GENCON 1994 – Tips and Pitfalls
The Power of Integrity
table of contents

background ........................................................................................................... 3

part i .................................................................................................................... 4

part ii ................................................................................................................... 7
  clause 1 – introductory clause ................................................................. 7
  clause 2 – owners’ responsibility ......................................................... 8
  clause 3 – deviation .................................................................................. 8
  clause 4 – payment of freight ............................................................... 8
  clause 5 – loading/ discharging ........................................................... 9
  clause 6 – laytime .................................................................................... 11
  clause 7 – demurrage ........................................................................... 12
  clause 8 – lien ....................................................................................... 12
  clause 9 – cancelling clause ............................................................... 13
  clause 10 – bills of lading ................................................................. 13
  clause 17 – war risks (“voywar 1993”) ............................................ 14
  clause 19 – law and arbitration .......................................................... 14

our shipping & logistics practice ............................................................. 16

contact us ........................................................................................................ 18

This publication is intended to be an outline of the law and procedures on this subject for the purpose of general reference only and cannot be relied upon as legal advice in any particular case. If any advice or assistance is needed, please contact this firm on 2810 1212 or email us at onc@onc.hk.

ONC Lawyers

June 2011

© ONC Lawyers 2011. All right reserved.
The Baltic and International Maritime Council ("BIMCO") Uniform General Charter, or "GENCON", is the standard form voyage charterparty most commonly used worldwide. GENCON was first issued by BIMCO in 1922 and was revised in 1976 and 1994. This article analyses the latest revised version "GENCON 1994".

GENCON 1994 consists of two parts. Part I is the "box form" which all the necessary information can be conveniently inserted and seen by the parties. The details to be inserted in this part are freely negotiable and may be traded back and forth. Part II contains all the standard terms and conditions which are usually non-negotiable, though it is common for the parties to amend some of the printed clauses by way of attaching a rider which overrides them or incorporates the standard terms into a negotiated fixture note.
Part I

There are 26 boxes in total in Part I. Boxes 1 to 7 describe the identity of the parties and the details and capacity of the vessel. The phrase “DWT all told on summer load line in metric tons (abt.)” in Box 7 refers to the maximum weight of cargo, bunkers, constant weight, etc. that the vessel can carry on summer draught. The stated deadweight tonnage cannot be taken as a guarantee since the maximum tonnage the vessel can carry is dependent upon the stowage factor of the particular cargo being carried.

Boxes 8 and 9 describe the present position of the vessel and the expected date when the vessel is ready to load the cargo. The word “abt” (about) in box 9 qualifies the date with a reasonable allowance with reference to the distance between the present position of the vessel stated in Box 8 and the loading port stated in Box 10. These two boxes should be carefully inserted because there is usually a span of some days until the vessel may be presented for loading and if the owners are unable to present for loading on the date specified in Box 9, they may be guilty of misrepresentation which could be a ground for the charterers to cancel the charter.

Boxes 10 to 11 provide information of the loading and discharging ports. It should be noted that some loading or discharging ports may not have enough water alongside at low tide to allow vessels to remain afloat. If the charterers wish the vessel to be loaded/ discharged at such a place, this must be specifically agreed in the
charterparty. It is important to specify whether the parties intend to have a port or a berth charter. Upon arriving at the contractual destination, be it a port or a berth, laytime shall start to count. An expression like “good and safe chtrs’ berth” means the charterers have the express right to nominate the berth at the designated port.

Box 12 describes the type and quantity of the cargo to be loaded and whether “full and complete” or “part” cargo. If the charterers fail to supply the agreed minimum quantity, the charterers may be liable to pay deadfreight on the shortfall. Where a fixed amount of cargo is specified, it is advisable to qualify the figure with a permitted allowance. If the charterers did tender a full cargo but, for safety reasons such as draught restrictions, the vessel was unable to load the full cargo and rejected the “excess”, the owners may not be able to claim deadfreight.

Boxes 13 and 14 give details of the freight rate (per tonne, lump sum or other basis), freight payment currency and method. When the calculation of freight is based on the quantity of cargo carried, disputes may arise if there is a discrepancy between the quantity shipped and the quantity discharged. From the charterers’ point of view, the lump sum freight is preferred if they are responsible for supplying a “full and complete cargo” as that would eliminate the risk of having to pay deadfreight.

In relation to cargo handling gear, the charterers are entitled to have free use of all of the vessel’s cargo handling gear in loading and discharging of the cargo, unless stated otherwise in Box 15.
Box 16 states the “laytime”, i.e. the amount of time available to the charterers free of charge for loading and discharging operations.

Boxes 17 to 19 give particulars on the identity of the shipper and the agents in the loading and discharging port. Box 20 states the “demurrage rate” which is the penalty rate payable to the owners if the charterers exceed the agreed time in loading/ discharging the cargo.

Clause 21 sets out the cancelling date which means if the vessel is not ready to load on that date the charterers may cancel the charterparty.

General Average shall be adjusted in London unless otherwise agreed in Box 22 according to an international convention called “York-Antwerp Rules 1994”.

Box 23 states the freight tax payable if it is for the owners’ account.

Box 24 states the brokerage commission and the person to whom it is payable. Lastly, Boxes 25 and 26 state the law and place of arbitration and whether there are any additional clauses agreed between the parties.
Part II of GENCON 1994 provides the standard terms and conditions. Some of the more important clauses will be highlighted below:

**clause 1 - introductory clause**

Clause 1 limits the owners’ obligation to proceed to the loading port by allowing the owners to complete prior commitments which were already in existence at the time the charter was made. Under this clause, the owners would not attract liability for being late at the loading port as punctuality is made subject to the timely completion of the previous voyage. That said, nothing in this clause operates to displace the implied obligation of the owners to give a date of expected readiness to load based on an honest and reasonable belief.

Clause 1 also gives the owners an unfettered right to refuse to put their vessel at the named port and instead load or unload the cargo at the nearest safe port should it be found that there is an unforeseeable hazard or obstruction of a permanent nature at the named port which would prevent the vessel from entering or leaving the named port or result in delay of an unreasonable length of time; or there is insufficient water alongside at the named port to keep the vessel always afloat; or there is a political danger at the named port.

If cargo is agreed to be carried on deck, it will be so carried at the charterers’ risk and responsibility.
clause 2 – owners’ responsibility

Clause 2 provides that the owners are responsible for loss of or damage to the goods or for delay in delivery of the goods only in cases where the loss, damage or delay has been caused by the personal lack of due diligence on the part of the owners or their manager to provide a seaworthy vessel and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the owners or their manager.

Given that deck cargo is carried at charterers’ risk and responsibility (see clause 1), clauses 1 and 2, when read together, seem to suggest that even if the owners are personally at fault, the owners may not be liable for any loss or damage of deck cargo.

clause 3 – deviation

Clause 3 provides that the owners have an unfettered right to call at any port or ports in any order, to tow and/ or to assist vessels, and to deviate from its course for the purpose of saving life and/ or property.

clause 4 – payment of freight

Under clause 4 the freight can either be “pre-paid” or “paid on delivery”, though the prevailing practice is for freight to be paid in advance. The choice is supposedly shown in Box 13. If the parties agree that freight is to be pre-paid on shipment, clause 4(b) provides that the freight is deemed earned and non-returnable. This is so even if the
cargo is subsequently lost in transit, provided that the loss is covered by an exception in the charterparty, or that the charter is subsequently terminated by frustration. Therefore, if freight is agreed to be paid in advance, it is advisable to state precisely when it is payable. Once paid and earned, the advance freight becomes irrecoverable by the charterers.

Conversely, if the parties agree that freight is to be paid on delivery, clause 4(c) provides that freight only becomes due and payable upon delivery of the cargo at the destination. In cases where only part of the cargo is delivered, the charterers have a right to decline payment of freight on cargo lost or not delivered.

It is important to note that freight is calculated and paid on the basis of intake quantity save where freight is to be paid upon delivery. In the latter case, the charterers have the option of paying the freight on the basis of delivered weight/ quantity on condition that such option is declared before breaking bulk and the weight/ quantity can be ascertained at the destination.

**clause 5 – loading/ discharging**

Clause 5(a) provides that all the risks, liabilities and expenses associated with the loading, stowage, trimming, tallying, lashing and discharging of the cargo shall be borne by the charterers solely. The effect is that the owners are relieved of all such risks, liabilities and expenses. In addition, the charterers shall provide for
and lay all dunnage material as required for the proper stowage and protection of the cargo on board. The costs of removing the same upon discharge of the cargo shall likewise be borne by the charterers. This effectively displaces the “alongside rule” at common law. If the vessel is unable to berth, the charterers may have to engage lighters to bring the cargo to the vessel’s side at charterers’ costs. In practice, the loading and discharge operations are carried out by professional stevedores acting on behalf of the charterers.

Clause 5(b) states that the owners shall provide free use of the vessel’s cargo handling gear, if any, and the necessary motive power, unless the parties otherwise agree; and provide free of charge cranemen/ winchmen to operate the cargo handling gear, unless prohibited by local regulations. If certain cargo handling equipment is required to be supplied by the owners for loading/ discharging, it is advisable to be stated in clear terms otherwise the absence of such equipment may not prevent the owners from giving valid notice of readiness (“NOR”).

It is important to note that those cranemen/ winchmen provided by the owners are deemed to be the charterers’ stevedores. The effect is that laytime or time on demurrage will not be interrupted where a craneman/ winchmen has negligently caused a cargo handling gear breakdown.

Clause 5(c) provides that the charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the vessel caused by stevedores provided that the Master shall give notice of the damage to the
charterers or their agents and the stevedores as soon as reasonably possible and shall endeavour to obtain the stevedores’ written acknowledgement of liability. If the Master fails to give notice in the manner required, the charterers may be excused from liability.

clause 6 – laytime

Clause 6 states that the cargo shall be loaded/ discharged within the time frame as indicated in Box 16 in a weather permitting condition, excluding Sundays and holidays. If NOR is given by the owners on or before 12.00 hours, the laytime for loading and discharging shall commence at 13.00 hours. If NOR is given after 12.00, then the laytime shall commence at 6.00 hours on the next work day. NOR shall be given to the parties identified in Boxes 17, 18 and 19 respectively.

It should be noted that even if the loading or discharging berth is not available on the vessel’s arrival at or off the port of loading or discharging, the owners may still give NOR on arrival there, no matter whether the vessel is in free pratique condition and whether the customs has been cleared. Provided that the Master of the vessel warrants that she is in fact ready to load or discharge, the laytime or time on demurrage shall then count as if the vessel were in berth. Accordingly, NOR can be given even when the vessel is still outside the port limits and/ or the berth is not available due to congestion. Though there is no requirement how the Master’s warranty shall be given, a warranty in writing is preferred. It is advisable for the
charterers to immediately go on board to verify if the vessel is truly ready to load/ discharge. If she is not, the time lost after discovery shall not count as laytime. As to the question whether in such a situation the NOR would be invalidated, it seems that so long as it was given by the Master in good faith, it remains effective.

The time used in moving from the place of waiting to the loading/ discharging berth shall not count as laytime. Such exception would not be applicable if the vessel is already on demurrage.

clause 7 – demurrage

Clause 7 provides that demurrage at the loading and discharging port as stated in Box 20 is payable by the charterers upon receipt of the owners’ invoice. If it is not paid accordingly, the owners shall give the charterers 96 hours to rectify, exhausting which the owners can terminate the charterparty and claim damages.

clause 8 – lien

Clause 8 provides that the owners have a lien on the cargo and all sub-freights payable in respect of the cargo for freight, deadfreight, demurrage, claims for damages and for all other amounts due under the charterparty. By exercising the lien, the owners will be entitled to obtain security up to an amount of a reasonably calculated claim, including the costs of recovery.
clause 9 – cancelling clause

Clause 9 provides that if the vessel is not ready to load on the cancelling date as stated in Box 21, the charterers shall have the option to cancel the charterparty. If the owners anticipate arrival beyond the cancelling date, they should notify the charterers without delay of the vessel’s readiness to load. If the charterers fail to exercise their option of cancelling the charterparty within 48 hours after the receipt of the owners’ notice, the charterparty shall be deemed to be amended such that the seventh day after the new readiness date stated in the owners’ notice shall be the new cancelling date. If there is further delay, the charterers shall have the option of cancelling the charterparty.

clause 10 – bills of lading

Pursuant to Clause 10, the charterers are entitled to insist upon the bills of lading as per the “Congenbill” Bill of Lading Form, Edition 1994 being signed by the Master, unless the charterers receive a copy of a written authority of the owners or their agent authorising some other person to sign.

Clause 10 also gives the owners an express right of indemnity from the charterers for issuing bills of lading at the charterers’ request and as a result of which the owners may assume greater liabilities than under the charterparty. The most obvious example is where the owners incur
liabilities to holders of bills of lading under the Hague and Hague-Visby Rules and are unable to rely upon the protection of Clause 2.

**clause 17 – war risks (“voywar 1993”)**

Clause 17 incorporates the Voywar 1993 War Risks Clause for voyage chartering, which has been revised and modernised. In particular, the definition of “War Risks” has been expanded and clarified taking into account modern ways of war and interventions such as war threats and belligerent events, etc. This clause stipulates in detail what the Master and/or the owners may do in case the vessel, the crew (or other person on board) or the cargoes are exposed to War Risks.

**clause 19 – law and arbitration**

Clause 19 deals with the choice of law and dispute resolution procedures. In essence, the parties may opt for (1) English law and London arbitration; (2) US law and New York arbitration; or (3) any other governing law and place of arbitration the parties wish to choose. In the event that the parties make no specific choice in Box 25, English law and London arbitration shall apply by default.

The parties may also agree that claims not exceeding the amount stated in Box 25 be resolved by the Small Claims Procedure of the London Maritime Arbitrators Association (in cases where English law is elected) or the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. (in cases where US law is elected).
In summary, as compared to the previous versions, GENCON 1994 is generally perceived as being more favourable to the owners. From the charterers’ point of view, it is advisable to exercise caution when using and adopting GENCON 1994 in its entirety.
our shipping & logistics practice

We provide comprehensive services in both contentious and non-contentious aspects of shipping and transport law.

We are particularly experienced in “dry” shipping work, including such matters as bills of lading, charterparties and international sale of goods. Examples of the matters with which we regularly deal are: cargo claims, bunker disputes, laytime and demurrage disputes, hire and off-hire claims, ship repair claims, performance warranties, commodity disputes, CIF and FOB contracts, trade finance and documentary credits, cargo policies, haulage and freight forwarding contracts, cross-border courier business as well as claims for loss of life/ personal injury sustained on board vessels.

We work closely with the leading experts, surveyors and adjusters dealing with the loss of or damage to cargo and related insurance problems.
Our clients include shipowners and charterers, cargo insurers, tug companies, ship-repairers, banks, marine engineering companies, ship and chartering brokers, oil companies, and government agencies.

Members of the team are frequently called upon to deal with matters requiring an urgent response, such as the application for or dismissal of an injunction, the exercise of a lien or the arrest of a ship.
contact us

for enquiries, please contact members of our shipping & logistics practice group

sherman yan

managing partner
head of litigation & dispute resolution department
shipping & logistics practice group

direct line: (852) 2107 0343
email: sherman.yan@onc.hk

Prior to joining ONC Lawyers, Sherman practised with an international law firm in its Hong Kong office, handling a wide range of shipping and logistics related cases including rendering advice on bills of lading; advising insurers on cargo policies; handling cargo claims, mortgagee actions, collision cases, bunkering disputes and charter party disputes. At ONC Lawyers, Sherman is the Head of Litigation & Dispute Resolution Department handling a wide range of commercial disputes especially disputes among shareholders and contentious matters concerning the Securities and Futures Ordinance, in addition to his shipping and logistics practice.
ONC Lawyers is a professional and dynamic legal practice based in Hong Kong. We have been growing continuously since our establishment in 1992, and have now become one of the largest local law firms with more than 90 members of legally-qualified and supporting staff.

We offer a full range of legal services to both corporate and individual clients, including:

- Capital Market
- China Attesting Services
- Banking & Finance
- China Practice
- Construction & Arbitration
- Corporate & Commercial
- Criminal Litigation
- Employment, Privacy and Discrimination
- Family & Matrimonial
- Immigration
- Insolvency & Restructuring
- Insurance & Personal Injury
- Intellectual Property & Technology
- Litigation & Dispute Resolution
- Notary Public Services
- Property
- Securities, Futures & Funds
- Shipping & Logistics
- Trust
- Venture Capital & Private Equity
- Wills & Probate

If you have any enquiries, please feel free to contact us at (852) 2810 1212 or onc@onc.hk.
The Simplicity of Solutions