly with the stevedores. It is felt to be impracticable for the owners to enter into settlement negotiations with the stevedores and that this should be a task for the charterers who have appointed the stevedores in the first place. Similarly, as far as acknowledgement of liability for damage caused, it was felt to be unreasonable for the owners to expect anything more from the stevedores than a simple acknowledgement that damage had occurred.

In sub-clause (b) the provision giving the charterers the responsibility for making repairs to the vessel arising out of stevedore damage has been amended to state simply that the charterers must pay for such damage. It was felt that no responsible owners would allow the charterers to make actual repairs to their vessel.

Recognising the availability of repair facilities at some of the ports used in the cement trades is often limited, the Clause contains a mechanism whereby the parties can mutually agree on an alternative place for repairs not affecting seaworthiness on completion of the voyage. In such circumstances the charterers must bear the costs for the repairs as well as compensating the owners for any time lost at the agreed demurrage rate.

If the parties have elected to use the owners' crane operators for loading and/or discharging then the Stevedore Damage Clause does not apply in those instances.

24. Owners' Liability for Damage

Save to the extent otherwise in this Charter Party expressly provided, the Owners shall be responsible for damage (beyond ordinary wear and tear) caused by the Vessel or her equipment whilst operated by the Vessel's crew to the loading or discharging berth(s) or to barges, if any, used for cargo operations, as well as damage caused to Charterers' loading/discharging appliances, provided always that written notice of such damage is given to the Master at the time of occurrence. ~~Actual time-Time~~ lost as a result of such damage shall not count as laytime but only to the extent that cargo operations are prevented or delayed thereby.

Notes – Liability for Damage

This provision is taken from sub-clause 24.3 of the original CEMENTVOY Stevedore Damage Clause. The drafting team that revised CEMENTVOY did not feel that this provision belonged with usual stevedore damage provisions and so they have elevated it to a free standing clause. The provision has been amended to make clear that the focus is on damage caused by the vessel or her equipment while operated by the vessel's crew.

GENERAL

25. Freight Payment

Freight, and deadfreight, if any, shall be paid at the rate per metric ton specified in **Box 26** and calculated on the ~~intaken~~Bill of Lading quantity of cargo subject to the provisions of **Clause 19 (Draft Survey)**.

Freight, and deadfreight, if any, shall be deemed earned on shipment and shall be payable by the Charterers, within 3 banking days of signing and release of Bills of Lading, and shall be paid as specified in **Box 27**, without discount, Vessel and/or cargo lost from any cause whatsoever or not lost.

Notes – Freight

This Clause covers freight and freight payment procedures. It should be noted that the Clause has been amended to make freight rate subject to the number of metric tonnes loaded and that freight is determined by the bill of lading quantity. The bill of lading quantity is determined in accordance with Clause 19 (Draft Survey).

26. Dues, Taxes and Charges

- (a) On the Vessel. - The Owners shall pay all dues, duties, taxes and other charges customarily levied on the Vessel, howsoever the amount thereof may be assessed.
- (b) On the cargo. - The Charterers shall pay all dues, duties, taxes and charges levied on the cargo at the port of loading/discharging, howsoever the amount thereof may be assessed.
- (c) On the freight. - Taxes levied on the freight shall be paid by the Owners or the Charterers as agreed in **Box 28**.

Notes – Dues and Charges

This Clause sets out a formula for the apportionment between the parties of dues and other charges levied against the vessel and the cargo. For the sake of clarity and to be consistent with other recently published BIMCO charter parties the Clause has been split into three distinct categories dealing with the vessel, cargo and freight. It should be noted that sub-clause (c) provides an option for the parties to negotiate who will pay taxes on freight.

27. Bill of Lading

~~Bills of Lading shall be signed as per "Cementvoybill" Bill of Lading form.~~

Bills of Lading shall be presented and signed by the Master as per the "CEMENTVOYBILL 2006" Bill of Lading form, always in accordance with Mate's Receipts and without prejudice to this Charter Party, or by the 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.

Notes – Bills of Lading

A more comprehensive Bill of Lading Clause has been introduced into the revised CEMENTVOY. The new Clause ensures that bills of lading are to be in accordance with Mate's Receipts and that the charterers are to indemnify the owners against the consequences of the owners finding themselves faced with liabilities greater than those entailed by the charter party.

28. Lien

~~The Owners shall have a lien on the cargo for freight, deadfreight and demurrage.~~

The Owners shall have a lien on the cargo and 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.

Notes – Lien

The original lien provision was felt to be a little too brief. The wording of this Clause has been amended and is now identical to GENCON 1994 Clause 8 (Lien), reflecting current commercial practice.

29. Liberty

The Vessel ~~has shall have~~ liberty to ~~call at any port or ports en route, for any reasonable purpose, to sail with or without pilots, to tow and/or assist or go to the assistance of~~ vessels in distress, ~~to call at any port or place for bunkers, and also~~ to deviate for the purpose of saving life ~~and/or~~ property, ~~or for any other reasonable purpose whatsoever.~~

Notes – Deviation

This clause contains the usual liberties which form part of the voyage. It has been amended to be consistent with other recently published BIMCO forms. It should be noted that the provision now includes a reference to bunkers and deviation for other "reasonable" purposes.

30. Oil Pollution Charter Party Clause (Non Tankers)

- (a) Owners warrant that throughout the currency of this charter they will provide the vessel with the following certificates:

Certificates issued pursuant to Section 1016 (a) of the Oil Pollution Act 1990, and Section 108 (a) of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended, in accordance with Part 138 of Coast Guard Regulations 33 CFR, from (indicate the earliest date upon which the Owners may be required to deliver the vessel into the charter), so long as these can be obtained by the owners from or by (identify the applicable scheme or schemes).

- (b) Notwithstanding anything whether printed or typed herein to the contrary.
- (i) save as required for compliance with paragraph (a) hereof, Owners shall not be required to establish or maintain financial security or responsibility in respect of oil or other pollution damage to enable the vessel lawfully to enter, remain in or leave any port, place, territorial or contiguous waters of any country, state or territory in performance of this charter.
- (ii) Charterers shall indemnify Owners and hold them harmless in respect of any loss, damage, liability or expense (including but not limited to the costs of any delay incurred by the vessel as a result of any failure by the Charterers promptly to give alternative voyage orders) whatsoever and howsoever arising which Owners may sustain by reason of any requirement to establish or maintain financial security or responsibility in order to enter, remain in or leave any port, place or waters, other than to the extent provided in paragraph (a) hereof.
- (iii) Owners shall not be liable for any loss, damage, liability or expense whatsoever and howsoever arising which Charterers and/or the holders of any bill of lading issued pursuant to this Charter may sustain by reason of any requirement to establish or maintain financial security or responsibility in order to enter, remain in or leave any port, place or waters, other than to the extent provided in paragraph (a) hereof.
- (c) Charterers warrant that the terms of this clause will be incorporated effectively into any bill of lading issued pursuant to this charter.

Notes – Oil Pollution

This Clause is a standard P&I Club wording relating to the owners' obligation to provide certification in relation oil pollution legislation.

31. BIMCO U.S. Customs Advance Notification/AMS Clause for Voyage Charter Parties

(a) If the Vessel loads or carries cargo destined for the US or passing through US ports in transit, the Owners shall comply with the current US Customs regulations (19 CFR 4.7) or any subsequent amendments thereto and shall undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and expense:

- (i) Have in place a SCAC (Standard Carrier Alpha Code);
- (ii) Have in place an ICB (International Carrier Bond); and
- (iii) Submit a cargo declaration by AMS (Automated Manifest System) to the US Customs.

(b) The Charterers shall provide all necessary information to the Owners and/or their agents to enable the Owners to submit a timely and accurate cargo declaration.

The Charterers shall assume liability for and shall indemnify, defend and hold harmless the Owners against any loss and/or damage whatsoever (including consequential loss and/or damage) and/or any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Charterers' failure to comply with any of the provisions of this sub-clause. Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall count as laytime or, if the Vessel is already on demurrage, time on demurrage.

(c) The Owners shall assume liability for and shall indemnify, defend and hold harmless the Charterers against any loss and/or damage whatsoever (including consequential loss and/or damage) and any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Owners' failure to comply with any of the provisions of sub-clause (a). Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall not count as laytime or, if the Vessel is already on demurrage, time on demurrage.

(d) The assumption of the role of carrier by the Owners pursuant to this Clause and for the purpose of the US Customs Regulations (19 CFR 4.7) shall be without prejudice to the identity of carrier under any bill of lading, other contract, law or regulation.

Notes – AMS

This is a standard BIMCO Clause designed to allocate responsibility for compliance with US Customs regulations in relation to cargo manifests to be submitted in advance of the vessel's arrival at a US port or in transit through US waters. The Clause obliges the owners to have in place a SCAC code and an International Carrier Bond and to be responsible for submitting an advanced cargo manifest. Sub-clause (b) places an obligation on the charterers to provide any information necessary to the owners to enable them to comply with the regulations. Each party is to indemnify the other in respect of any consequences arising out of their failure to comply with the provisions of the Clause.

Finally, sub-clause (d) clarifies that the identification of the owners as carrier is limited expressly to the purposes of compliance with the relevant US Customs regulations.

32. Protective Clauses

The following clauses shall apply to all Bills of Lading issued under this Charter Party and to this Charter Party:

Notes – Protective provisions

To enhance consistency between BIMCO standard charter parties, a group of clauses named "Protective Clauses" have been included. The Protective Clauses consist of:

(a) BIMCO General Clause Paramount
This is the current edition of the BIMCO General Clause Paramount.

(b) Both to Blame Collision Clause
This is the standard Both to Blame Collision Clause.

(c) General Average and New Jason Clause

This is the standard General Average and New Jason Clause. Note that the General Average provision has been updated to apply the York-Antwerp Rules 1994 and that adjustment and settlement takes place in London by default unless the parties elect another venue.

(d) War Risks (VOYWAR 2004)

Sub-clause (d) incorporates BIMCO's VOYWAR 2004, adopted by the Documentary Committee in November 2004. The clause makes reference to, *inter alia*, acts of terrorism. More information on this clause can be found in BIMCO Bulletin No. 6/2004 page 58.

(a) **BIMCO General Clause Paramount**

The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 ("the Hague Rules") as amended by the Protocol signed at Brussels on 23 February 1968 ("the Hague-Visby Rules") and as enacted in the country of shipment shall apply to this Contract. When the Hague-Visby Rules are not enacted in the country of shipment, the corresponding legislation of the country of destination shall apply, irrespective of whether such legislation may only regulate outbound shipments.

When there is no enactment of the Hague-Visby Rules in either the country of shipment or in the country of destination, the Hague-Visby Rules shall apply to this Contract save where the Hague Rules as enacted in the country of shipment or if no such enactment is in place, the Hague Rules as enacted in the country of destination, compulsorily applicable to shipments, in which case the provisions of such Rules shall apply.

The Protocol signed at Brussels on 21 December 1979 ("the SDR Protocol 1979") shall apply where the Hague-Visby Rules apply, whether mandatorily or by this Contract.

The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging, or while the cargo is in the charge of another carrier, or with respect to deck cargo and live animals.

(b) **Both-to-Blame Collision Clause**

If the liability for any collision in which the Vessel is involved while performing this Contract falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"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 the 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 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 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.

(c) **General Average and New Jason Clause**

General average shall be adjusted and settled in London unless otherwise agreed and stated in **Box 29** according to the York/Antwerp Rules, ~~1974~~1994 or any modification thereof.

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 Owner are not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods 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 goods. If a salving Vessel is owned or operated by the Owners, salvage shall be paid for a 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 goods,

shippers, consignees or owners of the goods to the Owners before delivery."

(d) **War Risks (Voywar 2004)**

- (i) For the purpose of this Clause, the words:
- "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
 - "War Risks" shall include any actual, threatened or reported: War; act of war; civil war; hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; 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.
- (ii) 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.
- (iii) 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 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.
- (iv) 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.
- The Owners may effect war risks insurance in respect of the Hull and Machinery of the Vessel and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefor shall be for their account.
 - If the Underwriters of such insurance should require payment of premiums and/or calls because, pursuant to the Charterers' orders, or in order to fulfil the Owners' obligation under

this Contract, the Vessel is within, or is due to enter and remain within, or pass through any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then the actual premiums and/or calls paid shall be reimbursed by the Charterers to the Owners within 14 days after receipt of the Owners' invoice. If the Vessel discharges all of her cargo within an area subject to additional premiums as herein set forth, the Charterers shall reimburse the Owners for the actual additional premiums paid which may accrue from completion of discharge until the Vessel leaves such area or areas referred to above. The Owners shall leave the area as soon as possible after completion of discharge.

(v) The Vessel shall have liberty:-

1. 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;
2. 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;
3. to comply with the terms of any resolution of the Security Council of the United Nations, 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;
4. to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;
5. 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;
6. 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.

(vi) If in compliance with any of the provisions of sub-clauses (b) to (f) 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.

33. Force Majeure

~~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 avoided or guarded against.~~

Neither party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions to the extent the party invoking force majeure is prevented or hindered from performing any or all of their obligations under this Charter Party, provided they have made all reasonable efforts to avoid, minimize or prevent the effect of such events and/or conditions:

- (a) acts of God;
- (b) any Government requisition, control, intervention, requirement or interference;
- (c) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
- (d) riots, civil commotion, blockades or embargoes;
- (e) epidemics;
- (f) earthquakes, landslides, floods or other extraordinary weather conditions;
- (g) fire, accident, explosion except where caused by negligence of the party seeking to invoke force majeure;
- (h) any other similar cause beyond the reasonable control of either party.

The party seeking to invoke force majeure shall notify the other party in writing within 2 working days of the occurrence of any such event/condition.

Notes – Force Majeure

The Force Majeure provision previously found in CEMENTVOY has been replaced by a new wording. There was a concern that the reference to strikes found in the earlier provision might conflict with the Strike Clause. To avoid any possible conflict the drafting team has incorporated a new force majeure clause based on a similar provision used in the recently revised SUPPLYTIME charter party which was drawn from the model ICC Force Majeure Clause 2003.

The Clause makes it clear that the party wishing to invoke force majeure must have been hindered or prevented from performing all or part of its obligations under the charter party.

Sub-clause (c) reflects the wording found in the ICC Force Majeure Clause 2003 by including a reference to terrorism, sabotage and piracy.

34. BIMCO 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 lockouts preventing or affecting the actual loading or discharging of the cargo.

Notes – Strike

This is BIMCO's standard Strike Clause wording as found in the GENCON 94 General Voyage Charter Party.

35. BIMCO General Ice Clause for Voyage Charter Parties

The Vessel shall not be obliged to force ice but, subject to the Owners' approval having due regard to its size, construction and class, may follow ice-breakers.

- (a) Port of Loading
- (i) If at any time after setting out on the approach voyage the Vessel's passage is impeded by ice, or if on arrival the loading port is inaccessible by reason of ice, the Master or Owners shall notify the Charterers thereof and request them to nominate a safe and accessible alternative port.
- If the Charterers fail within 48 running hours, Sundays and holidays included, to make such nomination or agree to reckon laytime as if the port named in the contract were accessible or declare that they cancel the Charter Party, the Owners shall have the option of cancelling the Charter Party. In the event of cancellation by either party, the Charterers shall compensate the Owners for all proven loss of earnings under this Charter Party.
- (ii) If at any loading port the Master considers that there is a danger of the Vessel being frozen in, and provided that the Master or Owners immediately notify the Charterers thereof, the Vessel may leave with cargo loaded on board and proceed to the nearest safe and ice free place and there await the Charterers' nomination of a safe and accessible alternative port within 24 running hours, Sundays and holidays excluded, of the Master's or Owners' notification. If the Charterers fail to nominate such alternative port, the vessel may proceed to any port(s), whether or not on the customary route for the chartered voyage, to complete with cargo for the Owners' account.

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- (b) Port of Discharge
- (i) If the voyage to the discharging port is impeded by ice, or if on arrival the discharging port is inaccessible by reason of ice, the Master or Owners shall notify the Charterers thereof. In such case, the Charterers shall have the option of keeping the Vessel waiting until the port is accessible against paying compensation in an amount equivalent to the rate of demurrage or of ordering the Vessel to a safe and accessible alternative port.
- If the Charterers fail to make such declaration within 48 running hours, Sundays and holidays included, of the Master or Owners having given notice to the Charterers, the Master may proceed without further notice to the nearest safe and accessible port and there discharge the cargo.
- (ii) If at any discharging port the Master considers that there is a danger of the Vessel being frozen in, and provided that the Master or Owners immediately notify the Charterers thereof, the Vessel may leave with cargo remaining on board and proceed to the nearest safe and ice free place and there await the Charterers' nomination of a safe and accessible alternative port within 24 running hours, Sundays and holidays excluded, of the Master's or Owners' notification. If the Charterers fail to nominate such alternative port, the vessel may proceed to the nearest safe and accessible port and there discharge the remaining cargo.
- (iii) On delivery of the cargo other than at the port(s) named in the contract, all conditions of the Bill of Lading shall apply and the Vessel shall receive the same freight as if discharge had been at the original port(s) of destination, except that if the distance of the substituted port(s) exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port(s) shall be increased proportionately.

Notes – Ice

This clause is the latest edition of the BIMCO General Ice Clause for Voyage Charter Parties, adopted by the Documentary Committee in November 2004. More information on this clause can be found in BIMCO Bulletin No. 6/2004 page 42.

36. Agency

At the port(s) of loading the Vessel shall be consigned to the Agents as stated in **Box 30(i)** and at the port(s) of discharge to the Agents as stipulated in **Box 30(ii)**, the Owners always paying the customary fees.

Notes – Agency

This Clause has been amended to allow the parties to agree on the agents to be appointed at loading and discharging ports. It has become customary practice in the cement trade for the charterers to nominate the agents and for the owners to appoint and pay for them.

37. BIMCO ISPS/MTSA Clause for Voyage Charter Parties 2005

- (a)
- (i) The Owners shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Vessel and "the Company" (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Owners shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the "Owner" (as defined by the MTSA).
- (ii) Upon request the Owners shall provide the Charterers with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).
- (iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Owners or "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Owners' account, except as otherwise provided in this Charter Party.
- (b)
- (i) The Charterers shall provide the Owners and the Master with their full style contact details and, upon request, any other information the Owners require to comply with the ISPS Code/MTSA.
- (ii) Loss, damages or expense (excluding consequential loss, damages or expense) caused by failure

on the part of the Charterers to comply with this Clause shall be for the Charterers' account, except as otherwise provided in this Charter Party, and any delay caused by such failure shall count as laytime or time on demurrage.

- (c) Provided that the delay is not caused by the Owners' failure to comply with their obligations under the ISPS Code/MTSA, the following shall apply:
- (i) Notwithstanding anything to the contrary provided in this Charter Party, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code/MTSA.
- (ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code/MTSA shall count as laytime or time on demurrage, unless such measures result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew or the identity of the Owners' managers.
- (d) Notwithstanding anything to the contrary provided in this Charter Party, any costs or expenses whatsoever solely arising out of or 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, vessel escorts, security fees or taxes and inspections, shall be for the Charterers' account, unless such costs or expenses result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew or the identity of the Owners' managers. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.
- (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.

Notes – ISPS/MTSA

This clause is the BIMCO ISPS/MTSA Clause for Voyage Charter Parties 2005, adopted by the Documentary Committee in May 2005. More information on this clause can be found in BIMCO Bulletin No. 3/2005 page 30.

38. Brokerage

A brokerage commission at the rate stated in **Box 31** on the freight, deadfreight and demurrage earned is payable by the Owners to the party mentioned in **Box 31**.

Notes – Brokerage

This Clause is unchanged from the original CEMENTVOY and requires no explanation.

39. BIMCO Dispute Resolution Clause

- (a) *This Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- (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 any dispute arising out of or in connection with this Charter Party 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 the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.

- (c) *This Charter Party shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Charter Party shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.
- (d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Charter Party.

In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:-

- (i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.
- (ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.
- (iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.
- (iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.
- (v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.
- (vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.
- (vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)

- (e) If **Box 32** in PART I is not appropriately filled in, sub-clause (a) of this Clause shall apply. Sub-clause (d) shall apply in all cases.

*Note: Sub-clauses (a), (b) and (c) are alternatives; indicate alternative agreed in **Box 32**.

Notes – Dispute Resolution

This clause, previously the "Law and Arbitration Clause", is the latest edition of BIMCO's standard suite of dispute resolution provisions. In addition to BIMCO's Law and Arbitration Clause 1998, the provision incorporates a mediation clause. The mediation provision is designed to function in conjunction with the chosen arbitration option, whether that is English law, London arbitration; US law, New York arbitration; or law and arbitration as agreed. Mediation is a technique that is recognised as offering savings in costs and time over traditional methods of dispute resolution for certain types of disputes. BIMCO's mediation provision is only triggered once arbitration proceedings have commenced and then runs in parallel with those proceedings, if the parties so choose. This has been done to ensure that one party cannot invoke mediation as a delaying tactic. It also provides for the parties to mediate on all or just some of the issues being arbitrated.

For a fuller description of the BIMCO Standard Dispute Resolution Clause, please see BIMCO Bulletin No. 1/2002.

40. BIMCO Notices Clause

- (a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Charter Party shall be in writing.
- (b) For the purposes of this Charter Party, "in writing" shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.

Notes – Notices

This is a standard BIMCO clause dealing with the methods to be used for writing and sending notices. It should be noted that the Clause permits the use of e-mail as an acceptable method of written communication for the purposes of giving notices under the charter party.

PART III – SPECIALISED CEMENT CARRIERS

The Clauses in this Part III apply only when the Vessel is described as a specialised cement carrier in **Appendix B**. Part III is a supplement to Part II with the exception of **Clauses 8 (Loading Methods and Costs), 14 (Discharging Methods and Costs) and 15 (Cleaning after Discharging)** of Part II which shall not apply. In the event of a conflict between the provisions of Part II and Part III the provisions of Part III shall prevail but only to the extent of such conflict.

Notes – Part III Preamble

CEMENTVOY 2006 has been simplified and divided into three distinct parts to ensure that terms and conditions that apply ordinarily to specialised cement carriers do not inadvertently get applied to conventional bulk carriers Part III of the charter party deals specifically with specialised cement carriers and applies ONLY when the vessel has been described as a specialised cement carrier in Annex B. It should be noted that the clauses in Part III are in addition to those in Part II with the exception of the provisions in Part II relating to loading and discharging methods and cleaning after discharging. The clauses in Part II which do not apply when Part III is effective are clearly marked in the text.

VESSEL

41. Vessel

The Vessel shall be suitable for loading of the cargo in accordance with **Clause 43 (Loading)** and capable of receiving the cargo at the rate (if any) specified in **Box 18(ii)** and capable of discharging in accordance with **Clause 44 (Self-Discharge)** at the rate (if any) specified in **Box 25(ii)**.

Notes – Vessel

This clause provides a general warranty in respect of the suitability of the vessel to load the agreed cargo and the rates of loading and discharging.

LOADING

42. Cleanliness of the Vessel

If the Vessel's last cargo was of a different quality of cement than the cargo to be loaded or a different product, the Vessel's holds shall be cleaned and made ready in all respects to load the intended type of bulk cement. In such cases the Charterers or their agents shall have the right to inspect the Vessel's holds and to request the Owners to rectify any cleaning deficiencies, in which case **Clause 6** shall apply.

Notes – Vessel Cleanliness

Under normal circumstances where a cement carrier loads the same cement product on each voyage there will be no hold cleaning requirement. However, if a different cement-related product or cement of a different quality is loaded then the owners are obliged by Clause 42 to clean the holds appropriately. It should be noted that the charterers have a right of inspection and that they can ask the owners to undertake further cleaning if, in their opinion, they consider the holds to be insufficiently clean for the intended cargo.

43. Loading

- (a) Loading shall be performed by stationary spout or other equipment as described in **Appendix C**.
- (b) To maintain proper trim the Vessel may shift alongside the loading berth as necessary. The Charterers' responsibility for trimming the cargo shall be limited to the outreach of the stationary spout.

Notes – Loading

Clause 43 determines the loading method to be used which will either be a stationary spout or some other form of loading device as may be specified in Annex C.

DISCHARGING

44. Self-Discharge

- (a) The cargo shall be self-discharged from the Vessel's holds with the Vessel's pneumatic system as described in **Appendix B** into the receiver's silo at Owners' expense, but at Owners' risk only as far as the Vessel's permanent discharge lines. The terminal shall take delivery of the cargo through the receiving lines described in **Appendix C** at the guaranteed take-away rate stated in **Box 25(ii)**.
- (b) The Charterers/receivers shall provide and connect at their own expense and risk the inch diameter hoses stated in **Appendix C** between the Vessel's permanent cement manifolds and shore manifolds. The Vessel shall provide two (2) crew members to assist with the connecting/disconnecting/moving of hoses.
- (c) Any time lost due to stoppages ashore shall count as time on demurrage if such shore stoppage(s) cause the overall take-away rate to be less than the guaranteed take-away rate. If the Vessel is unable to achieve a discharging rate equal to the discharge rate stated in **Box 25(ii)** (excluding stripping and free of any back pressure from silos and/or shore filters and/or other shore conditions preventing discharge at full capacity), the Owners shall not be entitled to claim demurrage for the time so lost.

Notes – Self-Discharge

Specialised cement carriers are, in many ways, more akin to tankers than bulk carriers. The cement cargo is usually pumped out of the vessel's holds using pneumatic devices and along pipelines to the receiver's storage facilities. The charterers must warrant the rate at which the cargo will be received – the so-called "take-away" rate. Clause 44 deals with liability for cargo at discharge and how time should count in the event of stoppages.

45. Cargo Free Flowing – Packset Testing

- (a) The cargo shall be free flowing and in the event the discharge rate falls substantially below the discharge rate stated in **Box 25(ii)** the Owners shall be entitled to take a sample of 40-50 kilograms at the time of the fall in discharge rate. The restricted cargo flow may be evidenced by cargo either "bridging" within the Vessel's holds or by cargo "trailing" (plugging) in the discharge lines. The Owners shall provide historical discharge rate figures for the Vessel at the terminal in question and in the event there are no available statistics the Owners shall provide statistics from discharge operations at similar terminals.
- (b) The sample shall be "Packset" tested at the Owners' expense. If the test results prove a "Packset" value outside a range of 3-10 it shall be accepted that the cargo compacted during the laden voyage and was no longer free flowing causing the reduced discharge rate. The Owners shall be compensated for all time beyond the agreed allowed discharge time, based on the terminal's receiving capacity, the Vessel's historical performance less any relevant time which is for the Owners' account, at the demurrage rate, and for any incremental expenses incurred, including but not limited to extra fuel consumed and/or additional port costs.

Notes – Cargo Free Flowing

The cargo free flowing provision relates to the physical characteristics of the cement cargo. In the event that the discharge rate falters below the agreed rate the owners may, in their option, take a sample of the cement for analysis to determine whether the reduced discharge rate is a result of the characteristics of the cargo or whether it is due to a deficiency in the vessel's discharge system.

GENERAL

46. Cargo Shortage Claims

Where the Vessel/Owners are liable for loss or shortage of cargo under this Charter Party or any bill(s) of lading issued hereunder, they shall be responsible only for that part of the loss or shortage that exceeds one percent (1.0%) of the Bill of Lading weight.

Notes – Cargo Shortage

It should be noted that the 1.0% cargo shortage figure although seemingly high, is standard practice in the cement trade for the specialised cement carriers due to the construction of their holds and the efficiency of the vessel's discharging equipment.