



INTERTANKO

**TWENTY
20**

**Guidance on Chartering
Issues relating to Covid-19**

v1



INTERTANKO

Guidance on Chartering Issues Relating to Covid-19

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Overview

At the time of writing almost every coastal state in the world has seen its shipping activities affected by Covid-19. Any contractual restrictions on trading to a Covid-19-affected area should therefore be carefully assessed so as not to unduly restrict vessel trading limits and hamper commercial viability. It is also essential that both ship and shore side put in place practical and effective measures to avoid the risk of infection to crew members, which may in turn interfere with owners' performance obligations, and vice versa to shore personnel, if any contamination is on board.

For charterparties, questions arise in three contexts:

1. Can an owner refuse to proceed to a port where there has been an outbreak of Covid-19? (Safety, force majeure, frustration)
2. Who will be responsible for disruption or delay to the fixture – e.g. losses and costs that arise from Covid-19 including e.g. quarantine, deviation, and crew illness?
3. How can the risks associated with Covid-19 be allocated in a charterparty?

Much will depend on the facts in each case and the specific wording of the particular fixture. However, some general observations and recommendations for charterparty protective clauses can be made to manage the allocation of Covid-19 risks going forward, both for time and spot fixtures. This document brings together a series of Q&As under each of the three areas outlined above. The guidance and recommendations that follow should allow readers to assess the need for a bespoke Covid-19 Clause. Should this be required, please refer to the INTERTANKO Model Covid-19 Clauses for Time and Voyage Charterparties and associated Commentary which can be found on the links below:

- **INTERTANKO Covid-19 ('Coronavirus') Clause – Time charterparties**
<https://www.INTERTANKO.com/info-centre/model-clauses-library/templateclausearticle/INTERTANKO-covid-19-coronavirus-clause-time-charterparties-explanatory-notes>
(<https://bit.ly/34EXuGr>)
- **INTERTANKO Covid-19 ('Coronavirus') Clause – Voyage charterparties**
<https://www.INTERTANKO.com/info-centre/model-clauses-library/templateclausearticle/INTERTANKO-covid-19-coronavirus-clause-voyage-charterparties-explanatory-notes>
(<https://bit.ly/34DIIRd>)

Latest updates on new Q&As on chartering issues relating to Covid-19 can be found at:

<https://www.INTERTANKO.com/topics-issues/issue/charterparty-and-other-contractual-issues-covid-19-q-a>

Independent legal advice on a case-by-case basis may be required for particular chartering provisions and trading patterns.

1. Can an Owner refuse to proceed to a port where there has been an outbreak of Covid-19?

Considerations:

- Safety
- Force majeure
- Frustration

SAFETY

1.1. Is a port in a country affected by Covid-19 'safe'?

Yes. Most tanker charters will contain an express warranty that charterers may only nominate a 'safe port', or equivalent. The classic test was established in the EASTERN CITY [1958]:

'...a port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it, and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship....'

Charterers therefore warrant that the port will be safe at the time of the vessel's arrival. Charterers must issue fresh orders if the port becomes unsafe prior to the vessel's arrival. In some cases, a safe port warranty will also be implied. If the port is unsafe, owners may refuse an order to call there.

Safety relates not just to the risk of damage to the vessel or cargo due to the physical characteristics of the port, but extends to other risks, including risk to the crew through the threat of infectious disease.

Whether or not a port is safe will need to be considered on the facts on a case-by-case basis. As things currently stand, it is unlikely that a port will be rendered unsafe due to the presence of Covid-19 as the risk of infection appears to be manageable if protective measures are followed. Ports remain open and many are taking their own precautions e.g. by managing ship and shore interaction, refusing disembarkation and crew change. There are a number of practical precautions that can be taken by the vessel and its crew prior to and during a port call to prevent contamination, including those advised by the World Health Organisation, and any specific guidance from the relevant authorities in each case. Owners may also monitor the health of the crew and any crew changes, provide personal protective equipment and minimise contact with the shore. There may therefore be delays, but ports will currently be considered 'safe'.

1.2. Will the port be 'safe' if there is a risk my vessel will be detained?

Risk of detention may also render a port unsafe. This includes cases where the vessel could be blacklisted, detained or impounded at a subsequent port. In broad terms, this is detention due to political risk. So it is unlikely it will apply to concerns about Covid-19 where vessels only face quarantine delays at a subsequent port following a call in certain affected areas (similar to the isolation provisions that currently apply to many individuals returning to their home countries from affected areas). Although as seen in the international press, there have been examples of vessels quarantined due to Covid-19 for extended periods which may give rise to frustration (discussed below).

1.3. Will the port be unsafe if my vessel is quarantined?

Unlikely. The vessel may be quarantined due to its previous trading pattern or due to crew sickness/Covid-19 issues on board. That will lead to delay but will not render the port itself unsafe.

1.4. What if the situation changes between nomination and arrival at the port?

With the rapid escalation of Covid-19 cases in a number of countries, the risk of contamination may also increase between the date of the fixture, nomination of the port and arrival. Should the port be deemed unsafe before arrival, time charterers (or voyage charterers where there is no named port identified in the charterparty) are obliged to nominate an alternative safe port. Generally speaking, in the case of a voyage charter, owners remain obliged to perform the voyage to any named port, having assessed its safety at the time

1. Can an Owner refuse to proceed to a port where there has been an outbreak of Covid-19?

they fixed the ship. (There is legal commentary to say that a secondary obligation to nominate an alternative safe port will arise even where there is a named port).

1.5. What if the situation changes when the vessel is in port?

If the port becomes unsafe whilst the vessel is in the port e.g. due to a sudden and serious outbreak of Covid-19, charterers will be responsible if this was predictable at the time when the vessel was nominated and could not be avoided by ordinary good seamanship practices. If the sudden outbreak otherwise amounts to “an abnormal occurrence”, owners would be responsible for managing events. Whether a vessel would be required to leave the port to avoid the risk of infection will depend on an assessment of these competing legal divisions in responsibility.

1.6. Can I refuse orders to go to a named port where there has been an outbreak?

When fixing on a voyage basis, it is suggested that owners avoid fixing under a berth charterparty which may impact NOR/laytime conditions if there is an issue at the berth.

Where there is a named port in a voyage charter and no express warranty of safety, it is unlikely that a warranty of safety will be implied. Charterers will not therefore be obliged to give fresh orders on the basis that the named port is unsafe.

It is therefore of vital importance when fixing a voyage charter for 1 load port, 1 discharge port that you also include a protective clause to allocate risk of Covid-19 if circumstances change for the worse.

Conclusion on Safety

At the time of writing, most ports are generally ‘safe’ from a chartering perspective as practical precautions are available. So owners will be bound by charterers’ orders unless the situation in the load or discharge port the vessel is ordered to changes dramatically.

This may change if the number of infections continues to escalate, to a point where a port could be considered unsafe and an order to go there refused. However, an owner should not be too quick to refuse an order due to the risk of Covid-19 without due diligence requiring investigation of the facts in each case. Refusal of a legitimate order from charterers may put owners in repudiatory breach of the charter and there can be knock-on consequences under the bill of lading for any cargo on board.

FORCE MAJEURE

1.7. Can ‘force majeure’ be used to justify suspension of the performance of charterparty obligations due to the outbreak of Covid-19?

‘Force majeure’ relieves a party from contractual performance when an unexpected event beyond the parties’ control occurs. It is not a principle of English common law, and for it to have effect it must be written into the contract/charterparty. Whether a force majeure clause is triggered by an event will depend on the proper interpretation of the force majeure clause. How it then works will depend on the precise words used in the clause itself and the circumstances said to have resulted from the ‘force majeure’ event.

The clause may also include a requirement to prevent or mitigate the effects of the force majeure, meaning it is not open to a party to walk away from its contractual obligations. In most instances, force majeure clauses act to suspend performance, meaning affected obligations do not fall away. The obligations are suspended while the force majeure event continues, unless the clause provides for a different outcome. When the force majeure event has passed, the contract is re-activated.

Note that any ‘force majeure’ classification or certificate issued by a local port authority or agency (e.g. as can be obtained in China and other jurisdictions) will not help justify non-performance unless there is a contractual ‘force majeure’ provision. In any event, such a classification or certificate is not conclusive as a matter of English law.

1.8. Can I rely on a 'force majeure' clause?

Yes, but only in limited circumstances.

If your charterparty does have a 'force majeure' clause, you will need to look carefully at the specific wording to see if it applies to an outbreak of Covid-19. The clause will usually list events that are to be considered 'force majeure'. In relation to Covid-19, look for references e.g. to 'epidemic', 'pandemic', 'quarantine' or extended delays. The burden will be on the party seeking relief i.e. trying to benefit from the operation of the force majeure clause, to show that the circumstances fall within that list. That party will need to demonstrate that the 'event' e.g. the Covid-19 outbreak, has prevented them from being able to perform. There must therefore be a causative link between the event and the loss, delay or non-performance of the charterparty.

For example, an inability to load at a named port due to generic (i.e. applicable to all vessels) and not specific (applicable to one vessel) restrictions from the local authorities could trigger the clause. On the other hand, inability to perform a voyage or discharge a cargo because of substantial delays at the discharge port (even if known), will most likely not trigger the clause. In this case, the parties will need to look at the wording of their charterparty to see where the consequences of the delay lie under laytime/demurrage or hire provisions. Look also at any Exceptions Clauses to see if they apply. In exceptional cases where there is forcible interference with the voyage by governmental authorities, a 'restraint of princes' exception might apply.

Note also that if the charterparty does contain a force majeure clause requiring the event to be unforeseen or unforeseeable, then it will not apply to Covid-19 risks which were known at the time of the fixture. So for any recent or new fixtures, Covid-19 is a known global risk and parties will not be able to rely on such force majeure provisions.

The clause will usually contain notice provisions with strict time limits. Check also if the clause provides for what is to happen regarding performance of the contract if the clause is activated. This will likely include suspension of rights and obligations until the event has passed and/or the right to terminate the contract in due course. You may also be required to demonstrate that you took any reasonable steps to mitigate against the effect of the events, for example by taking preventative measures.

Note that the English Courts are reluctant to relieve a party from its contractual obligations and will look to interpret and apply these clauses strictly. Courts will not relieve parties just because the contract has become more onerous or expensive than anticipated when agreed.

Conclusion on Force Majeure

There are quite a few hurdles to overcome for a force majeure argument to succeed. In most cases, force majeure arguments are unsuccessful either because of a lack of a causal link between the event and the prevention of performance, failure to mitigate and/or a failure to give proper notice to comply with the technical provisions of a particular clause.

The INTERTANKO Covid-19 Clauses specifically state that the Covid-19 outbreak is not a force majeure event to provide clarity.

*A table of all standard General Exceptions and Force Majeure Clauses found in commonly used voyage charter party forms can be found in Appendix 2

FRUSTRATION

1.9. Could Covid-19 frustrate the performance of the contract?

The doctrine of 'frustration' is another legal principle that may be available. A contract is said to be 'frustrated' when an event happens through no fault of the parties, and it becomes physically or commercially impossible to perform the contract or transforms the obligation to perform into a radically different obligation from that undertaken at the moment of fixture. If a frustrating event occurs, both parties are relieved of the obligation to perform the contract, which is automatically terminated.

Conclusion of Frustration

It is difficult to establish frustration as it requires the whole purpose of the contract to be undermined. The current impact of Covid-19 on charterparties is mainly delay in performance. That in itself is unlikely to be so serious that the charterparty will be frustrated. As with force majeure, the INTERTANKO Covid-19 Clauses again specifically state that the Covid-19 outbreak is not a frustrating event.

2. Who will be responsible for any disruption or delay?

Considerations:

- Time – laytime, demurrage and off hire
- Quarantine
- Free Pratique
- Crew

Under the terms of most time charterparties, owners are required to perform charterers' orders with utmost or due despatch. Owners meet this obligation by taking the usual route between ports.

Under a voyage charter, similarly owners must perform the voyage without delay or deviation from the usual route.

Delays due to Covid-19 risks may arise due to restrictions in port including e.g. unavailability of pilots; quarantine or the obtaining of free pratique. In each case the terms of the charterparty must be assessed to see which party will bear the risk of the delay and any associated costs/losses.

TIME CHARTER ISSUES

2.1. Will my vessel be off-hire if there is delay due to Covid-19?

Where there is delay in arrival or departure from a port, a vessel will generally remain on-hire unless the reason for the delay is linked to the vessel or crew. Time charterers are therefore required to continue to pay hire unless there are events which fall within the off-hire provisions of the charterparty.

The off-hire provisions give charterers the right to stop paying hire. No breach of contract is required. Off-hire provisions vary from one form to another. In the main they relate to the working of the vessel but can also relate to crew matters.

So you will need to look at the wording of the off-hire clause as well as the factual cause of any Covid-19 related delay.

2.2. Will my vessel be off-hire if:

(a) it is quarantined?

This will depend on the cause of the quarantine and the off-hire provisions which may include specific reference to quarantine (see Appendix 1 for an analysis of quarantine provisions in regularly used tanker charter forms).

In absence of a specific quarantine provision, if, following charterers' orders, the vessel calls at a port and is quarantined as a result of those orders, then the vessel will remain on-hire. The same will apply if the vessel is then prevented from entering, or is delayed at, the next or subsequent ports.

If on the other hand, the quarantine (and any subsequent delay) is linked to owners' matters e.g. crew change or infected crew members requiring medical treatment, then charterers may seek to rely on the commonly used 'deficiency of men' provisions in many off-hire clauses e.g. Shelltime 4 Clause 21 (a) (i). The effectiveness of this may depend on the number of crew members affected. The material test will be whether the vessel still perform the services required of it without the crew members affected? If so, and no time is lost, the vessel will remain on hire.

Note that Shelltime 4 Clause 21 (a) (iv) also places the vessel off hire if time is lost due to any delay in quarantine arising from crew communication with the shore at an infected area without the written consent or instruction of charterers or their agents. The position would be different if a crew member became infected as a direct result of charterers' orders. The vessel would remain on-hire as charterers cannot rely on an off-hire event if they have caused it themselves.

(b) free pratique is delayed?

As with quarantine, this will depend on the cause of the delay. If it related to the trading pattern of the vessel, then the vessel will remain on-hire. If however it is linked to the health of the crew, for example, a suspected infection, then the vessel will be off-hire.

(c) I need to seek medical treatment for my crew?

As with quarantine for owners' matters, if owners need to seek medical treatment for infected crew, charterers may rely on the 'deficiency of men' provisions. In addition, the charterparty may contain specific clauses to address this. The Shelltime 4 form for example, contains provisions allowing charterers to place the vessel off-hire if time is lost for the purposes of obtaining medical advice or treatment or for landing a sick person ashore (Clause 21 (a) (iii)).

(d) We have been unable to obtain a Ship Sanitation Certificate (SSC)?

The SSC is a certificate which is issued by certain local health organisations under the umbrella of the World Health Organization and is valid for maximum of 6 months.

If you do not have a certificate and are calling at a port where an SSC is in place, then you can apply for a Ship Sanitation Exemption Certificate (SSEC). If you have an SSC which is due to expire, there are two things you can do: apply early to renew, or apply for the one month extension as warranted by the WHO. An SSEC can also be requested if no inspectors are able or willing to visit your vessel.

Practical recommendations for ports which require an SSC are:

- Start the renewal process as early as possible (30 days in advance if possible), if you suspect your vessel will call a port which requires an SSC or exemption.
- There have always been issues with inspector calls, such as arrival at weekends and public holidays, therefore we would always recommend that owners handle any potential covid-19 delays in the same way they would weekends and public holidays. Practical titbits are:
- If an SSC is required but the surveyor / health inspector is unavailable to board vessel, then owners proactively may request for remote verification by:
 - Liaising closely with ship agent before the arrival of the vessel:
 - Providing the 'maritime declaration health' (MDH) to agents.
 - Submitting accurate records of crew body temperature at least 72hrs before arrival followed by a period of 48hr/24hr/12hr/6hrs before arrival.
 - Proof of previous ship sanitation carried out and date (for example after departure port and routinely thereafter) and if possible with pictures.

2. Who will be responsible for any disruption or delay?

- Photos of ship management's inspection of common places, provision stores, crew cabins, galley, mess room and any other areas.
- Providing a breakdown of the procedures of how port entry/operation was completed at the last high risk port. I.e. company procedure; terminal additional requirement, pilotage, visitor movement control etc.

This could help to expedite any potential delays at the port and any argument that your vessel is off hire.

(e) What happens if I have a suspected case of flu or common cold; NOT COVID on board?

It is essential to keep agents and managers closely abreast of the situation on board the vessel. Practical measures such as logging the health of crew on board the vessel and a high standard of hygiene will be imperative to ensure that the vessel can continue trading without any delays. There are still measures in place for ports to quarantine vessels; therefore you must ensure that you have taken every proactive measure possible to prove that your vessel is free from disease.

If a member of your crew is unwell, but his condition is treatable on board e.g. he has a common cold, it is unlikely that charterers will be able to place the vessel off hire e.g. under any 'deficiency of men' provisions if the vessel can otherwise perform the services required of it.

VOYAGE CHARTER ISSUES

2.3. When will time count for laytime and demurrage?

Time will count from tender of a valid notice of readiness (NOR) in the usual way in any port affected by Covid-19. NOR indicates that the vessel has arrived and is ready to load. If there are then restrictions in place e.g. lack of free pratique or other exceptions to laytime, they will apply in the usual manner.

Tanker charters contain varying provisions with regard to whether free pratique is required prior to tender of NOR and/or if NOR is rendered invalid if free pratique is not granted shortly after tender of NOR (in many cases within six hours).

2.4. Will time count for laytime and demurrage if:

(a) there is delay in obtaining free pratique?

'Free pratique' is essentially a clean bill of health for the vessel. It is often considered a formality which does not prevent Notice of Readiness being served. However, in the context of Covid-19, it is a necessity to obtain free pratique prior to NOR if there are health issues on board the vessel. If there is an outbreak on board for example, then a valid NOR cannot be tendered. In that case, the risk and cost of any delay in obtaining free pratique will fall to the owners.

Whenever there is delay in obtaining free pratique, owners are advised to re-tender NOR as soon as it is obtained, 'without prejudice' to any previous NOR tendered.

(b) my vessel is quarantined

This will depend on the terms of the charterparty and any bespoke quarantine provisions. In absence of any bespoke provisions, the usual laytime regime will apply and laytime will not commence as the vessel will not be at charterers' disposal i.e. ready to load.

In general terms, most tanker charters provide that if charterers order the vessel to proceed to a port where quarantine is known to exist, then any quarantine period will count for the purposes of laytime/demurrage. If the quarantine is declared at a port after charterers have made their nomination of that port, then time will not count and the delay will be for owners' account. See for example Asbatankvoy Clause 17 and ExxonMobilVoy 2012 Clause 23.

*A table of standard quarantine provisions incorporated in commonly used voyage charterparty forms can be found in Appendix 1.

(c) What happens if a WIFPON provision is incorporated in my charterparty?

When a WIFPON (whether in free pratique or not) provision is incorporated, then the granting of free pratique is not a condition precedent to the tender a valid NOR. However, in order to tender a valid NOR, as with any other 'Whether In....Or Not' provision, the vessel must be ready in all respects and at charterers' disposal. So if there are quarantine, or other Covid-19 related port restrictions that mean the vessel cannot proceed to berth, the vessel will not be ready to load, any NOR will be invalid and the WIFPON provision will not assist.

2.5. Charterers have asked for a warranty with respect to health screening. What do you advise?

Charterers may ask owners to warrant that the vessel will be able to tender Notice of Readiness during the agreed laycan/scheduled arrival, taking into account any health screening requirements at the port.

Charterers will be able to rely on the general laycan/cancelling provisions of the charter if the vessel does not arrive within the laycan. However, where the vessel is otherwise ready to load during the laycan, we recommend that owners check to see their fixtures include a provision to say a valid Notice of Readiness may be tendered even if free pratique has not been obtained. The INTERTANKO Covid-19 Clause provides for this (see sub-clause 2(c)).

See below under CREW ISSUES regarding health screening warranties for crew.

2.6. Charterparty provisions

As we have outlined above, delays in port to vessels that arrive in, or have arrived from Covid-19 infected areas, may lead to issues arising with regards to granting of free pratique, tender of a valid Notice of Readiness and commencement of laytime/demurrage.

Delays can also be encountered on the front end of a voyage when a vessel calls at a load port where the local authorities have implemented protective measures that indirectly cause port congestion or longer periods of loading and/or discharge.

In general, most standard charterparty forms include clauses that clarify responsibility between owners and charterers with regards to time in the context of laytime and demurrage, when under quarantine, where there are delays in obtaining free pratique, or for any other reason that may be unconnected to Covid-19 issues e.g. congestion, bad weather etc.

For ease of reference, the following table identifies whether any standard provisions on quarantine, general exceptions and specific laytime and demurrage provisions incorporated in the main standard form tanker voyage charters may be applied to Covid-19-related issues. For bespoke provisions relating to Covid-19, please see section 3.

2. Who will be responsible for any disruption or delay?

Standard Tanker Charter Provisions relevant to Covid-19 issues			
Charterparty Forms (Standard)	Quarantine Provisions (*)	General Exceptions (**)	Laytime / Demurrage Provisions (***)
BP Voy 3	✓	✓	✗
BP Voy 4	✓	✓	✓
BP Voy 5	✓	✓	✓
ExxonVoy 90	✓	✗	✓
ExxonMobilVoy 2005	✓	✗	✓
ExxonMobilVoy 2012	✓	✗	✓
Shell Voy 5	✓	✗	✗
Shell Voy 6	✓	✓	✓
Asbatankvoy	✓	✗	✗

(*) All standard quarantine provisions for the above listed charterparties can be found in Appendix 1.

(**) All standard general exceptions clauses for the above listed charterparties can be found in Appendix 2.

(***) All laytime/demurrage provisions relevant to covid-19 delays and quarantine restrictions can be found in Appendix 3.

As a whole, Members are encouraged to take note of the guidance on the terms of all standard tanker voyage charter forms, but also to assess their additional /rider clauses. In the event of conflict, the terms of the rider clauses will prevail.

CREW ISSUES

2.7. Crew sickness – One or more of my crew are infected with Covid-19. Can I interrupt the voyage?

A vessel may deviate (whether under voyage or time charter) if there is a risk to the maritime adventure. Deviation will usually be justified if it becomes necessary to depart from the contractual voyage because a crew member has been infected by Covid-19. If under time charter, the vessel will be off-hire for the time taken/lost to deviate and put back on the voyage.

Many time and voyage charters also contain provisions that give the vessel liberty to deviate to save life. In the context of Covid-19, the infected crew member would likely need to be ill enough to require immediate shore based attention. If such provisions are to be relied on you will need to justify the deviation.

2.8. Health screening warranties – Charterers have asked for information on crew including:

- (a) a warranty that the vessel and crew will meet local health screening requirements. Should owners agree to this?

Members have asked questions regarding restrictive Covid-19 related warranties being proposed by charterers regarding port entry restrictions and health screening.

ICS has produced helpful Guidance for Ship Operators for the Protection of the Health of Seafarers (<https://bit.ly/3epNntF>) which includes information on the practical aspects of Port Entry Restrictions. Further information on current port restrictions can also be found here:

<https://www.INTERTANKO.com/topics-issues/issuearticle/covid-19-port-restrictions?topicID=151>
(<https://bit.ly/3cfKKII>)

INTERTANKO has produced an Outbreak Management Plan which details the steps owners should take to protect crew from risks in port, from on-signing crew and shore workers. This may be downloaded here:

<https://www.INTERTANKO.com/topics-issues/issuearticle/covid-19-INTERTANKO-issues-outbreak-management-plan?topicID=146>
(<https://bit.ly/3emLJJd>)

In the current climate, delays at port are inevitable due to heightened concern about Covid-19 risks. Owners must adhere to any national and local port entry restrictions and requirements, and will have their own detailed ship side preventative measures in place to protect the crew and anyone boarding the vessel from the shore side. However, owners should exercise extreme caution before warranting anything that is beyond their control. Breach of warranty may give rise to a claim in damages which may go beyond any remedy in the charter for delay.

(b) confirmation that there has been no crew change in the last 14 days and that no crew change will take place within the voyage.

If owners have real time information then there is no harm in providing this and keeping charterers in the loop, especially for time charterparties where crew changes need to be scheduled.

A sensible approach from charterers should be expected in the current climate as neither owners nor charterers want to see their fixtures delayed. However again, owners should avoid confirming anything that is beyond their control. For example, a crew change becomes necessary due to prolonged quarantine.

Owners may consider offering to charterers the same information they provide to the local authorities in terms of pre-arrival health screening as this will assist in minimising delay. Guidance on this screening process can be found in INTERTANKO's Outbreak Management Plan.

If there are issues with local authorities with regard to port entry restrictions, health screening, etc., these should be addressed commercially under the existing terms of the charter (whether off hire or in delayed NOR/exceptions to laytime and demurrage). Where the liability for any disruption or delay falls will depend on the facts in each case. As a general rule, if the delay is due to port side restrictions, that will fall to charterers; if due to crew/owners' matters it will fall to the owners. So there needs to be a detailed record kept of the reasons for the delay, including crew change restrictions should this be the subject of a dispute post fixture.

(c) a log of body temperature for the whole voyage.

INTERTANKO's Outbreak Management Plan recommends that owners should keep a daily medical log and actively monitor the health of the seafarers as well as those who have recently off-signed from the vessel. Owners need to take care that this private information is only shared in accordance with applicable data privacy laws e.g. the General Data Protection Regulations ('GDPR').

If a crew member does become sick, any delays should be adequately dealt with under the terms of the charterparty (see 2.7 above). However, as above, owners are advised to keep a careful record of all aspects of crew health in case this impacts on any commercial claims post fixture.

POST FIXTURE ISSUES

2.9. What about compliance with time bar provisions in charterparties for demurrage and other claims

The Covid-19 outbreak has also changed working practices in many owners, charterers and brokers' offices which has led to questions over compliance with certain charterparty terms, in particular relating to production of original documentation.

2.10. Our charterparty terms require us to submit original/hard copy documents in support of demurrage and other claims within a prescribed time bar. With our post-fixture team and brokers working from home this is difficult to comply with. What do you advise?

For existing charters

1. Do not miss the time bar.
2. Check if the charterparty actually requires original/ hard/ signed/ stamped documents ('original documents') to be sent.

If the charterparty contains a provision requiring original documents to be sent, and this can be complied with, send the documentation and keep any proof of postage from the courier/mail service to evidence that the documents were sent in time. At the end of a voyage when documentation is being produced, a few practical steps may assist:

- If the original and signed documents have been received in a place controlled by owners (such as on board the vessel, or by owner agents), a scanned copy of this, and/or the receipt/ waybill if the documents are posted, is sent to charterers.
- If the documents have yet to be signed, or the originals are unobtainable, then scanned copies, signed by the Master (such as the statement of facts and NOR) should be sent to charterers with a short explanation that the originals are currently unavailable.

Additional follow up using an alternative method e.g. email is recommended.

If hard copies cannot be sent, advise the charterers/ brokers along the following terms (which can be amended based on the specifics of the trade/ fixture):

"Covid-19 related restrictions to regular business

Clause {XX} of the charterparty (time bar) requires that {original documents} are to be sent from the ship to the charterers' chosen location. However, for the purpose of this voyage, these cannot be sent. All documentation in support of owners' {demurrage} claim is hereby provided by e-mail. We trust that no {original documents} will be required in order to process this claim".

The purpose of charterparty time bar provisions in general is to ensure that charterers receive notice of any claim in a timely fashion and are able to assess that against supporting documents whilst matters are still fresh. Practically, they are not supposed to be a vehicle to delay consideration of claims and/or to trip up an owner on a technicality over production of an original document within the time bar period (though some charterers use them like this). Provided charterers can determine whether or not the claim is well founded, there is little if anything to be added by provision of original documentation so there is no detriment to charterers if the documentation is e.g. scanned and sent by e-mail.

Successful examples of use of non-original documentation has been in practice for some time in the industry (for example Letters of Indemnity for non-production of Original Bills of Lading). The industry has adapted to using alternative documentation other than original documents, therefore we would hope that charterers take a pragmatic and responsible approach in these unusual circumstances with regard to laytime/demurrage and other post-fixture matters. We would therefore hope that no responsible charterer would seek to rely on a 'hard copy' provision to try to defeat a claim that has been otherwise presented in time by other means.

For future charters

Review any time bar provisions in the fixture and discuss with charterers the practicality of compliance in the current climate. This may result in:

- Removal of all reference to the time bar provisions;

OR;

- Amendment of any time bar provision to include:
 - Time bars will not be subject to the production of original documentation as provided by any third party other than the Master (such as agents).
 - Owners will continue to send documents such as the statement of facts, noon report and NOR as signed by the Master via email or other appropriate method.
 - Supporting documents for any claims may be scanned and sent by e-mail

2.11. Our charterers are asking us to warrant production of original documents. What should we do?

This is dependent on what stage of the fixture you are at. If you are negotiating terms then warranting production of original documents should be avoided.

If you are midway through the voyage, then see the advice above. Reference should be made to the unusual circumstances currently faced, and amendments to any warranty for production of original documents should be made.

2.12. What if charterers are refusing to accept unsigned / unoriginal documents?

Whilst there are no contractual references to draw on, it would not be reasonable for charterers to refuse without more specific reasoning. Use commercial relationships and the broker (if applicable) to appeal for common sense to prevail.

It may be beneficial to emphasize that other important stakeholders in the shipping industry (such as those responsible for SIRE and CDI inspections) are taking a pragmatic approach with issues arising because of COVID-19.

VETTING ISSUES

2.13. What if my SIRE or CDI Inspection is cancelled due to Coronavirus?

If there is a delay in a vetting inspection, whether SIRE or CDI, this should generally be accepted and understood by charterers as unavoidable, with an allowance being made for the vessel's trading pattern until an inspection can be arranged. Our experience to date is that most charterers are adopting a pragmatic approach and clearing vessels on a case-by-case basis. Clearance is usually done based on all of the information available to them, thus INTERTANKO encourages Members to keep charterers updated on all the actions taken and issues encountered. Individual reactions from the industry are being monitored by INTERTANKO and can be found here.

<https://www.INTERTANKO.com/topics-issues/issuearticle/covid-19-inspections-and-charterers-reactions-from-the-industry?topicID=147>

(<https://bit.ly/2VbjDsF>)

2. Who will be responsible for any disruption or delay?

For Members who would prefer to include a contractual provision to this effect in their charter, the addition of the following is suggested:

In the event of cancelled SIRE/CDI inspections in a Coronavirus Affected Area, the SIRE/CDI requirements in this charterparty shall be suspended and shall not be re-instated until the Vessel's trading pattern permits such inspection.

In addition the practical advice below may be followed:

CDI – CDI has updated its temporary “Covid-19” inspection procedures in view of the ever changing global situation. Updated process can be accessed here:

<https://www.INTERTANKO.com/topics-issues/issuearticle/cdi-temporary-covid-19-inspection-procedures?topicID=146>

(<https://bit.ly/2VblPRe>)

OCIMF has also issued guidance to its members and advises that:

‘Where a Vessel operator has any concerns about the coronavirus pandemic and how this may impact the conduct of SIRE Inspections, they should engage with the OCIMF member commissioning the inspection at the earliest opportunity’.

INTERTANKO advises that Members faced with the possibility of a cancelled inspections should have contingency plans in place.

- Remind charterers that inspection reports are maintained on the OCIMF systems for periods of 12 months or longer from the date of receipt and remain valid. Time restrictions on their validity are the choice of individual charterers.
- Keep detailed records of all refusals/cancellations of inspections and any problems related to travel for seafarers, superintendents, inspectors and repair technicians.
- Request all stakeholders adopt a pragmatic approach and inform OCIMF and INTERTANKO about the issues.

3. How can the risks associated with Covid-19 in a charterparty be allocated?

Firstly check the terms of the relevant charter form to see if the issues identified are adequately covered. Most standard tanker charters contain quarantine provisions for example, and deal with the consequences of delay in obtaining free pratique. Some may even contain force majeure provisions, though caution should be exercised in reliance on these (see above).

3.1. Does the implied indemnity for the compliance with charterers' orders help?

Under a time charter, owners may also be able to rely on any express, or implied, indemnity and claim from charterers for any loss or damage that arises as a consequence of compliance with charterers' orders. This could include a call at a subsequent port that imposes restrictions after a call at a Covid-19 affected port. The indemnity will operate where the risk was not one that the owner agreed to bear when the vessel was fixed. Did the owner agree to expose the vessel and crew to the risk of Covid-19? That may depend on when the vessel was fixed as it is now widely known that Covid-19 is a global risk. There is no equivalent implied indemnity under a voyage charter.

There are legal restrictions on implied indemnities and the scope of any implied indemnity will depend on the express words of the charterparty.

3.2. Are there any protective provisions I can use in my charterparty?

Yes. There are now several bespoke clauses in circulation. INTERTANKO has produced two model Covid-19 Clauses for time and voyage charters which address the issues identified above. These Clauses and associated Commentary can be found at www.INTERTANKO.com.

Unlike the more general 'epidemic' or 'infectious diseases' clauses, the INTERTANKO Covid-19 Clauses are specific to Covid-19 so avoid any argument over whether or not Covid-19 falls within the definition of an 'epidemic', 'pandemic' or 'infectious disease'. They also leave the determination of the level of risk to Owners and the Master. We consider this preferable to a reference to determination of risk by an outside body e.g. the World Health Organization (WHO), as they may not issue a clear cut decision on whether or not there is a risk of exposure in any particular place.

In brief, if using the INTERTANKO Covid-19 Clause in time charters, the vessel will remain on-hire if quarantined and owners will be compensated for any additional expenses/losses. The INTERTANKO Covid-19 Clause is designed so it will override any off-hire provisions in a charterparty. Likewise, the INTERTANKO Covid-19 Clause for voyage charters passes the risk of delay in obtaining free pratique to charterers and time will count (at the demurrage rate) for any Covid-19 associated delays. Any losses or expenses that arise as a result will be for charterers' account.

INTERTANKO Covid-19 ('Coronavirus') Clauses for Time and Voyage Charterparties

Owners are advised to use the bespoke INTERTANKO Covid-19 Clauses in whole or in part to allocate Covid-19 risks between the parties. They are set out in the following pages and can also be found here:

<https://www.INTERTANKO.com/info-centre/model-clauses-library/templateclausearticle/INTERTANKO-covid-19-coronavirus-clause-voyage-charterparties-explanatory-notes>

(<https://bit.ly/2xucvP2>)

<https://www.INTERTANKO.com/info-centre/model-clauses-library/templateclausearticle/INTERTANKO-covid-19-coronavirus-clause-time-charterparties-explanatory-notes>

(<https://bit.ly/34FpAkF>)

INTERTANKO Covid-19 ('Coronavirus') Clause – Time charterparties

1. Notwithstanding any other term to the contrary in this charterparty, the Vessel will not be required to call at any port, place, country or region if in the Master's or Owners' reasonable judgement there may be a risk of exposure of the crew or other persons on board to Covid-19 ('Coronavirus').

2. Should Charterers order the Vessel to a port, place, country or region which is presently or subsequently becomes affected by the Coronavirus virus (the 'Coronavirus Affected area'), and if such order has not been refused in accordance with sub-clause 1 hereof then the following provisions to apply:

a) If, prior to reaching the load or discharge port, in the reasonable judgement of the Master or Owners, the level of risk of exposure of the crew and other persons on board to the Coronavirus virus becomes unacceptable, Owners shall be entitled to request fresh voyage orders from Charterers.

b) If, following tender of notice of readiness, either prior to or during loading or discharge, in the reasonable judgment of the Master or Owners, the level of risk of exposure of the crew or other persons on board to the Coronavirus virus becomes unacceptable, the Vessel may proceed to a safe waiting place and Owners shall be entitled to request fresh orders from Charterers.

c) Any time taken for the purposes of obtaining free pratique shall be for Charterers' account and shall not prevent the tender of a valid and effective notice of readiness.

d) Charterers shall arrange at their time and expense for all appropriate inspections and certification, including but not limited to screening, cleaning, fumigation, quarantine of the Vessel and/or crew or other persons on board and the obtaining of medical advice and/or treatment, as required at any port or place where the Vessel calls under this charterparty.

e) Owners shall promptly provide any crew health records, evidence of the Vessel's prior trading pattern, and other existing documentation required by the port authorities for the purposes of free pratique. Owners shall ensure that shore leave for any crew member in a Coronavirus Affected Area shall be prohibited.

3. Should the Vessel be boycotted, refused admission to port, quarantined, or otherwise delayed in any manner whatsoever by reason of having proceeded to an Coronavirus Affected Area, the Vessel shall remain on-hire for all time lost and any direct losses, damages and/or expenses incurred by Owners as a result shall be paid by Charterers. In the event that the Vessel is boycotted, refused admission, or otherwise delayed as stated above within 30 days after having been redelivered under this charterparty, then Charterers are to compensate Owners for all time lost as a result as if the Vessel is still on hire, in addition to compensating Owners for all direct losses, damages, and or expenses which may arise as a result of the above.

4. Owners and Charterers agree that the outbreak of Coronavirus virus shall not be considered as force majeure or as a frustrating event of the charterparty.

5. The Vessel shall have liberty to comply with all orders, directions, recommendations, precautionary measures or advice of any governmental or International authority and/or the Flag State of the Vessel relating to or arising as a result of the Vessel being ordered to a Coronavirus Affected Area.

6. Charterers shall ensure that all Bills of Lading for cargo to be carried under this charterparty shall incorporate the above provisions.

INTERTANKO Covid-19 ('Coronavirus') Clause – Voyage charterparties

1. Notwithstanding any other term to the contrary in this charterparty, the Vessel will not be required to call at any port, place, country or region if in the Master's or Owners' reasonable judgement there may be a risk of exposure of the crew or other persons on board to Covid-19 ('Coronavirus').

2. Should Charterers order the Vessel to a port, place, country or region which is presently or subsequently becomes affected by the Coronavirus virus (the 'Coronavirus Affected Area') and if such order has not been refused in accordance with sub-clause 1 hereof, then the following provisions to apply:

a) If, prior to reaching the load or discharge port, in the reasonable judgement of the Master or Owners, the level of risk of exposure of the crew and other persons on board to the Coronavirus virus becomes unacceptable, Owners shall be entitled to request fresh voyage orders from Charterers.

b) If, following tender of notice of readiness, either prior to or during loading or discharge, in the reasonable judgment of the Master or Owners, the level of risk of exposure of the crew or other persons on board to the Coronavirus becomes unacceptable, the Vessel may proceed to a safe waiting place and Owners shall be entitled to request fresh orders from Charterers.

c) Any time taken for the purposes of obtaining free pratique shall be for Charterers' account and shall not prevent the tender of a valid and effective notice of readiness.

d) Charterers shall arrange at their time and expense for all appropriate inspections and certification, including but not limited to screening, cleaning, fumigation, quarantine of the Vessel and/or crew or other persons on board and the obtaining of medical advice and/or treatment, as required at any port or place where the Vessel calls under this charterparty.

e) Owners shall promptly provide any crew health records, evidence of the Vessel's prior trading pattern, and other existing documentation required by the port authorities for the purposes of free pratique. Owners shall ensure that shore leave for any crew member in a Coronavirus Affected Area shall be prohibited.

f) In the event Charterers fail to provide alternative voyage orders as required in sub-clause 2 (a) or (b) above within 48 hours of receiving the request for new orders, Owners shall be entitled to discharge the cargo at any safe port of their choice (including at the loading port) which shall be considered as complete fulfilment of this charterparty. Owners shall be entitled to recover from Charterers the extra expenses of such discharge and to receive the full freight as though the cargo had been carried to the discharge port, Owners shall have a lien on the cargo for such expenses and freight.

3. Should the Vessel be boycotted, refused admission to port, quarantined, or otherwise delayed in any manner whatsoever by reason of having proceeded to a Coronavirus Affected Area, for all time lost Owners to be compensated by Charterers at the demurrage rate and all direct losses, damages and/or expenses incurred by Owners shall be paid by Charterers. In the event that the Vessel is boycotted, refused admission, or otherwise delayed as stated above within 30 days after having completed discharge under this charterparty, then Charterers are to compensate Owners for all time lost as a result at the demurrage rate in addition to compensating Owners for all direct losses, damages, and or expenses which may arise as a result of the above.

4. Owners and Charterers agree that the outbreak of Coronavirus virus shall not be considered as force majeure or as a frustrating event of the charterparty.

5. The Vessel shall have liberty to comply with all orders, directions, recommendations, precautionary measures or advice of any governmental or International authority and/or the Flag State of the Vessel relating to or arising as a result of the Vessel being ordered to a Coronavirus Affected Area.

6. Charterers shall ensure that all Bills of Lading for cargo to be carried under this charterparty shall incorporate the above provisions.

INTERTANKO Covid-19 ('Coronavirus') Additional Vetting Inspection Clause

In the event of cancelled SIRE/CDI inspections in a Coronavirus Affected Area, the SIRE/CDI requirements in this charterparty shall be suspended and shall not be re-instated until the Vessel's trading pattern permits such inspection.

Commentary on INTERTANKO Covid-19 ('Coronavirus') Clauses

The scheme of the clause works in exactly the same way as the INTERTANKO Ebola Clause.

Clause 1 – provides that Owners may first and foremost refuse to call at a Coronavirus-affected area. Clause 1 leaves the determination of the level of risk to Owners and the Master. We consider this preferable to a reference to determination of risk by an outside body e.g. the World Health Organization (WHO), as they may not issue a clear cut decision on whether or not there is a risk of exposure in any particular place.

Members should be aware that sub-clause 1 may be interpreted as meaning that the right to refuse to proceed depends on a reasonable judgment that, if reasonable/normal precautions against Coronavirus are taken, there will still be an unacceptable level of risk.

Clause 2 then carries on so that there is a continual assessment of the risk on the approach to the port and during any port stay.

Clause 2 (a) provides that if the Vessel does sail towards a Coronavirus-affected port, the Master can request fresh orders should the level of risk become unacceptable prior to arrival at the load or discharge port.

Thereafter, **Clause 2 (b)** provides that if the Vessel arrives at the port and tenders NOR, it may still depart and proceed to a safe waiting place if the risk escalates.

Clause 2 (c) deals with **Notice of Readiness (NOR)**. A number of Members have questioned the validity of an NOR served at a place that is actually or potentially affected by Coronavirus. In order to tender NOR, and for laytime to commence under a voyage charter, a ship must be ready to start cargo operations. To do this, the Vessel must have been granted free pratique. In most cases, free pratique will be a formality enabling the Master to tender a valid NOR without having first obtained free pratique. However, with a risk of Coronavirus at the port or on the Vessel, obtaining free pratique will be more complex. There may be delays whilst investigations are made e.g. into the health of the crew or the Vessel's previous trading pattern. In those circumstances, a valid NOR cannot be tendered unless the charterparty itself provides for this. Under Clause 2 (c), Owners are able to serve a valid and effective NOR whether or not free pratique has been granted, thereby passing the risk of any delay on to Charterers who ordered the Vessel to that particular port. This is an important provision without which the risk of delay in obtaining free pratique will be borne by Owners.

Clause 2 (d) passes the cost of addressing the issues which arise due to the Coronavirus risk, e.g. quarantine and any delay thereby caused, to Charterers.

Clause 2 (e) A number of jurisdictions are putting in place measures to require the Vessel/Master to report on the medical health of the crew prior to arrival as well as previous port calls, including that no crew members are showing any Coronavirus symptoms. We have therefore expanded the clause to include a specific reference to Owner's obligations as regards any mandatory port call protocols.

The scheduling for this varies from place to place and should be checked well in advance with local agents and/or P & I to ensure compliance. For example, some ports require declarations on crew health in the event that the Vessel and/or any of the crew have called in China within a defined period (this can be the 14 day incubation period or up to 30 days) or within the number of last port calls (typically between three and five).

The North of England P & I Club for example is collating individual country requirements.

<https://www.nepia.com/industry-news/coronavirus-outbreak-impact-on-shipping/>

The clause also provides, sensibly, that crew members should not go ashore.

Clause 2 (f) – (For voyage charters only) addresses the situation where Charterers fail to provide alternative orders in order to give them the incentive to give the order. This is not necessary for the time charter version where the Vessel will simply remain on hire.

Clause 3 – provides that time counts under both a voyage and time charter (at the demurrage rate/on hire respectively) for any Coronavirus associated delays during the fixture. Any losses or expenses will also fall to Charterers. One issue that has troubled many of our Members is that there may be consequences subsequent to the conclusion of the charterparty for a Vessel that has called in a Coronavirus-affected port; we have built in a protection for Owners for a period of 30 days thereafter so that any delays or expense under a subsequent fixture will fall to the previous Charterer.

Clause 4 – deals with **force majeure**. Members have questioned if 'force majeure' can be used to justify suspension of the performance of charterparty obligations due to the outbreak of Coronavirus. Members should note that 'force majeure' is not a principle of English Law but must be written into the contract/charterparty. How it then works will depend on the specific words used in the clause itself and the circumstances said to have resulted from the 'force majeure' event. It also involves a requirement to mitigate. For example, has the outbreak prevented you from physically performing the charterparty (Note that the fact it has become more expensive or unprofitable will not count)? Have you tried to mitigate, for example by taking protective measures, or seeking alternative orders?

Further, does Coronavirus **frustrate** the contract? This is unlikely as it would need to make the contract radically different or impossible to perform.

To avoid this discussion, we have drafted the **Clause 4** to include an agreement that force majeure and frustration will not apply.

Clause 5 – expressly provides for good order that the Vessel may comply with orders of both the port and Flag State.

Clause 6 – as there may be consequences between Owners and a bill of lading holder e.g. if a Vessel deviates from the original destination due to a Coronavirus outbreak, we have built in a provision requiring Charterers to ensure the clause is incorporated into the bills of lading. This should entitle Owners to an indemnity for any claims brought by bill of lading holders.

Members must keep up to date with the practical measures and guidelines that have been issued by national and international authorities to deal with Coronavirus risks.

Further information and links to information resources about the issue can be accessed here. Many of INTERTANKO's Associate Members in the P&I and Agency business have issued helpful and locally specific guidance that has been widely distributed.

Appendix 1 – Quarantine Provisions Comparison

BP Voy 3	<p><u>31. QUARANTINE</u> Should Charterers require the Vessel to proceed to any port or place at which, at the time the Vessel is ordered to that port or place, there is quarantine time shall count as laytime or, if the Vessel is on demurrage, as demurrage whilst the Vessel is detained, but should quarantine be declared only whilst the Vessel is on passage to the port or place Charterers shall not be liable for any delay caused by such Quarantine.</p>	<p>Was the quarantine in place at the time order?</p> <p><u>Yes</u> Time to count as laytime or if on demurrage as demurrage</p>
BP Voy 4	<p><u>29. QUARANTINE</u> If Charterers require the Vessel to proceed to any port at which, at the time when the Vessel is ordered to that port, there is quarantine then time spent or lost whilst the Vessel is detained due to such quarantine shall count as laytime or, if the Vessel is on demurrage, as demurrage. However, if quarantine is subsequently declared whilst the Vessel is on passage to such port Charterers shall not be liable for any delay caused by such quarantine.</p>	<p><u>No</u> Charterers will not be liable for any delay caused by such quarantine</p>
BP Voy 5	<p><u>37. QUARANTINE</u> If Charterers require the Vessel to proceed to any port at which, at the time the Vessel is ordered to that port, there is quarantine, any time spent or lost while the Vessel is detained due to such quarantine shall count as laytime or demurrage. However, if quarantine is declared while the Vessel is on passage to such port, Charterers shall not be liable for any delay caused by such quarantine.</p>	
ExxonVoy 90	<p><u>23. QUARANTINE</u> Time lost at any port or place due to quarantine shall not count as laytime or, if Vessel is on demurrage, as time on demurrage unless such quarantine was in force at the time when such port or place was nominated by Charterer.</p>	<p>Was the quarantine in place at the time of nomination?</p> <p><u>Yes</u> Time to count as laytime or if on demurrage as demurrage</p>
ExxonMobilVoy 2005	<p><u>23. QUARANTINE</u> Time lost at any port or place due to quarantine shall not count as laytime or, if Vessel is on demurrage, as time on demurrage unless such quarantine was in force at the time when such port or place was nominated by Charterer.</p>	<p><u>No</u> Time not to count as laytime or demurrage if the port was subsequently (i.e. after the nomination) put under quarantine.</p>
ExxonMobilVoy 2012	<p><u>23. QUARANTINE</u> Time lost at any port or place due to quarantine shall not count as laytime or, if Vessel is on demurrage, as time on demurrage unless such quarantine was in force at the time when such port or place was nominated by Charterer.</p>	

ShellVoy 5	<p><u>23. QUARANTINE</u> Time lost due to quarantine shall not count against laytime or for demurrage unless such quarantine was in force at the time when the affected port was nominated by Charterers.</p>	<p>Was the quarantine in place at the time of nomination?</p> <p><u>Yes</u> Time to count as laytime or if on demurrage as demurrage</p>
ShellVoy 6	<p><u>23. QUARANTINE</u> Time lost due to quarantine shall not count against laytime or for demurrage unless such quarantine was in force at the time when the affected port was nominated by Charterers.</p>	<p><u>No</u> Time lost due to quarantine will not count against laytime or demurrage</p>
Asbatankvoy	<p><u>17. (a) QUARANTINE.</u> Should the Charterer send the vessel to any port or place where a quarantine exists, any delay thereby caused to the Vessel shall count as used laytime; but should the quarantine not be declared until the vessel is on passage to such port, the Charterer shall not be liable for any resulting delay.</p>	<p>Was the vessel sent to a port under quarantine?</p> <p><u>Yes</u> Any delay caused to the vessel shall count as laytime or demurrage</p> <p><u>No</u> Charterer will not be liable for any resulting delay if subject port was put under quarantine while on passage.</p>

Appendix 2 – General Exceptions/Force Majeure Provisions Comparison

BP Voy 3	Charterers shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage or delay or failure in performance hereunder arising or resulting from Act of God, act of war, seizure under legal process, quarantine restrictions, labour disputes, strikes, riots, civil commotions, arrest or restraint of princes, rulers or peoples.
BP Voy 4	<p>38. EXCEPTIONS</p> <p>38.2 Charterers shall not, unless expressly provided otherwise in this Charter, be responsible for any loss, damage, cost, expense, delay or failure in performance hereunder arising or resulting from Act of God, act of war, hostilities, seizure under legal process, quarantine restrictions, labour disputes or strikes threatened or actual, riots, civil commotions, arrest or restraint of princes, rulers or people.</p>
BP Voy 5	<p>46.2 Unless expressly provided otherwise in this Charter, Charterers shall not be responsible for any loss, damage, cost, expense, delay or failure in performance arising or resulting from act of God, natural events (such as storms, cyclones, earthquakes, tidal waves, floods, lightning), explosions, fires, destruction of pipelines and any other kind of installation, war (whether declared or not), civil war, civil commotions, riots and revolutions, hostilities, acts of piracy, acts of sabotage, lawful detention of the Vessel, quarantine restrictions, threatened or actual boycotts, lockouts, strikes or any other labour dispute.</p>
ExxonVoy90	<p>29. EXCEPTIONS.</p> <p>(a) Vessel, Master and Owner shall not, unless otherwise expressly provided in this Charter, be responsible for any loss or damage to cargo arising or resulting from: any act, neglect, default or barratry of Master, pilots, mariners or other servants of Owner in the navigation or management of Vessel; fire, unless caused by the personal design or neglect of Owner; collision, stranding, or peril, danger or accident of the sea or other navigable waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery. Neither Vessel, Master or Owner, nor Charterer, shall, unless otherwise expressly provided in this Charter, be responsible for any loss or damage or delay or failure in performing hereunder arising or resulting from: act of God; act of war; perils of the sea; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond is promptly furnished to release Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion. (b) The exceptions stated in Paragraph (a) of this Clause shall not affect Owner's warranties and undertakings with respect to the condition of Vessel at the commencement of loading hereunder, the obligations of Owner in respect of the loading, handling, stowage, carriage, custody, care and discharge of the cargo and/or the rights or obligations of either</p>

<p>ExxonMobilVoy 2005</p>	<p><u>EXCEPTIONS.</u></p> <p>(a) Vessel, Master and Owner shall not, unless otherwise expressly provided in this Charter, be responsible for any loss or damage to cargo arising or resulting from: any act, neglect, default or barratry of Master, pilots, mariners or other servants of Owner in the navigation or management of Vessel; fire, unless caused by the personal design or neglect of Owner; collision, stranding, or peril, danger or accident of the sea or other navigable waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery. Neither Vessel, Master or Owner, nor Charterer, shall, unless otherwise expressly provided in this Charter, be responsible for any loss or damage or delay or failure in performing hereunder arising or resulting from: act of God; act of war; perils of the sea; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond is promptly furnished to release Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.</p> <p>(b) The exceptions stated in Paragraph (a) of this Clause shall not affect Owner's warranties and undertakings herein with respect to the condition of Vessel, the obligations of Owner in respect of the loading, handling, stowage, carriage, custody, care and discharge of the cargo and/or the rights or obligations of either Owner or Charterer with respect to laytime or demurrage as elsewhere provided in this Charter.</p>
<p>ExxonMobilVoy2012</p>	<p><u>29. EXCEPTIONS.</u></p> <p>(a) Vessel, Master and Owner shall not, unless otherwise expressly provided in this Charter, be responsible for any loss or damage to cargo arising or resulting from: any act, neglect, default or barratry of Master, pilots, mariners or other servants of Owner in the navigation or management of Vessel; fire, unless caused by the personal design or neglect of Owner; collision, stranding, or peril, danger or accident of the sea or other navigable waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery. Neither Vessel, Master or Owner, nor Charterer, shall, unless otherwise expressly provided in this Charter, be responsible for any loss or damage or delay or failure in performing hereunder arising or resulting from: act of God; act of war; perils of the sea; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond is promptly furnished to release Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.</p> <p>(b) The exceptions stated in Paragraph (a) of this Clause shall not affect Owner's warranties and undertakings herein with respect to the condition of Vessel, the obligations of Owner in respect of the loading, handling, stowage, carriage, custody, care and discharge of the cargo and/or the rights or obligations of either Owner or Charterer with respect to laytime or demurrage as elsewhere provided in this Charter.</p>

<p>ShellVoy 5</p>	<p>32. (a) The vessel, her master and Owners shall not, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure arising or resulting from any act, neglect or default of the master, pilots, mariners or other servants of Owners in the navigation or management of the vessel; fire unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the sea; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery; provided, however, that Part I(A) and Clauses 1 and 2 hereof shall be unaffected by the foregoing. Further, neither the vessel, her master or Owners, nor Charterers shall, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure in performance hereunder arising or resulting from act of God, act of war, act of public enemies, seizure under legal process, quarantine restrictions, strikes, lock-outs, restraints of labour, riots, civil commotions or arrest or restraint of princes rulers or people.</p> <p>(b) Nothing in this charter shall be construed as in any way restricting, excluding or waiving the right of Owners or of any other relevant persons to limit their liability under any available legislation or law.</p> <p>(c) Clause 32(a) shall not apply to or affect any liability of Owners or the vessel or any other relevant person in respect of</p> <p>(i) loss of or damage caused to any berth, jetty, dock, dolphin, buoy, mooring line, pipe or crane or other works or equipment whatsoever at or near any port to which the vessel may proceed under this charter, whether or not such works or equipment belong to Charterers, or</p> <p>(ii) any claim (whether brought by Charterers or any other person) arising out of any loss of or damage to or in connection with the cargo. Any such claim shall be subject to the Hague-Visby Rules or the Hague Rules, as the case may be, which ought pursuant to Clause 37 hereof to have been incorporated in the relevant bill of lading (whether or not such Rules were so incorporated), or, if no such bill of lading is issued, to the Hague-Visby Rules.</p>
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<p>ShellVoy 6</p>	<p>32. (1) The vessel, her master and Owners shall not, unless otherwise in this Charter expressly provided, be liable for any loss or damage or delay or failure arising or resulting from any act, neglect or default of the master, pilots, mariners or other servants of Owners in the navigation or management of the vessel; fire, unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the sea; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery; provided, however, that Part I clause (A) and Part II clauses 1 and 2 hereof shall be unaffected by the foregoing. Further, neither the vessel, her master or Owners, nor Charterers shall, unless otherwise in this Charter expressly provided, be liable for any loss or damage or delay or failure in performance hereunder arising or resulting from act of God, act of war, act of public enemies, seizure under legal process, quarantine restrictions, strikes, lock-outs, restraints of labour, riots, civil commotions or arrest or restraint of princes, rulers or people.</p> <p>(2) Nothing in this Charter shall be construed as in any way restricting, excluding or waiving the right of Owners or of any other relevant persons to limit their liability under any available legislation or law.</p> <p>(3) Clause 32(1) shall not apply to or affect any liability of Owners or the vessel or any other relevant person in respect of</p> <p>(a) loss or damage caused to any berth, jetty, dock, dolphin, buoy, mooring line, pipe or crane or other works or equipment whatsoever at or near any port to which the vessels may proceed under this Charter, whether or not such works or equipment belong to Charterers,</p> <p>or</p> <p>(b) any claim (whether brought by Charterers or any other person) arising out of any loss of or damage to or in connection with the cargo. Any such claim shall be subject to the Hague-Visby Rules or the Hague Rules, or the Hamburg Rules as the case may be, which ought pursuant to Part II clause 37 hereof to have been incorporated in the relevant bill of lading (whether or not such Rules were so incorporated) or, if no such bill of lading is issued, to the Hague-Visby rules unless the Hamburg Rules compulsory apply in which case to the Hamburg Rules.</p>
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Asbatankvoy	<p>19. GENERAL EXCEPTIONS CLAUSE. The Vessel, her .Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage, or delay or failure performing hereunder, arising or resulting from:</p> <p>-any act ,neglect, default or barratry of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of the carp; any act or omission of the Charterer or Owner, shipper or consignee of the cargo, their agents or representatives; insufficiency of packing; insufficiency or inadequacy or marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault of privity of the Owner. And neither the Vessel nor Master or Owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided be responsible for any loss of damage or delay or failure in performing hereunder, arising or resulting from:-Act of God; act of war; perils of the seas; act of public enemies. pirates or assailing thieves; arrest or restraint of princes, rulers or people; or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor whatever cause, either partial or general; or riot or civil commotion.</p>
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Appendix 3 – Laytime Demurrage Provisions

BP Voy 3	<p>21. Any delay(s) arising from adverse weather or sea state conditions, fire, explosion, breakdown or failure of equipment, plant or machinery in or about ports or places of loading and/or discharge, Act of God, act of war, labour dispute, strike, riot, civil commotion, or arrest or restraint of princes, rulers, or peoples shall, provide always that the cause of the delay(s) was not within the reasonable control of Charterers or Owners or their respective servants or agents, count as one half laytime or, if the Vessel is on demurrage, at one half of demurrage rate.</p>
BP Voy 4	<p>17. HALF LAYTIME/HALF DEMURRAGE/FORCE MAJEURE</p> <p>Any delay arising from adverse tidal conditions which could not reasonably have been predicted, adverse weather, adverse sea state conditions, blockage of access to a port due to casualty or wreck, fire, explosion, breakdown or failure of equipment, plant or machinery in or about any loading or discharge port, Act of God, act of war, labour dispute, strike, riot, civil commotion, or arrest or restraint of princes, rulers or peoples shall count as one half laytime or, if the Vessel is on demurrage, at one half of the demurrage rate provided always that the cause of the delay was not within the reasonable control of Charterers or Owners, as the case may be, or their respective servants or agents.</p> <p>18.2 Nor shall time count against laytime or, if the Vessel is on demurrage, as demurrage when spent or lost:-</p> <p>18.2.1 as a result, whether directly or indirectly, of breakdown, defect, deficiency or inefficiency of, or other cause attributable to, the Vessel, Master, officers, crew, Owners or their servants or agents;</p> <p>18.2.2 as a result of a labour dispute, or strike, involving the Master, officers or crew of the Vessel;</p> <p>18.2.3 in, or in connection with, the handling of ballast unless this is carried out concurrently with loading or discharging of cargo such that no loss of time is involved;</p>
BP Voy 5	<p>12. Laytime / Demurrage Not To Count</p> <p>12.1 Time shall not count as laytime or demurrage when spent or lost:</p> <p>a) subject to Clause 33.4 f), on an inward passage, including awaiting daylight, tide, opening of locks, pilot or tugs or moving from an anchorage, even if topping off and/or lightering has taken place at that anchorage, until the Vessel is securely moored and the Vessel's gangway, if it is to be used, is in place;</p> <p>b) on an outbound passage to a STS location as defined in Clause 13.3, which passage shall be deemed to commence upon disconnection of cargo hoses and end upon the Vessel's arrival at such location;</p> <p>c) as a result of a labour dispute, or strike, involving tugs, pilots or the Master, officers or crew of the Vessel;</p> <p>d) as a result of arrest or detention of the Vessel, unless due to the fault of the Charterers;</p> <p>e) as a result, whether directly or indirectly, of breakdown, defect, deficiency or inefficiency of, or any other cause whatsoever attributable to the Vessel, Master, officers, crew, Owners or their servants or agents;</p> <p>f) in, or in connection with, bunkering, the handling of ballast, the discharging of slops, or any purpose of Owners, unless the activity is carried out concurrently with loading or discharging of cargo;</p> <p>g) by reason of an inspection on board by the relevant authority in connection with the Vessel's COC.</p> <p>12.2 Nothing in this Clause shall be affected by the provisions of Clause 46.</p>

ExxonVoy90	<p>b) EXCLUSIONS. Notwithstanding the provisions of any other Paragraph of this Clause or any other Clause of this Charter to the contrary, time shall not count as laytime or, if Vessel is on demurrage, as time on demurrage, if such time is spent or lost:</p> <p>(iv) Due to Owner or port authority prohibiting loading or discharging.</p> <p>(v) By reason of local law or regulations, action or inaction by local authorities (including, but not limited to, Coast Guard, Naval, Customs, Immigration or Health authorities), with the exception, however, of port closure due to weather and/or sea conditions.</p>
ExxonMobilVoy 2005	<p>c) EXCLUSIONS. Notwithstanding the provisions of any other Paragraph of this Clause or any other Clause of this Charter to the contrary, time shall not count as laytime or, if Vessel is on demurrage, as time on demurrage, if such time is spent or lost:</p> <p>(iv) Due to Owner or port authority prohibiting loading or discharging;</p> <p>(v) By reason of local law or regulations, action or inaction by local authorities (including, but not limited to, Port, Coast Guard, Naval, Customs, Immigration and/or Health authorities), with the exception, however, of port closure due to weather and/or sea conditions;</p>
ExxonMobilVoy2012	<p>c) EXCLUSIONS.</p> <p>Notwithstanding the provisions of any other Paragraph of this Clause or any other Clause of this Charter to the contrary, time shall not count as laytime or, if Vessel is on demurrage, as time on demurrage, if such time is spent or lost:</p> <p>(v) Due to Owner or port authority prohibiting loading or discharging;</p> <p>(vi) By reason of local law, regulations, requirements or orders of any governmental or military authorities (including, but not limited to, port authorities, Coast Guard, Naval, Customs, Immigration and/or Health authorities);</p> <p>(vii) By reason of action or inaction by any governmental or military authorities (including, but not limited to, Port, Coast Guard, Naval, Customs, Immigration and/or Health authorities), with the exception, however, of port closure due to weather and/or sea conditions;</p>
ShellVoy 5	<p>14. Time shall not count when</p> <p>(a) spent on inward passage from the vessel's waiting area to the loading or discharging berth specified by Charterers, even if lightening occurred at such waiting area; or</p> <p>(b) spent in handling ballast except to the extent that cargo operations are carried on concurrently and are not delayed thereby; or</p> <p>(c) lost as a result of</p> <p>(i) breach of this Charter by Owners; or</p> <p>(ii) any cause attributable to the vessel, including breakdown or inefficiency of the vessel; or</p> <p>(iii) strike, lock-out, stoppage or restraint of labour of master, officers or crew of the vessel or tug boats or pilot.</p> <p>(2) If, however, all or part of such demurrage arises out of or results from fire or explosion at ports of loading and/or discharging in or about the plant of Charterers, shippers or consignees of the cargo (not being a fire or explosion caused by the negligence or wilful act or omission of Charterers, shippers or consignees of the cargo or their respective servants or agents), act of God, act of war, riot, civil commotion, or arrest or restraint of princes rulers or peoples, the rate of demurrage shall be reduced by half for such demurrage or such part thereof.</p>

ShellVoy 6	<p>13. Time shall never commence before six hours after commencement of laydays unless loading commences prior to this time as provided in clause 13 (3). If Owners fail;</p> <p>(i) to obtain Customs clearance; and/or</p> <p>(ii) to obtain free pratique unless this is not customary prior to berthing; and/or</p> <p>(iii) to have on board all papers/certificates required to perform this Charter, either within the 6 hours after notice of readiness originally tendered or when time would otherwise normally commence under this Charter, then the original notice of readiness shall not be valid. A new notice of readiness may only be tendered when Customs clearance and/or free pratique has been granted and/or all papers/certificates required are in order in accordance with relevant authorities' requirements. Lay time or demurrage, if on demurrage, would then commence in accordance with the terms of this Charter. All time, costs and expenses as a result of delays due to any of the foregoing shall be for Owners' account.</p>
Asbatankvoy	<p>8. Demurrage. Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. If, however, demurrage shall be incurred at ports of loading and/or discharge by reason of fire, explosion, storm or by a strike., lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo, the rate of demurrage shall be reduced to one half of the amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by strike, lockout, stoppage, or restraint of labor for Master, officers and crew of the vessel or tugboat or pilots.</p>

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