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Without These Terms in Your Vessel Charter

Don't Leave Port



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Put it in Writing

When chartering an asset so valuable and with so many risk exposures as a vessel — whether a 15-ft RIB or a 4,000 HP tractor tug, put the agreement in writing. While I have previously written in this magazine about how maritime contracts can be enforceable under admiralty law (see “Marine Contracts: Do I Have to Put it in Writing?” *MarineNews*, June 2008), it is far preferable to put the terms in writing. Some terminology: A contract to lease a vessel is a “charter party,” or for short a “charter.” While I cannot cover all the terms a vessel charter should include, I highlight below some indispensable ones. First, though, a warning about forms.

Be Wary of Forms

While forms may be better than having no written agreement, the problem with forms is they are static. They do not change to take account of serious shortcomings which may be present in the wording of the form that, unbeknownst to you, may have caused others using the same form to have sued one another. Forms also may take into account changes in the law. Even if you have a vessel charter form, or the other side sends you theirs as a starting point, I strongly recommend you have an admiralty lawyer review the document to ensure it does not have flaws, that it takes into account developments in the law, that it is consistent with the type and service of the vessel involved, and that it accurately puts into writing the key terms of the parties' agreement.

Vessel Description & Agreed Value

Clearly identify the vessel, typically by its U.S. Coast Guard Official Number, its Hull Number, if state-registered its state registration number, and set forth the vessel's characteristics, such as: construction material, type of vessel, build date, dimensions, engine/power plant, horsepower, fuel and lube types and fuel efficiency. For example, if the owner warrants it is chartering out a well-maintained and fuel efficient tug, but it turns out the vessel burns oil and is highly fuel in-efficient, this paragraph can assist the charterer in later negotiating a reduction in the charter hire, or cost of chartering the vessel. Specify the gross and net tonnage. If a passenger vessel, state the manning requirements and passenger capacities as listed in the vessel's U.S. Coast Guard Certificate of

Inspection.

Type of Charter

State the nature and purpose of the charter. State whether it is a time charter, meaning a lease of the vessel for a fixed period of time, or a voyage charter, only for as long as it takes for the vessel to transit from point X to point Y. State if the owner will be responsible for crewing and operating the vessel (“fully found charter”), or if the charter is only of the vessel itself, shifting crewing, operating, insuring responsibilities to the charterer or lessee (“bareboat charter”).

Warranty of Seaworthiness

The owner should warrant the seaworthiness of the vessel, usually worded along the lines of: “Owner warrants the Vessel is tight, staunch, strong, well and sufficiently tackled and equipped, and in every respect seaworthy and in good running order, condition and repair, and in all ways permitted and constructed to [describe the intended service of the vessel: towing, carrying passengers, etc.]”

Trading Limits

Describe where, geographically and on which waterways, and when the vessel may be used (for example, can the vessel withstand ice?).

Agreed Value

Agree to this up front and specify the currency. This way, if the vessel sinks or is involved in an accident and rendered a total or constructive total loss, there will be one less thing to fight about. The insurer of the party responsible for insuring the vessel will also typically demand specification of this figure so it can determine the premium it will charge. The insurer may require a recognized marine surveyor to perform a “Condition and Valuation” survey of the vessel to assist in establishing this value.

Term of Charter

If a time charter, when does it begin and end? Can it be extended or renewed? On what conditions? For how long?

Place of Delivery & Redelivery

Specify where the party chartering-in the vessel will take posses-



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sion of and assume responsibility for the vessel, and where the charterer must return the vessel to the owner.

Surveys

Provide for joint on-hire and off-hire surveys, and, ideally, specify in the charter the surveyor(s) to be used. The on-hire survey sets the baseline condition of the vessel. If the vessel has more than reasonable wear and tear at the time of the off-hire survey, the owner will be looking for the charterer to pay for the cost of refurbishing the vessel. Specify which party will pay for these surveys or, if they are to be shared, state this.

Consumables

Typically, the vessel owner and charterer agree to a joint inventory of the vessel's consumables aboard at the time of the on-hire and off-hire surveys and a method to account for changes in quantities.

Charter Hire

"Charter hire" is the cost to charter the vessel. The charter should also express the effect on charter hire of certain contingencies, such as breakdowns, accidents, Coast Guard or classification society surveys, drydockings.

Vessel Operations, Fuel, Lube & Other Expenses

State which party is responsible for operating, fueling, lubing, and otherwise provisioning the vessel, and paying for such.

Charterer's Signage & Other Modifications

It is common, particularly for a long term charter, to permit the charterer to paint the exterior of the vessel in its company colors, and affix or paint on its ship stack logo. Structural changes should be permitted only with the owner's advance written consent.

Insurance

This is one of the most critical terms of any vessel charter. Here, the owner specifies — down to the precise policy forms and endorsements, and dollar limits — the insurance it requires. Both sides should consult their own admiralty lawyer and marine insurance broker when working out this clause, in particular.

Indemnity

An indemnity agreement within a charter, as in most other commercial agreements, is typical and prudent. This is a clause where if "magic words" are missing the clause may be unenforceable. Have an admiralty lawyer review this clause closely and how it interrelates with the charter's Insurance clause.

Termination of Charter

State which party or what circumstances can end the charter before its agreed term and in such event who pays for what?

Force Majeure

A force majeure clause generally states that if, because of acci-

dents, floods, fuel shortages, embargoes, lock closures, ice, terrorist actions, or for other causes beyond the reasonable control of either party, the terms of the charter cannot be adhered to, the parties shall attempt to negotiate suitable amendments to the charter so as to continue the charter, but if no resolution is agreed upon within a certain amount of time of the force majeure event, either party may terminate the charter without further recourse.

Notice

State whom the parties nominate as the only permissible providers and recipients of notices. Specify their contact information, including name, title, mailing address, fax #, and e-mail address.

Dispute Resolution, Choice of Law and Forum

State how the parties will resolve disputes that arise under the charter. By litigation? Arbitration? Where? Under what law? Who will pay for the attorney's fees and other expenses?

Conclusion: Put it in Writing, Use a Professional

Charter parties have too many terms, with minute details and great significance, to not put the agreement in writing. The terms discussed above are just a starting point. While involving a lawyer may increase the cost of the project incrementally up front, and take more time, there are many cases for which I never would have been hired and cases which would have been resolved in short order, had the parties both put their agreement in writing and consulted an admiralty lawyer and a marine insurance broker before they signed on the dotted line.

Iraqi Navy Boats

Northrop Grumman's Sperry Marine won a contract to supply the navigation and communication systems for nine new 115-ft patrol boats being built for the Iraqi navy. The \$19m firm, fixed-price contract was awarded by Swiftships Shipbuilders of Morgan City, La. Each of the vessels will be fitted with an integrated bridge system (IBS) based on Sperry Marine's VisionMaster FT navigation technology.

DOD Service Contract

Marine Group Boat Works of San Diego Bay, was one of ten companies awarded a five-year, indefinite-delivery/indefinite-quantity contract (IDIQ) by the U.S. Department of Defense to provide boat repair, refit and maintenance services to Naval vessels and crafts at its Chula Vista facility. Outlined in the contract, Marine Group Boat Works is expected to provide necessary management, material support services, labor, supplies and equipment for vessels and crafts such as Landing Craft Utility (LCU) boats, SeaArk aluminum boats and barges. The contract is valued up to \$197m.