MARINE CONTRACTING

Contractual Economic Risks – analysis of
SUPPLYTIME 05 and NSC 05

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# Content

<table>
<thead>
<tr>
<th>1</th>
<th>INTRODUCTION</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Presentation of the subject area</td>
<td>1</td>
</tr>
<tr>
<td>1.2</td>
<td>Presentation of the Industry</td>
<td>3</td>
</tr>
<tr>
<td>1.2.1</td>
<td>Marine Contracting</td>
<td>3</td>
</tr>
<tr>
<td>1.2.2</td>
<td>Background</td>
<td>3</td>
</tr>
<tr>
<td>1.2.3</td>
<td>Tender Phase – offshore installations</td>
<td>4</td>
</tr>
<tr>
<td>1.2.4</td>
<td>Project Phase – offshore installations</td>
<td>5</td>
</tr>
<tr>
<td>1.2.5</td>
<td>The vessels</td>
<td>6</td>
</tr>
<tr>
<td>1.2.6</td>
<td>Expertise</td>
<td>8</td>
</tr>
<tr>
<td>1.3</td>
<td>The further presentation</td>
<td>11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th>THE CONTRACTS</th>
<th>12</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>SUPPLYTIME 2005 – Time Charter Party for Offshore Service Vessels</td>
<td>12</td>
</tr>
<tr>
<td>2.1.1</td>
<td>Layout</td>
<td>13</td>
</tr>
<tr>
<td>2.1.2</td>
<td>Governing Law and Place of Arbitration</td>
<td>13</td>
</tr>
<tr>
<td>2.1.3</td>
<td>Owners obligations</td>
<td>14</td>
</tr>
<tr>
<td>2.1.4</td>
<td>Charterers obligations</td>
<td>16</td>
</tr>
<tr>
<td>2.2</td>
<td>Norwegian Subsea Contract 05</td>
<td>17</td>
</tr>
<tr>
<td>2.2.1</td>
<td>The Contract – Conditions of Contract and Exhibits</td>
<td>18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3</th>
<th>CONTRACTUAL ECONOMIC RISKS</th>
<th>27</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Late delivery of vessels</td>
<td>27</td>
</tr>
<tr>
<td>3.1.1</td>
<td>New build vessels – Delays</td>
<td>28</td>
</tr>
<tr>
<td>3.2</td>
<td>Off – Hire</td>
<td>30</td>
</tr>
<tr>
<td>3.2.1</td>
<td>Vessel breakdown</td>
<td>33</td>
</tr>
<tr>
<td>3.2.2</td>
<td>Vessel not in accordance with Specifications</td>
<td>34</td>
</tr>
</tbody>
</table>
3.3 Pollution 36
  3.3.1 The solution in NSC 05 39
  3.3.2 The solution in SUPPLYTIME 05 40

3.4 Damage 41
  3.4.1 Damage to Vessels, Marine Contractors or Company’s Equipment, or the Contract Object 41

3.5 Variations to the Work 44
  3.5.1 Variations before Offshore Work 45
  3.5.2 Variations during Offshore Work 46

4 CONCLUSION 48

REFERENCES 51

ANNEX A

A.1 SUPPLYTIME 2005 – Time Charter Party for Offshore Service Vessels - Part II A
A.2 Norwegian Subsea Contract – NSC 05 Revision 0, 08.03.2005 - Chosen Articles A
1 Introduction

1.1 Presentation of the subject area

Contracts used by marine contractors in the offshore installation business are normally detailed and large in size. The contracts deals with complex projects and regulates obligations and economic risk between the parties. The different parties’ interests are reflected in the creation of the contracts. The shipowners (Owners) main interest is to earn freight on the vessels. The marine contractors (Charterer and Contractor) main interest is to add value with the vessels as tools. The oil or energy companies (Company) main interest is to use the marine contractors experience and brainwork, combined with vessels, to install structures and later earn money. All parties are interested in money and to have a functioning vessel.

This thesis is a presentation of the frequently used contracts, SUPPLYTIME 05 and NSC 05, and an identification of contractual economic risks exposed to marine contractors through these two contracts. I am doing a practical contractual economic risk analysis of central clauses in the contracts from the marine contractors’ point of view (chapter 3).

Chapter 3 is the main chapter of this thesis. The analysis is an identification of differences and a comparison of chosen clauses in these two contracts. Therefore, the most interesting legal sources in this analysis are SUPPLYTIME 05 and NSC 05 and there will not be an extensive analysis of other legal sources and background law in this thesis.

Problems of particular interest is late delivery of vessels (analyzed in chapter 3.1), off-hire (analyzed in chapter 3.2), and pollution (analyzed in chapter 3.3). SUPPLYTIME 05 and NSC 05 treat these particular problems differently. Therefore, these problems can be of great interest since marine contractors can be exposed to extensive contractual economic risk through the above mentioned differences. Other problems of interest are damage (analyzed in chapter 3.4) and variations to the Work (analyzed in chapter 3.5). Both contracts have similar, so called knock-for-knock clauses regarding damage (analyzed in
chapter 2.2.1.8). However, there is an exception regarding damage to the Contract Object (analyzed in chapter 3.4.1). Rules regarding variations to the Work are only covered in NSC 05. The rules in NSC 05 are different related to variations before Offshore Work (analyzed in chapter 3.5.1) and Variations during Offshore Work (analyzed in chapter 3.5.2).

Before analyzing the above problems, I will give a short presentation of the Industry (chapter 1.2), and present and discuss the chosen contracts SUPPLYTIME 05 and NSC 05 (chapter 2).
1.2 Presentation of the Industry

1.2.1 Marine Contracting
The marine contracting industry works with everything from installments of floating windmills, through heavy lift of structures weighing ten thousand tones, to construction work 2500 meters below sea level. Contractors use specialist vessels to undertake construction, inspection, repair and maintenance of platforms, subsea structures and pipelines and to support other offshore operations. The marine contracting industry of today works mainly for offshore oil and gas companies, but installments of offshore windmills and construction of underwater/seabed tunnels and buildings are examples of growing markets. I will focus on the part of the industry specializing in installation of FPSO, GBS, SURF, floatover of topsides / mating and field abandonment. I will explain this below in chapter 1.2.6. Some examples of these types of marine contracting companies are Subsea7, Heerema Marine Contractors, Aker Marine Contractors and Technip. Their main customers are the oil and gas companies and their main costs and tools are the vessels, usually chartered from different shipowners.
There are many ways of structuring a marine contracting company and the structure changes depending on vessel availability, oil prices, financial situations, interest rates, and other market situations. Some marine contractors owns vessels and works also as shipowners, some charter on short time, some charter vessels on long time, and some combine shipowning and chartering. Since there are high amounts of money and risks involved in the industry the clue is to find solutions that the marine contractor can live with. Therefore it is important to have control over as many risks as possible. Market situations are risks that are almost impossible to control. Contractual economic risks on the other hand are possible to control and therefore I will focus on them.

1.2.2 Background
The Marine Contracting industry is highly influenced by oil prices, but also periods after nature disasters are of great importance for Marine Contractors.
When the oil prices are high or has a growing trend the oil companies has a tendency to increase the number of projects dramatically. This leads to a growing market for these specialist vessels and results increased vessel rates. In periods like this there is no problem to win contracts, but the problem is to secure vessels that can do the work. The shipowners order new vessels and the contractors sign long time charters to secure the vessels, sometimes years before the vessels are built and ready to operate. In growing periods like the ones described above it is tempting to believe that the market will continue to grow and therefore many “problematic” contracts are written. For example, the oil price fell from 160$ a barrel to 50 $ a barrel in the year of 2008. This led to an extreme market shift and numerous of oil projects were cancelled. Several marine contractors faced 2009 with an insecure market and many vessels on costly long time charters with no back log. With day rates above one million kroner it is extremely expensive to not have enough contracts to secure work for the vessels.

1.2.3 Tender Phase – offshore installations

The Tender Phase, from the marine contractors’ point of view, is the work of securing new contracts towards their customers, mainly the oil companies. The marine contractors’ business development department searches the market and expresses their interest of work towards the oil companies. The oil companies usually sends out a so called Tender Prequalification to find out if the marine contractor is capable of doing the work of interest for them. When there is work to be done the oil company sends out a so called Invitation to Tender to several marine contractors capable of doing the work. Each marine contractor reviews their Invitation to Tender and decides whether to bid or not. If the marine contractor decides to bid and to compete for the work he/she notifies the oil company in writing. Then there is an internal kick off for the tender and the tender team mobilizes. The tender team varies in size depending on the customers’ requirements. In large and mid size tenders towards oil companies, like British Petroleum and StatoilHydro, the tender usually consists of ten to fifteen specialists. The specialist areas are usually planning, engineering, method, vessel/assets, procurement, contract, HSE, QA – risk and cost. The Method Statement is the basis for the tender and describes in detail how the Marine Contractor proposes to do the project. The planner prepares a detailed Plan based on information given
by the engineers and written in the Method Statement. Vessel/assets secure vessels that fit
the requirements in the Method Statement and make sure that the vessels are available
according to the proposed Plan. The cost estimator combines information from the tender
team with variables and historical data and prepares a Cost Estimate. All information in the
Tender is checked by contractual specialist, lawyers and the management team. If approved
the Tender is ready to be submitted. The complete Tender is usually a document of several
hundred pages and is relatively extensive. The customer/oil company reviews all tenders
submitted by the different Marine Contractors. After final negotiations the contract is
awarded to one of the Marine Contractors.
The Tender Phase can last from a couple of days to several months. It is sometimes an
extremely hectic period for the Marine Contractor because of short deadlines from the
customers. At the same time the Tender Phase is also of great importance and risk for the
Marine Contractor. There are many questions about the risks involved in a Tender. Is the
cost estimate ok? Are the vessels suitable for the project secured? Do we have vessels to a
competitive price? Is the method good enough? Are the HSE plan and documents good
enough and in accordance with the customers’ requirements? Is the procurement plan ok?
Is the schedule good enough and is it possible to implement in the real project? How good
is quality of the total Tender package? The Tenders are usually binding, usually from 30 to
150 days, so the quality of work done in the Tender Phase can have great importance of
how successful the project will be.

1.2.4 Project Phase – offshore installations
The Project Phase, from the Marine Contractors’ point of view, starts when the Tender/
Project is awarded. There is usually a project kick off and then the tender team mobilizes.
The mid size and large offshore installation projects usually lasts from two to four years
and the main period of time is spent on preparations for the offshore installation part. The
Project Phase is divided into different milestones. Time limits and milestones are of great
importance since the oil companies do not earn money before the first oil is pumped up
from the field. Therefore the contracts usually contain economic penalties if the milestones
are not followed. The first milestones are mostly production of detailed engineering and
method documents. The customer/oil company usually order changes, so called Change
Orders, during the project and between the milestones. The Change Orders can be everything from changes in the project plan to changes in weight and size of the Contract Object. It is not unusual that the total number of changes exceeds hundred during a large project. For the Marine Contractors it is extremely important that all changes are identified and given the exact cost so that they do not create economic problems or obstacles to the plan, vessels or HSE.

The offshore installation is the phase where the vessels are used. The use of vessels can be everything from only a couple of days to several months depending on the type of project. A project can also have several installation phases. For example, when FPSO’s are installed in Norway the first offshore phase is installation of anchors and chains, usually in the spring. The next offshore phase is tow and hock up of the FPSO, usually done in the spring one year after the anchor installation. Some hulls and complete FPSO’s are constructed in other parts of the world and must be towed. This creates a third offshore phase with vessels involved. For example, the BP Skarv FPSO is constructed in Asia and towed to Norway.

There are many risks involved in securing a safe installation at field. For example economic risks as waiting on weather, customs declaration and vessel break down. Other examples are safety risks for the crew related to the operation and in some countries the risk of piracy and robbery.

1.2.5 The vessels

There are numerous of different types of vessels used by marine contractors. Below I will give a presentation of some chosen vessels that are common to the industry.

1.2.5.1 Multi Purpose Construction Vessels (MPCV)

These vessels are important tools for the marine contractors. A typical MPCV is the BOA Deep C. BOA Deep C is owned by Taubåtkompaniet and long time chartered by Aker Marine Contractors. The vessel is designed to execute ultra-deepwater marine operations of, for example, suction anchors to the FPSO’s or Templates used to pump gas from the seabed. Length is 119, 3 meters, breadth is 27 meters and deadweight is 7900 ton. BOA Deep C is equipped with a 250 ton mid-ship crane and a 30 ton stern crane with working depth down to 2000 meters. The Remotely Operated Vehicle (ROV) onboard is rated to
3000 meters operational working depth. BOA Deep C is also equipped with one 500 ton anchor handling winch and two 500 ton towing winches.

1.2.5.2 Anchor Handling Tug Supply Vessels (AHTS)

The Anchor Handling Tug Supply Vessels (AHTS) are the most common and they are built to serve the oil exploration and oil production industry World wide. Bourbon Orca, owned by Bourbon Offshore, is an AHTS with the well known Ulstein x-bow design. Length is 86,2 meters, breadth is 18,5 meters and deadweight is 3180 ton. The vessel is equipped with diesel electric power plant, large azimuth main thrusters, high capacity AHT winches and anchor handling equipment, ensuring the vessel to obtain the best operating characteristics in both sailing, anchor handling, and DP/maneuvering modes.

1.2.5.3 Semi-submersible Heavy Transport Vessels (Float-on / Float-off)

Semi-submersible Heavy Transport vessels has large open cargo decks that make them ideally suited to transport large and oversized cargoes. The world's largest heavy transport carrier is the Blue Marlin, owned by Dockwise. Overall length is 206,5 meters and breadth is 63 meters. Deadweight is 76,410 tons. Blue Marlin is able to carry ultra large and heavy cargoes. The deck on Blue Marlin provides a safe platform for a wide variety of cargoes, as for example ultra large floating production and drilling platforms up to 73,000 tons. The Blue Marlin enables oil companies to build fully integrated units anywhere in the world and transport them to the final offshore destination, in order to limit hook up and commissioning at the offshore location. The vessel is equipped with a ballasting system specially designed for float-on/float-off, roll-on/roll-off, skid-on/skid-off, lift-on/lift-off or any combination of these methods.

1.2.5.4 Offshore Construction Vessels (OCV)

These vessels are similar to the MPCV’s, but larger and equipped with more equipment. A typical OCV is the BOA Sub C. Sub C is owned by Taubåtkompaniet and long time

1 http://www.bourbon-offshore.no/default.asp?menu=15&id=22
2 http://www2.dockwise.com/vessels/node/195
chartered by Aker Marine Contractors. The vessel is designed to execute ultra-deepwater marine operations. For example, installation of Umbilicals with the Flexible Deployment System, installation of mooring systems or Templates used to pump gas from the seabed. Length is 138,5 meters, breadth is 30,6 meters and deadweight is 12000 ton. BOA Sub C is equipped with a 400 ton mid-ship crane and a 30 ton stern crane both with working depth down to 3000 meters. The Remotely Operated Vehicle (ROV) onboard is rated to 3000 meters operational working depth. The vessel is equipped with one 600 ton anchor handling winch and two 500 ton towing winches. The Flexible Deployment System (FDS) onboard is designed to install flexible pipes. The FDS has 150 ton capacity and 1200 m/hr lay speed. BOA Sub C is also equipped with a Carousel to store flexible pipes. The Carousel is an above deck basket type with 2500 ton capacity.

1.2.5.5 Deepwater Construction Vessels (DCV)

These are the largest heavy lifters on the planet and the largest of them all, so far, is the Thialf. Thialf is owned by Heerema Marine Contractors and capable of lifting 14,200 tons. Thialf’s lifting capacity is one topside or, in other words, 10,000 cars in one go. Overall length is 201 meters and width is 88 meters. GRT is 136,709 tons and Thilaf is equipped to accommodate 736 men. Thialf was, among others, employed on the Ormen Lange project.

1.2.6 Expertise

There are numerous of different types of components installed and removed by marine contractors. Below I will give a presentation of some chosen areas of expertise that are common to the industry.

1.2.6.1 Mooring and Floater Installation

1.2.6.1.1 Installation of floating production units (FPSO)

A Floating Production, Storage and Offloading vessel (FPSO; also called a "unit" and a "system") is a type of floating tank system designed to take all of the oil or gas produced from nearby platforms or templates, process it, and store it until the oil or gas can be

offloaded onto a tanker or transported through a pipeline. The marine contractor’s job is
tow – to – field and installation at field of the FPSO’s.

1.2.6.1.2 Installation of gravity base structures (GBS)
A gravity base structure (GBS) is a support structure held in place by gravity. GBS’s
intended for offshore oil platforms are constructed of steel reinforced concrete, often with
tanks or cells which can be used to control the buoyancy of the finished GBS. When
completed, GBS’s are towed to their intended location and sunk. The platform structure
which a GBS supports is called the topsides. I will explain the topsides below in chapter
1.2.6.3. The GBS’s are often constructed in fjords because of their protected area and
sufficient depth is very desirable for construction. The Troll A gas platform is an example
of a GBS. The marine contractor’s job with the GBS’s is out – of – dock operations, tow –
to – field and installation at field.

1.2.6.1.3 Mooring systems
The mooring systems are used for station keeping and mooring of vessels and floating
offshore structures (FPSO’s and Mobile Offshore Drilling Units). The mooring systems can
be used in shallow water as well as deep water down to 3000 meters. A mooring system
consists of anchors, mooring lines and connectors. The anchors are usually cylinder shaped
and can be fifteen meters tall, 5 meters wide and weigh 200 ton each. Nine, twelve or
sixteen anchors are usually used when installing FPSO’s. The mooring lines can consist of
chains, metal wire ropes and synthetic fiber ropes. The mooring lines are connected to the
anchors and FPSO’s with connectors. The mooring systems are usually installed by MPCV
or OCV vessels. A typical mooring system installation is the Gjøa FPSO in 2009.

1.2.6.2 Installation of Structures, Umbilicals, Risers and Flowlines (SURF)
As the oil and gas field development has moved into deeper waters, the subsea installations
have become an important part of marine contracting. The subsea structures are the
Templates, manifolds and other subsea equipment usually used to pump oil and gas from
the sea bed. They are transported and installed on the sea bed by crane and ROV operations
from the OCV’s. A Flowline is a pipe that acts as a return tank to the mud tanks. A Riser is
a pipe or assembly of pipes used to transfer produced fluids from the seabed to the surface facilities or to transfer injection fluids, control fluids or lift gas from the surface facilities and the seabed. An Umbilical is an assembly of hydraulic hoses which can also include electrical cables or optic fibers, used to control subsea structures from a platform or an FPSO. The Umbilicals are usually transported on carousels and installed with flexible deployment systems from the OCV’s.

1.2.6.3 Floatover of topsides / mating

A topside is what we usually see as the oil platform. It consists of most of what we can see above sea level. For example the housing, flare boom and helicopter deck are all parts of the topside. In areas where floating cranes are scarce or unavailable, or when available cranes’ capacity cannot handle the topside weight, floatover is a viable solution for the installation of topsides onto its substructure. The vessels used for floatover of topsides are the Semi - submersible Heavy Transport Vessels (Float - on / Float - off). The greatest advantage of floatover is that most of the commissioning can be done onshore, saving expensive and time-consuming offshore work. Typical floatover installations were the Angel project (7500 t) outside the coast of Australia in 2008 and the Kristin Semi project (20000 t) outside the coast of Norway in 2004.

1.2.6.4 Field abandonment

The oil and gas installations do only have a limited life cycle. After thirty to forty years of operation they must be removed. A removal operation offshore is complex, often more complex than the original installation. The condition of the platform, its residual strength, actual weight and other factors must all be assessed and taken into consideration. Field abandonment is an increasing area of work for the marine contractors. It consists of everything from removal of subsea installations to re float and tow of units to shore. The vessels used for field abandonment varies from MPCV’s to DCV’s. A special buoyancy tank method designed by Aker Solutions/Aker Marine Contractors is also used for field abandonment. The buoyancy tanks are fitted to jackets and de ballasted. When the jackets are floating, they are towed to the inshore demolition site where they are cut into pieces and the steel is reused. One example of field abandonment is the Frigg Cessation project. The
project consisted of re float, towage and deconstruction of the 11600 t jacket from the Frigg field outside Norway in 2008.

1.3 The further presentation

The following presentation is meant to be used as a tool for lawyers, project managers, tender managers and others who are working with contracts related to marine contracting and marine operations.

Part 1 is a general presentation of marine contractors and their work. Part 2 is a presentation of two important standard contracts used by marine contractors. Part 3 is a risk analysis and forms the main chapter. I have tried to identify some of the potential economic risks that marine contractors can face because of the obligations they are bound to by the contracts described. Part 4 is a conclusion of the most central areas of this presentation.

This presentation is a product based on experience, knowledge and interviews. The knowledge is gained through my Master of Law in Maritime Law (LLM) studies and the courses, Petrolueumkontrakter, International Commercial Law, Maritime Law and Marine Insurance lectured by the Scandinavian Institute of Maritime Law at the University of Oslo combined with knowledge from my degree in Business Administration. I have also interviewed a handful of the most experienced professionals in this industry and my own experience is gained through employment by a Norwegian marine contractor.
2 The Contracts

The following presentation is a discussion of to the two standard contracts SUPPLYTIME 05 and the Norwegian Subsea Contract 05 (NSC 05). These standard contracts are frequently used by the major companies on the Norwegian continental shelf and sometimes also outside Norwegian boarders.

2.1 SUPPLYTIME 2005 – Time Charter Party for Offshore Service Vessels

SUPPLYTIME is one of the standard contracts used by marine contractors to charter vessels for marine operations. SUPPLYTIME is published by BIMCO and adopted by ISOA. The first version of the Time Charter Party was published in 1975 on demand from the offshore service industry and it was revised in 1989 and 2005. This Time Charter Party is based on Baltime 39 and the standard contracts of the Dutch shipowner Smith-Loyd, the German Offshore Supply Association (OSA) and the Norwegian shipowner Whilhelmsen. SUPPLYTIME is part of a suite of offshore industry related forms produced by BIMCO. The other forms in the suite include HEAVYCON, PROJECTCON, BARGEHIRE, TOWCON and TOWHIRE.

Since SUPPLYTIME was created mainly by Shipowners it is regarded as a Shipowner friendly time charter party. The Charterers, on the other hand, will usually argue for more charter friendly contracts. What kind of contract the parties agree is therefore usually influenced by the market situation.

SUPPLYTIME is used on everything from half day charters on the spot market up to long term charter parties of several years. The Charterers are, according to Woxholt and Gade.

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5 The Baltic and International Maritime Conference.
6 International Support Vessel Owners’ Association, London
7 Woxholt & Gade, 1979, p.15.
8 www.bimco.org.
9 Woxholt & Gade, 1979, pp.16 - 17.
usually not interested in using SUPPLYTIME on charter parties exceeding 30 days, but the contract is very popular on the spot market. My experience from the business today is that the period of hire varies and that it is not unusual to use SUPPLYTIME on contracts up to five years when the market is good. I have several examples on long term SUPPLYTIME charter parties signed in the period before autumn 2008\textsuperscript{10}.

2.1.1 Layout

SUPPLYTIME is divided into three parts. The layout in part 1 is a system of boxes. The boxes are filled with the names of the parties, name of the vessel, date and place of delivery, period of hire, charter hire etc. Part 2 contains printed standard clauses. In this layout all the negotiable variables are put in part 1, but part 2 remains unchanged. The reason for this system is to avoid conflict of clauses and to secure that the balance of responsibility and risk between the parties remains unchanged. Part 3 contains the technical description. Since the vessels are employed in complex operations it is necessary to have a high degree of details in the description of vessel and equipment. The technical description for offshore support vessels is similar to the ones in tanker charter parties, but usually with more details.

2.1.2 Governing Law and Place of Arbitration

Standard contracts like SUPPLYTIME 05 are often considered to live their own lives outside the normal legal system. However, this is not true and it is important to be aware that enforceability and State law must be considered in addition to the contract. The governing law and place of arbitration is stated in box 34 and described in clause 34 of SUPPLYTIME. The parties usually agree to one of the three alternatives written in clause 34. The parties often believe that they are not bound to state law. All parties are, as a main rule, bound to the law of their own state. However, the freedom of contract, the choice of arbitration and governing law is normally accepted by the different states. Very many

\textsuperscript{10} The use of SUPPLYTIME as a long term contract is confirmed by some of the main marine contractors. However, I will not present examples here because of confidentially and competition in the market.
states, including Norway, have ratified the New York Convention of 1958\textsuperscript{11} which ensures, to a great extent, the jurisdiction and enforceability of arbitral awards. The rule regarding freedom of contract under Norwegian Maritime Law is stated in the Maritime Code section 322. I will discuss this further, below in chapter 3.2. My discussion is based on Norwegian governing law and place of arbitration.

2.1.3 Owners obligations

The Owners obligations in SUPPLYTIME are mainly connected to the vessel and the crew. Obligations specified in the contract are, for example, clause 8 “Owners to Provide” in SUPPLYTIME. Clause 8 specifies the owners’ obligations related to wages and other expenses of the crew and to the maintenance and repair of the vessel. The quality of the vessel and the Owners obligations are of great importance for the Charterers because he/she bears many of the commercial risks connected to the charter party, especially those related to delays. Below I will give a presentation of some chosen areas of the Owners obligations under SUPPLYTIME.

2.1.3.1 Charter Period, Delivery and Redelivery

It is important to know the exact charter period, and the time and place of delivery and redelivery, since the obligations of the parties are only binding in this period.

The charter period is stated in box 9 and described in clause 1 of SUPPLYTIME with a possibility of extension of period of hire stated in box 10.

The period of hire (box 9) is usually written as the agreed number of days, months or years. Alternatively, according to Woxholt and Gade\textsuperscript{12}, the period of hire can be more closely connected to the operation and written as “until completion of operations”. This is not regarded as Owner friendly, especially in periods with falling rates.

The port or place of delivery and redelivery is stated in box 7 and 8 and described in clause 2. The Vessel shall be delivered free of cargo and with clean tanks at the port or place

\textsuperscript{11} http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html

\textsuperscript{12} Woxholt & Gade 1979, p.47.
stated in Box 7\textsuperscript{13}. The vessel shall be redelivered on the expiration or earlier termination of the Charter Party at the port or place as stated in box 8 or such other port or place as may be mutually agreed by the parties\textsuperscript{14}. However, if the Charterer has an extraordinary right to early termination because of breach of contract by the Owners then the Charterer has a right to redeliver the vessel at the place where the vessel is at the time of termination of the contract, according to Woxholt and Gade\textsuperscript{15}.

The Owner has an obligation to deliver the vessel in the period from the date of delivery stated in box 5 and to the cancelling date stated in box 6. If the Owner will be unable to deliver the Vessel by midnight local time at the cancelling date he/she can ask for extension of the cancelling date in writing. The Charterer must then make the decision within 24 hours in writing. This delivery clause is extremely Owner friendly and I will discuss this further below in chapter 3.1.

2.1.3.2 Speed and Bunkers

In SUPPLYTIME speed and bunkers is stated in the specifications. Speed and bunkers is closely connected to costs for the Charterers and is important, especially, in periods with high oil and bunker prices. However, since most of the offshore operations are on standby or within short distances SUPPLYTIME have chosen to state speed and consumption as “approximate” numbers in “fair weather”. This is similar to the “about” numbers used in dry bulk charter parties\textsuperscript{16} and regarded as Owner friendly. Speed and bunkers is normally not disputed by the Charterers even though the cost and risk is born by them. But there are situations where the Charterers would prefer a more Charter friendly contract. Long distance towage of FPSO’s from Asia to Norway or Deepwater Construction Vessels that are used both in the Gulf of Mexico and Norway are examples where marine contractors are exposed to major costs related to bunkers and speed. In these situations the best

\textsuperscript{13} SUPPLYTIME 2005, Clause 2 (d), Line 27 – 32.

\textsuperscript{14} SUPPLYTIME 2005, Clause 2 (d), Line 66 – 70.

\textsuperscript{15} Woxholt & Gade 1979, p.47.

\textsuperscript{16} Please see. Gram, s. 173f, Baltime 39, line 7, Produce line 10.
solution for the Charterer is to choose a clause similar to those used in tanker charter parties. These contracts guarantees for speed and consumption in any weather conditions. 

2.1.4 Charterers obligations

The Charterers obligations in SUPPLYTIME are mainly connected to the payment of charter hire, bunkers and harbor fees. Below I will give a presentation of some chosen areas of the Charterers obligations under SUPPLYTIME 05.

2.1.4.1 Charter hire

The charter hire is stated in box 20 and described in clause 12 in SUPPLYTIME with a possibility for extension of hire stated in box 21. The Charterers obligation is to pay hire “…from the time that the vessel is delivered to the Charterers until the expiration or earlier termination…” A possible dispute is to decide the exact time of expiration. The Vessel must be clean and cleared and the Charterer must have winded up its relationship to the Vessel, according to ND 1957.296 Kirsten Skou NV.

The mobilization charge is stated in box 12 and described in clause 2(b)(i). The demobilization charge is stated in box 15 and described in clause 2(e) and 31(a). Mobilization and demobilization is paid as lump sum and does normally cover installation and removal of special equipment, and steaming to and from the agreed port or place of delivery and redelivery. The time and place of payments are stated in box 22, 23 and 26 and described in clause 12. It is important for the Charterers that they follow the contract strictly regarding payments since the Owners can claim withdraw the Vessel from the charter party if late payments.

2.1.4.2 Off – Hire

The Charterer is, as a main rule, only obligated to pay hire to the Owner when the Vessel is working according to the contract. If not, the vessel can normally be regarded as off –

17 Please see. Gram, s. 173, Shelltime 3, cl. 24.
20 Woxholt & Gade 1979, p.66
hire and charter hire ceases. In SUPPLYTIME the main rules regarding off – hire is described in clause 13 – Suspension of Hire. The rules regarding off – hire and the problems related to vessels not working is of great importance for the marine contractors. Marine contractors are usually bound by contract to pay penalties to their customers if delays and they do also have extra equipment and people working for the cost of several hundred thousand dollars each day. This consequential loss is to be covered by the Charterers, according to SUPPLYTIME clause 13 (b). I will describe this problem in detail below in chapter 3.2.

2.2 Norwegian Subsea Contract 05

The Norwegian Subsea Contract 05 (NSC 05) is one of the standard contracts used between marine contractors and their customers, mainly oil companies, for contracting within the subsea segment. The intended application of the NSC is contracts for marine operations such as installation of pipelines, cables, umbilicals and other subsea structures and related subsea construction work where the use of vessels is involved. This standard contract captures both “installation only” contracts as well as full EPCI type contracts and addresses specific risks in connection with subsea work and the operation of vessels.21

The preparation of the standard contract was initiated by OLF The Norwegian Oil Industry Association. OLF is a professional body and employer’s association for oil and supplier companies engaged in the field of exploration and production of oil and gas on the Norwegian Continental Shelf.22 The participants in the negotiations of the latest version of the contract, NSC 05, were Statoil, Stolt Offshore, Subsea 7 and Technip Offshore Norge. The NSC 05 is based on the Norwegian Fabrication Contract 92 and the Norwegian Total Contract 2000 with modifications to fit the purpose of the contract and the use of vessels.23

The Norwegian Fabrication Contract is a standard contract used for fabrication of large components to the petroleum industry on the Norwegian continental shelf. The first version of the Norwegian Fabrication Contract was negotiated and made in 1987 by Norsk Hydro

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21 Introduction to NSC 05, NIS, Materialsamling i Petroleumskontrakter, Oslo 2007, p. 106.
22 http://www.olf.no/about-olf/olf-the-norwegian-oil-industry-association-article2910-292.html
a.s, Saga Petroleum a.s and Statoil a.s (Den norske stats oljeselskap) on one side and the National Association of Technology Companies (TBL) on the other side. The Norwegian Total Contract is a standard contract used on the more complex and larger EPC(I) (Engineering, Procurement, Construction and Installation) contracts on the Norwegian Continental Shelf. The Norwegian Total Contract was first made in 2000 and is based on the Norwegian Fabrication Contract. One example of the usage of this type of contract is for the construction of large FPSO’s (Floating, Production, Storage and Offloading vessel). The Norwegian Total Contract is usually used for the construction of the FPSO’s and the NSC is usually used for the installation of the FPSO’s.

2.2.1 The Contract – Conditions of Contract and Exhibits

The NSC 05 is divided into 10 parts which forms this standard contract. In addition to these conditions the Contract consists of Exhibit A to Exhibit L which is specific to each project24.

As mentioned above, the NSC is based on the Norwegian Fabrication Contract. Some of the main changes from the Norwegian Fabrication Contract 92 are the special rules regarding “Offshore Work” (art. 16.1, second paragraph), “Weather Downtime” (art. 4.7), the risk for “soil and seabed conditions” (art 6.1 last paragraph, please also see art 23.1), “The Spread” (art. 9 and 26.1), the effects of a variation on the schedule with due consideration to Contractor’s commitments under other contracts (art 13.3.b), and detailed rules regarding cancellation (art 17.3)25. Below I will give a presentation of some chosen areas in the different parts of the NSC.

2.2.1.1 Part 1 – General Provisions

Part 1 consists of articles regarding central definitions in the contract, the interpretation of the contract documents and Contractor and Company representatives. Each party shall appoint a representative with authority to act on its behalf in all matters concerning the contract.

24 Norwegian Subsea Contract – NSC 05, Rev. 0, 08.03.2005, Art. 2.
2.2.1.2 Part 2 – Performance of the Work

Part 2 regulates central areas of the Contractors planned Work according to the agreed contract\(^{26}\). Weather is an important factor since the Work is done offshore with vessels that can only be operated safely under certain weather conditions. Weather Downtime is defined in Art. 1 and means a period of time when the progress of the Work is prevented solely due to adverse weather conditions in excess of the capabilities of the Spread (Vessel). In the event the Work is prevented as a consequence of Weather Downtime, then Contractor is entitled to be paid in accordance with the rates in Exhibit B - Compensation. In addition, Contractor may be entitled to an adjustment of the Contract Schedule in accordance with the provisions of Art. 12 to 16 \(^{27}\).

Other important regulations in Part 2 are those regarding Company Provided Items. The Company provides the Contractor with items, like Drawings and Specifications, during the Project for performance of the Work. According to Art 6.2 and 6.3, Contractor shall make an immediate visual inspection of Company Provided Items and within 48 hours give notice of any damage or defects. If Contractor has not notified the Company all extra cost shall be borne by Contractor. This also applies to soil and seabed conditions set out in Specifications. If not set out in Specifications then Contractor is, according to Art. 6.1. 4\(^{th}\) paragraph, entitled to an adjustment of the Contract Schedule and the Contract Price for delays or costs incurred as a result of soil and seabed conditions.

The Spread is defined in Art. 1 and means all vessels and barges provided by Contractor for the performance of the Work together with all necessary personnel, equipment and consumables. Rules regarding the Spread are stated in Art. 9 and specifies Contractors obligations required by the Contract. Contractor has the right to substitute the Spread with vessels and/ or equipment having similar or better specifications and capabilities. However, Contractor shall carry all costs. I will discuss problems and risks regarding the Spread in chapter 3.

\(^{26}\) Kaasen, 2006, p. 103.

\(^{27}\) Norwegian Subsea Contract – NSC 05, Rev. 0, 08.03.2005, Art. 4.7.
2.2.1.3 Part 3 – Progress of the Work

Contractor’s progress of the Work is usually of significant importance for the Company.\(^{28}\) The Oil companies do not earn money before production has started and they have oil or gas to sell in the market. The NSC usually covers the last phase before production start and delays can be extremely expensive. For example, in Norwegian waters it is usually impossible to perform marine operations between late fall and early spring. Problems with the vessels or other obstacles to progress of the Work can lead to delays amounting up to half a year. Therefore the requirements to quality and progress of the Work are very high for marine contractors and the vessels used. The general rule is, according to Art 11, that Contractor shall perform the Work in accordance with the milestones set out in the Exhibit C – Contract Schedule. If Contractor believes that the Work cannot be performed in accordance with the milestones he/she must notify Company. Company may require Contractor to take measures considered necessary to avoid, recover or limit delays.

2.2.1.4 Part 4 – Variations and Cancellation

The rules regarding Variations to the Work can be considered as the most central part of NSC when it comes to dynamic contract law. The rules regarding Variations are agreed systems or processes to change originally agreed rights and duties in the contract.\(^{29}\) A normal project agreed under the terms of the NSC lasts for several years and it is not unusual that the Company need to order Variations to the Work during the project. Part 4 covers the agreed rules regarding Variations in detail. The central documents used are Variation Order Requests (VOR), Variation Orders (VO) and Disputed Variation Orders (DVO). The Company has a right to order Variations to the Work, according to Art. 12, but these orders are not always instructed in a formal document. The Work can be instructed through an email to an engineer or orally in a meeting or by telephone. If the Contractor means that the Work required is not part of the originally agreed obligations under the Contract, then Contractor shall submit a Variation Order Request, according to Art. 16.1. The VOR must be submitted without undue delay or else the Contractor looses its right to


\(^{29}\) Kaasen, 2006, p. 270.
claim Variation to the Work. After having submitted a VOR, Contractor is not obligated to implement the instruction until an answer in form of a VO or a DVO from Company is received. However, according to Art 16.1 second paragraph, instructions related to Offshore Work shall be implemented even if Contractor has submitted a VOR.

The VOR must contain an estimate that describes the Variation and shows the effect on the Contract Price and the Contract Schedule, in accordance with Art 12.2. If a VOR is submitted the Company can choose between issuing a VO, issuing a DVO or to dismiss the instruction. If a VO is issued then the Contractor has a duty to perform the Variation to the Work, but also a right to get the agreed change on the Contract Price and the Contract Schedule. If a DVO is issued the Contractor still has the duty to perform the Variation to the Work, but may not be entitled to a change in the Contract Price and the Contract Schedule if Company disagrees to this. The dispute may be decided by an expert according to Art 16.3. If the dispute is still not agreed then it can be resolved by arbitration or court proceedings according to Art 16.4. It is important that the parties, especially the Contractor, follow the time limits set out in Part 4 or else the right to claim compensation is dismissed. The rules regarding time limits are, among others, important tools to secure progress of the Work for the Company, but require a high degree of professionalism in the Contractors internal administration systems. I will discuss the rules regarding variations further, in chapter 3.5, as a contractual risk.

The rules regarding cancellation are described in Art. 17 and covers Company’s right to cancel parts of the Work. The Contractor can claim for cancellation fees according to the rules described in Art. 17.2. In addition to this Contractor can claim for cancellation fees as described in detail in Art. 17.3. For example, if the cancellation date occurs within 180 days prior to planned Mobilization then Contractor can claim a percentage of unearned sums directly related to the Offshore Work affected. The Company has also a right to temporarily suspend the Work in accordance with Art. 18.

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2.2.1.5 Part 5 – Delivery and Payment

Part 5 regulates the payments for the different Work Packages during the project, as well as the payments and guarantees in connection with delivery and completion of the Work. Delivery occurs when the parties jointly, upon Contractor’s request, conclude a Delivery Protocol or Interim Delivery Protocol when the Delivery Date has been reached, the Offshore Work and/or the Contract Object has been completed, has passed the tests specified in the Contract and is ready for delivery., according to Art 19. The Delivery Protocol can also be concluded even if minor parts of the Offshore Work remain incomplete. When all the Work is completed, with the exception of guarantee work, then Company shall issue the Completion Certificate in accordance with Art. 19.5. The Company shall pay the Contractor in accordance with Exhibit B – Compensation and the rules in Art. 20. However, Company has no obligation to pay until Contractor has submitted a Bank Guarantee, according to Art. 20 and Exhibit J. The rules regarding Contractors guarantees are described in Art. 23. The Guarantee Period is, as a general rule, two years from the issue of the Delivery Protocol(s). It is worth to mention that the guarantee does not apply to dredging, trenching, ploughing, span corrections, back-fillings, burial or rock dumping if the relevant Spread is demobilized. When the Work, including guarantee work, has been completed then Company shall issue the Acceptance Certificate in accordance with Art. 23.5.

2.2.1.6 Part 6 – Breach of Contract

Part 6 covers the important part of NSC regarding breach of contract. There are significant differences between the sanctions for breach made by the Contractor and breach made the Company. The reason for this difference is that, according to Kaasen, the Contractor shall only have money in the end and that everything else is only milestones on the way. The Company, on the other hand, has its main interest in the Contract Object. The Contract Object is a tool that the Company will later use to earn money. Because of this conflict of interest the contract is strict, especially against the Contractor, on certain areas of breach of

31 Norwegian Subsea Contract – NSC 05, Rev. 0, 08.03.2005, Art. 23.1, second paragraph, letter b).
contract. One example is the rules regarding Contractor’s delays. Contractor must pay penalties to Company if Contractor is delayed from the agreed milestones. The milestones and the penalties are prescribed in Exhibit C – Contract Schedule.

Another important sanction against the Contractor is the rule regarding delays and problems with the vessels. The Company is, according to Art. 26.1, entitled to terminate the whole Contract with immediate effect if the Spread is unable to perform the Work for a period of 20 cumulative days, due to breakdown / repair / maintenance or other non-compliance with the Contract. I will discuss the potential risks involved with delays and breach of contract, below in chapter 3.

2.2.1.7 Part 7 – Force Majeure

The definition of Force Majeure is described in Art. 1 q) and means an occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time of entering into the Contract and could not reasonably have avoided or overcome it or its consequences.

If an obligation under NSC has been prevented by Force Majeure then neither of the parties shall be considered in breach of that obligation, according to Art. 28. If Force Majeure, the rules in Part 6 of NSC are suspended. There shall be no economic liability on the party hit by Force Majeure.

2.2.1.8 Part 8 – Liability and Insurances

Part 8 regulates liability and insurance in NSC. Art. 29 and 30 regulates which party of the contract that has risk if loss or damage occurs. The regulation of liability used in NSC is the so called “knock – for – knock” principle which means that damage stays with the party where the damage occurs.

This form of contractual allocation of liability stems from an agreement of shipping between USA and the allies during the Second World War. Each of the parties should,

\[33\] Kaasen, 2006, p. 709.
according to the agreement, bear the damage to vessels belonging to an allied State if they collided with a vessel from another allied State\textsuperscript{34}.

The knock – for – knock principle means, firstly, that the contractual parties must sacrifice their mutual right to claim compensatory damage from each other if property belonging to one of them has been damaged or lost as a consequence of the other party. Secondly, the contractual parties must sacrifice their mutual right to claim recourse for liability towards certain third parties. Thirdly, the contractual parties must indemnify the other party for liability towards certain third parties\textsuperscript{35}.

The central part of this principle is that the risk for damage is distributed on the basis of for who the damage occurs, not on the basis of who caused the damage, or if it was caused by fault or neglect\textsuperscript{36}. For a further discussion of the knock – for – knock principle please see below in chapter 3.3.1.

Art. 31 regulate what kind of insurance each party must provide and maintain. The contractor shall provide employer’s liability insurance and ordinary third-party insurance. The contractor shall also provide hull- and P&I- insurance when vessels or other floating objects are used during the Work\textsuperscript{37}.

2.2.1.9 Part 9 – Proprietary Rights, etc

Part 9 regulates each party’s right to information, technology and inventions, as well as rules regarding confidential information. Commercial and technical information, including drawings, documents and computer programs regardless of method of storage, and copies thereof, provided by Company to Contractor shall be the property of Company. The same applies to information provided by Contractor, according to Art. 32.

The general rule in Art 33 states that all information exchanged between the parties shall be treated as confidential and shall not be disclosed to a Third Party without the other party’s written permission.

\textsuperscript{34} Bull, 1988, p. 333 et seq. & The Knock-for-knock agreement, AfS 3 p. 448 et seq.
\textsuperscript{35} Bull. 1988, p. 346-347.
\textsuperscript{36} Bråfelt, 2008, p. 352.
\textsuperscript{37} Bull, 1988, p. 407.
2.2.1.10 Part 10 – Other Provisions (Governing Law and Arbitration)

Part 10 covers total limitation rules, rules regarding assignment to third parties, notices and dispute rules.

Contractor’s total liability for breach of contract is limited to 25% of the Contract Price, according to Art. 34.2. This rule applies regardless of whether the Contract is terminated or not.

The NSC shall be governed by Norwegian law in accordance with Art. 37, if any disputes between the parties arise. Disputes can be resolved by mutual agreement or through arbitration. If not agreed, then disputes shall be settled by court proceedings in Stavanger district court in accordance with Norwegian law. For a further discussion of governing law and place of arbitration, please see above in chapter 2.1.2.

2.2.1.11 Exhibits

The Conditions of Contract (Part 1 to 10) is the standard contract part of NSC 05. The content of the Exhibits are different from project to project. When marine contractors are invited to Tender the Company usually asks for information to be provided in the Exhibits in NSC. If a Contract is awarded then most of the information provided in the Tender will form the Exhibits in NSC. The Exhibits usually consist of Scope of Work (Exhibit A), Compensation (Exhibit B), Contract Schedule (Exhibit C), Administration Requirements (Exhibit D), Specifications (Exhibit E), Drawings (Exhibit F), Company Provided Items and Services (Exhibit G), Subcontractors (Exhibit H), Company’s Insurances (Exhibit I), Standard Bank Guarantee (Exhibit J), Contractor’s Proprietary Information (Exhibit K) and Parent Company Guarantee (Exhibit L).

The Scope of Work is an exhibit where much work is done by the marine contractors during the Tender phase. The Company asks for the method of executing the Work. The method statement is normally a document of 50 to 100 pages written by experienced engineers.

Another important exhibit is the Compensation. The document included in the contract is usually only 10 to 20 pages, but the calculation is usually based on enormous amounts of information and experience numbers.
A third important exhibit is the Contract Schedule. The Schedule is usually made by a planner and is based on experience and information provided from the engineers that writes the method statement.
3 Contractual Economic Risks

A contractual economic risk is the probability of economic loss or wins arising out of a contract. Marine contractors are exposed to great possibilities to earn good money, but there are also great amounts of risks and possibilities to loose in this business. Contractual economic risks are to some extent possible to control through knowledge and good risk management. Below I will give a presentation of some contractual economic risks exposed to marine contractors through obligations written in NSC and SUPPLYTIME.

3.1 Late delivery of vessels

The Owner has an obligation to deliver the vessel in the period from the date of delivery stated in box 5 and to the cancelling date stated in box 6 of SUPPLYTIME. According to clause 2 (c), “If the Vessel is not delivered by midnight local time on the cancelling date stated in Box 6, the Charterers shall be entitled to cancel this Charter Party”. However, the Owner can ask for extension of the cancelling date in writing. The Charterer must then make the decision within 24 hours in writing if he / she accept the new delivery date. If the Charterer cancels the Charter Party, it shall terminate on terms that neither party shall be liable to the other for any losses incurred by reason of the non-delivery of the Vessel or the cancellation of the Charter Party. This means that each party shall cover its own loss.

The delivery of vessels is of great importance and interest for marine contractors. Similarly to the shipowners, the marine contractors do also usually want to earn money on the vessels from day one. Therefore the marine contractors tend to have contractual obligations with their customers soon after the delivery date agreed with the shipowners. The penalties in NSC can lead to a major economic risk for a marine contractor if the vessel is delivered late.

Below I will give a presentation of some economic risks exposed to marine contractors if a new built vessel is delivered late. The presentation below does also relate to late delivery of vessels already in use.
3.1.1 New build vessels – Delays

Shipbuilding is highly influenced by market trends. If the market is good, like the offshore market until mid 2008, the demand for vessels is high and shipowners signs shipbuilding contracts. One example of a standard shipbuilding contract is the NEWBUILDCON\(^{38}\) published by BIMCO.

To secure income on the new build vessel the shipowners sign charter contracts even before the vessels are built. If we are in a peak of the business cycle, the shipowners are in a powerful position and shipowner friendly long term contracts are often signed with customers.

If the Charterer is a marine contractor then he or she usually wants to secure income on the vessel chartered. Therefore the marine contractors have a tendency to sign contracts with their customers, usually oil companies, before the vessels are delivered. The contracts are often signed on NSC terms. The offshore installation phase, agreed in NSC, can be scheduled to start one month after the latest agreed delivery date in SUPPLYTIME (Box 6 – cancelling date).

If the vessel is ready to operate and delivered as agreed, there is no problem and all parties are satisfied. However, delayed deliveries are not unusual especially in periods with high business activity.

The shipowners are usually covered to some extent for delayed delivery of new build vessels. One example is the late delivery compensation from the shipbuilders like the amounts stated in Box 18 of NEWBUILDCON. “If delivery takes place more than 30 days after the Delivery Date then for each day thereafter the Contract Price shall be reduced by the amount stated in Box 18 per day as liquidated damages…if the delay exceeds 180 days the Buyer shall have the option to terminate this Contract…”, according to NEWBUILDCON Clause 13. The amount of the late delivery compensation is meant to cover potential loss of income and cost related to the delay. The size of the amount depends on the cost of the vessel, but one example for a MPCV is NOK 1.000.000 per day.

\(^{38}\) https://www.bimco.org/Corporate%20Area/Products/Publications/NEWBUILDCON.aspx
The oil companies are usually also covered to some extent for delays. Through Art. 24 of the NSC and the penalty milestones set forth in the Exhibit C – Contract Schedule. The penalty milestones in connection with activities like mobilization complete and Offshore Installation Complete is of significant importance for the oil companies. The penalty amount for breach of these milestones can amount to NOK 1,000,000 per day.

The marine contractors are bound by contract to both shipowners and oil companies and can end up with contractual economic risk if new build vessels are delivered late. The SUPPLYTIME does not contain any Late Delivery Compensation similar to the one stated in Box 18 of NEWBUILDCON to cover their loss. The marine contractors can also be obliged to pay high amounts in penalties even though the breach of milestones are not caused by the marine contractor, but by the shipbuilder or the shipowner. The marine contractors must also pay employees, subcontractors and other costs related to late deliveries. The only reduction of risk related to late delivery in SUPPLYTIME is the cancelling date stated in Box 6. The marine contractor (Charterer) is entitled to cancel the charter party if the vessel is not delivered by midnight on the cancelling date, according to Clause 2 (c). This sounds like a powerful tool on the paper, but it is usually not very powerful in real life. It can be almost impossible to find a similar vessel on a similar rate in periods with high business activity. The marine contractors will most probably accept extensions of the cancelling date simply because they can’t secure other similar vessels in the market. Another potential solution is to charter a much more expensive vessel to do the work on time because the marine contractors do not want to loose their reputation towards their customers. As mentioned above, milestones and schedules are of great importance for the oil companies since their source of income starts when the offshore installation is completed. A bad reputation related to timeliness on a marine contractor can result in loss of customers and, in the worst case if no customers, bankruptcy.

The total potential economic risk for late delivery of new build vessels can amount up to several million NOK per day for marine contractors. As an example, there was a new build MPCV with agreed delivery date in June 2007. The vessel was signed in 2005 on a five year charter party on SUPPLYTIME terms and conditions. The vessel was delayed and delivered in November 2007, approximately five months after the agreed delivery date.
This happened in a period with extraordinary high business activity and the vessel was assigned on several projects contracted before the agreed delivery date. The total cost for the marine contractor related to finding other vessels was in the end amounted to over one hundred million NOK for this period of five months. The shipowner suffered only minor losses because of his /her late delivery compensation clause agreed in the shipbuilding contract.

One advice to marine contractors if negotiating SUPPLYTIME with potential shipowners can be to implement an obligation with late delivery compensation, similar to the Box 18 and Clause 13 of NEWBUILDCON in to SUPPLYTIME. This to divide some of the risk between Owner and Charterer and make the SUPPLYTIME more balanced. Another advice to marine contractors can be to avoid SUPPLYTIME on long term charters since it do not correspond with NSC on the regulations of delays.

3.2 Off – Hire

As described above in chapter 2.1.4.2, the Charterer (marine contractor) is only obligated to pay hire to the Owner when the vessel is working according to the contract. If not, the vessel can normally be regarded as off – hire and charter hire ceases. According to SUPPLYTIME clause 13, “if as a result of any deficiency of Crew or of the Owners’ stores, strike of Master, Officers and Crew, breakdown of machinery, damage to hull or other accidents to the Vessel, the Vessel is prevented from working, no Hire shall be payable in respect of any time lost…” The vessel normally goes off – hire. However the vessel does not go off – hire if he / she is prevented from working as result of the exceptions stated in clause 13 (a), (i) to (vi). For example, if the vessel is prevented from working as a result of acts or omissions of the Charterers, their servants or agents then the hire shall not cease. Another example where hire shall not cease is if the vessel has been exposed to abnormal risks at the request of the Charterers.

One of the most interesting clauses in SUPPLYTIME 05 is the clause 13 (b) regarding liability for vessels not working. This clause is interesting since it totally deviates from and
modifies the background rules of law. “The Owners’ liability for any loss, damage or delay sustained by the Charterers as a result of the Vessel being prevented from working by any cause whatsoever shall be limited to suspension of hire…”, according to SUPPLYTIME 05 clause 13 (b). This exclusion of liability clause is interesting since the shipowner’s total liability is limited to the loss of hire. Even though the Owner, in accordance with clause 13 (b), cannot become liable for consequential loss and other damages there is still a considerable preventive effect of this clause because the Owner looses its right to freight hire. However, between 30% and 50% of world fleet buy Loss of Hire Insurance so the Owners are therefore, in my opinion, not exposed to the same extra risk as marine contractors if vessels go off – hire.

The exclusion of liability under clause 13 (b) is excepted in Clause 11 (a) (iii) for “…loss, damages, expense and delay (excluding consequential loss, damages, expense and delay) caused by failure…to comply with the ISPS Code/MTSA…”. The International Ship and Port Facility Security Code (ISPS Code) was developed by IMO in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States. The ISPS Code is an amendment to the Safety of Life at Sea (SOLAS) Convention on minimum security arrangements for ships, ports and government agencies. The Maritime Transport Security Act (MTSA) was developed by the U.S. Department of Homeland Security and is similar to the ISPS Code. The goal of the MTSA is to prevent a maritime transport security incident related to loss of life and environmental damage. The intention of Clause 11 (a) (iii) is that the Owners must pay for loss as a consequence of breach of the above mentioned international security regulations, however this Clause also

41 http://www.uio.no/studier/emner/jus/jus/JUR5450/v09/undervisningsmateriale/LOH%20UiO%20March%202009_Sveinung_M.pdf
42 http://www.imo.org/Legal/mainframe.asp?topic_id=553
43 http://homeport.uscg.mil/mycg/portal/ep/home.do
excludes consequential loss and is therefore similar to Clause 13 (b) regarding liability towards marine contractors. Under Norwegian law there is a regulation of the off-hire situations in the Maritime Code Section 392. The regulation is non-mandatory\(^{44}\), but there has been a discussion whether exclusion of liability clauses similar to clause 13 (b) in SUPPLYTIME shall be supplemented with Norwegian Law. The background rules of law are often built on accurately normative discussions regarding the conflict of interest of the parties\(^{45}\) so any exclusion of liability clause is normally regarded as a negative consequence of the freedom of contract. The answer regarding clause 13 (b) is broad and depends on every single case, according to Norwegian case-law and arbitration\(^{46}\). For example, in ND 1950.398 *Karmøy NV*\(^ {47}\) the majority decided to supplement Norwegian law. In ND 1952.442 *Hakefjord NV*\(^ {48}\) the arbitrators also decided to supplement Norwegian law. However, in ND 1983.309 *Arica NV*\(^ {49}\) the majority decided not to supplement with the Maritime Code Section 392. In other words, there is no general rule that Norwegian Law shall prevail clause 13 (b) of SUPPLYTIME even if breach of contract by the Owner.

The marine contractors are in the situations described above exposed to consequential risks if the chartered vessels go off – hire. Marine contractors may not have to pay hire, but they are usually bound by contract to pay penalties to their customers if delays and they do also have extra equipment and people working for the cost of several hundred thousand dollars each day. The marine contractors does not have any insurance if a vessel goes off – hire and must pay for all related costs by them selves. Therefore, the quality and the reliability of the shipowners and their vessels are of great importance for marine contractors. Below I will give a presentation of some chosen areas related to risks exposed to marine contractors when vessels are off - hire.

\(^{44}\) The Norwegian Maritime Code of 24 June, 1994, No. 39, Section 322.


\(^{47}\) The judgement regards to the off-hire clause in BALTIME 1939.

\(^{48}\) The judgement regards to the off-hire clause in BALTIME 1939.

\(^{49}\) The judgement regards to the off-hire clause in Texacotime 2.
3.2.1 Vessel breakdown

The rules regarding Vessel breakdown is agreed in Box 33 and stated in Clause 31 (b) (vi) of SUPPLYTIME. If a breakdown of the Vessel results in a period longer than the period stated in Box 33 then the charter party may be terminated, according to Clause 31 (b) (vi). The Owner may provide a substitute vessel pursuant to Clause 21. The agreed breakdown period varies depending on the length of charter party.

Breakdown of the vessel during an offshore installation phase of a project is one example of economic risks for marine contractors. For example, a Deepwater Construction Vessel like Thialf was chartered on SUPPLYTIME terms by a marine contractor. The marine contractor then entered into a contract on NSC terms with an oil company. The agreement was to install three large Templates on the sea bed approximately 2000 meters below sea level. The DCV - vessel fitted perfect to the required work since it was possible to carry all three Templates on deck and install them all during one offshore trip. The oil company and marine contractor were pleased with the contract and they were both looking forward to a safe and fast offshore installation. However, during mobilization, one day before the agreed penalty milestone, there was discovered a major breakdown in the machinery of the vessel. The marine contractor immediately called the shipowner to find out more about the vessel breakdown. It was clear that the vessel must be repaired and goes off – hire, but it was unclear for how long. The marine contractor soon after concluded that it was impossible to replace the vessel on short notice. There are only three other similar vessels in the world that can install the large Templates and they were all chartered out to others.

The oil company informed the marine contractor about Art. 24 of the NSC and the penalty milestones set forth in the Exhibit C – Contract Schedule. The penalty milestone after mobilization was set to NOK 1, 2 million per day. The oil company stressed the importance of avoiding long delays. If the vessel is delayed for more than twenty days after the planned mobilization then the oil company is entitled to terminate the contract, according to Art 26.1 (a).

The repair of the vessel and off – hire resulted in a total delay of fourteen days. The breakdown period was set to 30 days so the marine contractor was not entitled to terminate the Charter Party.
The marine contractor’s total loss was amounted to over NOK two million per day because of the penalty milestones to the Oil Company, payments to subcontractors and extra payments to employees. The marine contractor did not pay charter hire during the delay, in accordance with Clause 13, but no other loss was covered by the shipowner.

The shipowner’s potential loss was the loss of charter hire, in the off–hire period, and the cost of repairs, but most of the loss was covered by the shipowner’s off–hire insurance and hull and machinery insurance.

The advice to marine contractors is to change Clause 13 (b) when negotiating SUPPLYTIME with potential shipowners. A proposed change of Clause 13 (b) is “All expenses incurred whilst the Vessel is off–hire shall be for Owner’s account”. This proposed clause is not an exclusion of liability clause limited to the suspension of hire, but includes also other expenses or costs that the Charterers may suffer. One example of “expenses incurred” is costs related to subcontractors while the Vessel is off–hire. The purpose of this clause is to divide some of the risk between the Owner and the Charterer and make SUPPLYTIME 05 clause 13 (b) more balanced. Break down of the vessel is not a risk that the Charterers can influence since the Owners are responsible for the quality and maintenance of the Vessel. Therefore, the contractual economic risk for vessel break down should not, in my opinion, be born by the Charterers.

3.2.2 Vessel not in accordance with Specifications

The Vessel Specification is stated in Annex “A” to SUPPLYTIME. The Owner and the Charterer shall jointly, according to Clause 5, appoint an independent surveyor for the purpose of determining the condition of the Vessel’s equipment specified in Annex “A”. According to the Definitions in SUPPLYTIME the Vessel shall also mean the particulars stated in Annex “A”. If the Vessel is not delivered in accordance with the Specifications in Annex “A” at the cancelling date the Charterer shall be entitled to cancel, in accordance with Clause 2 (c). The Owners shall also, according to Clause 3, exercise due diligence to maintain the Vessel and the equipment specified in Annex “A” fit for the service (employment and area of operation) stated in Clause 6 throughout the period of the charter party.
The MPCV as described above in chapter 3.1.1 was equipped with stern rollers. Stern rollers are among other things used when installing suction anchors for mooring systems. The stern rollers are important tools to safely move anchor chains from deck, over the stern and down to the sea. According to the Specifications in SUPPLYTIME the Vessel was equipped with “two stern rollers with length 5000 mm each dia.4500 mm. The stern rollers are designed for a downward pull of 750 tonnes”. During testing of the Vessel and survey, in accordance with Clause 5, it was discovered that the stern rollers were not rolling. The stern rollers are vital parts of the anchor handling and towing equipment so the marine contractor required that they had to be fixed immediately. The shipowner disputed this and there was a long discussion whether the stern rollers should roll only with 750 tonnes load or between 0 and 750 tonnes. The vessel was accepted by the oil companies on the first offshore installations so there was no direct cost related to this issue then. However, in the mean time it was agreed that the stern rollers should be functioning as a normal anchor handling equipment. This means that they should roll with load from only a few tones and up to 750 tonnes.

One and a half years later the Vessel was contracted on a mooring installation for an FPSO in the North Sea. The oil company did not accept malfunctioning stern rollers because of safety issues. Therefore the shipowner took the Vessel off – hire to fix the stern roller. During testing it was discovered that the stern rollers where not functioning if loaded with less that 300 tonnes. The anchors on the mooring installation weighed between 150 and 180 tonnes. Therefore the Vessel had to be repaired again and the offshore installation was delayed for ten days.

The marine contractor’s total loss was amounted to over one point five million NOK per day because of the penalty milestones to the Oil Company, payments to subcontractors and extra payments to employees. The marine contractor did not pay charter hire during the off hire period, in accordance with Clause 13, but no other loss was covered by the shipowner. The Charter Party could have been canceled, in accordance with Clause 2 (c), but this was an impossible solution for the marine contractor as described above in chapter 3.1.1. The shipowner’s loss was the cost of repairs and the loss of charter hire, in the off –hire period,
but most of the loss was covered by the shipowner’s warranties from the shipbuilder as well as through the off–hire insurance.

There has not been published any arbitration awards regarding SUPPLYTIME 05 clause 13 (b) and vessels not in accordance with specifications, but there is an unpublished award regarding the similar clause 11 (b) in SUPPLYTIME 89\textsuperscript{50}. The vessel was rechartered by the Charterer on another contract. The vessel had defects and the recharterer claimed liquidated damages. The Charterer then claimed these liquidated damages from the Owner. The arbitrators dismissed the claim with reference to clause 11 (b) (SUPPLYTIME clause 13 (b)).

A minimum requirement should in my opinion be that the Vessel works in accordance with the Specifications described in the Contract. If not, all costs including consequential costs shall be born by the Owner, but this is not the case under SUPPLYTIME 05. The advice to marine contractors’ wanting to avoid economic contractual risks related to Specifications is to change Clause 13 (b) with the “All expenses incurred” – clause, as described above in chapter 3.2.1. Another advice, when negotiating SUPPLYTIME with potential shipowners, is to implement penalty clauses, as described in chapter 3.1.1, similar to the penalty and compensation clauses in NEWBUILDCON and the NSC.

It can be discussed afterwards whether the marine contractor also was entitled to a deduction in the charter hire because of the malfunctioning in vital equipment on the Vessel. The rule regarding defects in the vessel and deduction in charter hire is not stated in the contract, but in the Maritime Code section 376. Section 376 was amended in 1994 but there are long traditions in Norwegian arbitration awards that charterers have been given deduction in the charter hire because of vessels delivered inadequate\textsuperscript{51}.

3.3 Pollution

The risk of pollution damage is always present for marine contractors. The offshore operations are complex and often done in areas with harsh weather conditions with large

\textsuperscript{50} Evje/Solvang 2007 p. 18-19.

\textsuperscript{51} Please see ND 1949.322 Braila NV, ND 1950.192 NV, ND 1952.299 Lysnaes NV and ND 1958.8 Ole Bratt NV.
vessels containing considerable amounts of bunkers, and the structures and pipelines installed are mainly used to pump oil and gas. If a collision or an accident occurs then the consequences can be fatal. The rules regarding pollution damage is regulated by the NSC and SUPPLYTIME contracts, by the law of each State as well as by international conventions.

In Norwegian law, according to Falkanger et al\textsuperscript{52}, the starting point is that “owners of ships, drilling rigs and other mobile installations are strictly liable for damage…caused by oil escaping…The type of oil involved is irrelevant, as is the type of ship or installation involved and the place the damage occurs”. However, there are exemptions which I will discuss below.

The Norwegian rules regarding pollution damage from production platforms, loading buoys and pipelines are covered by the Petroleum Act\textsuperscript{53} chapter 7. The definition of petroleum, in the Petroleum Act. § 1-6, covers oil and gas as naturally found in the subsoil, but it does not cover distilleries like bunker oil; neither does it cover drilling mud\textsuperscript{54}. Pollution damage from vessels (used by marine contractors) is not covered by the Petroleum Act\textsuperscript{55}. Most of the offshore installations by marine contractors in the North Sea are done before production start. Therefore the risk of pollution damage from structures and pipelines is usually not very present when marine contractors are working in the North Sea. In areas like the Gulf of Mexico, on the other hand, the risk of pollution damage from structures and pipelines during offshore work has been more present. The reason for this is because there has been done very much repair work during the last years after weather disasters, like the Katrina and others. If pollution damage happens during work on structures covered by the Petroleum Act, then the liability is channeled to the operator / licensee and the marine contractor is protected against liability, according to § 7-4. The reason for this channeling

\textsuperscript{52} Falkanger / Bull, 2004, p. 199
\textsuperscript{53} LOV-2009-06-19-104, Lov om petroleumsvirksomhet.
\textsuperscript{54} Ot.prp. nr. 72 (1982-83) p. 31 and p. 93
\textsuperscript{55} Covered by the Norwegian Maritime Code
is because the risk of damage and loss is much greater than the potential economic gain for
the marine contractors\textsuperscript{56}.

The Norwegian rules regarding ship – sourced pollution damage are covered by the
Norwegian Maritime Code, primarily in Chapter 10. The rules in Chapter 10 of the
Maritime Code are convention based and apply the 1992 CLC Protocol, the 1992 Fund
Protocol, the 2003 Supplementary Fund Protocol\textsuperscript{57} and the Bunker Oil Convention 2001.
The conventions are ratified by the EU and Nordic countries.

Chapter 10 of the Maritime Code is divided into rules regarding liability for pollution from
vessels carrying oil in bulk and for vessels that are not carrying oil in bulk. The rules for
vessels carrying oil in bulk are strict and channeled to the registered owners, according to
MC sections 191 and 193. However, these rules are of little interest to marine contractors.
Vessels used by marine contractors do normally not carry oil as bulk cargo. To these
vessels the ordinary maritime rules and part 1 of MC Chapter 10 applies which means that
the rules on limitation of liability in MC Chapter 9 will apply. To these vessels there will
be no strict channeling of liability or excess losses covered by the international pollution
funds.

Other countries, like for example USA, has other legislation regarding liability for
pollution from vessels. USA decided, after the Exxon Valdez spill in Alaska in 1989, to
enact its own legislation. The US enacted the Oil Pollution Act in 1990. The OPA 1990
goes much further in its regulation of liability than EU and international rules described
above and allow individual states to adopt their own rules\textsuperscript{58}.

The risk of pollution damage from the vessels used and from structures worked on is often
regarded as high. Therefore marine contractors must always be aware of their potential
liability according to different contracts, different State law and conventions. Below I will
give a presentation of some contractual economic risks related to pollution damage,
exposed to marine contractors through NSC and SUPPLYTIME and governed by
Norwegian Law.

\textsuperscript{56} Bull, 1988, p. 39
\textsuperscript{58} Brautaset, \textit{Oljesolansvaret} - Oil Pollution Act, Marlus no. 195, Oslo 1993.
3.3.1 The solution in NSC 05

NSC uses the knock – for – knock principle regarding liability between the contractual parties. As described above in chapter 2.2.1.8, the knock – for – knock principle means that damage stays with the party where the damage occurs. The central part of this principle is that the risk for damage is distributed on the basis of for who the damage occurs, not on the basis of who caused the damage, or if it was caused by fault or neglect. However liability against third parties is normally governed by State law.

For example, an accident happens during repair work on a GBS. The accident is caused by the marine contractor and results in pollution damage from the GBS for over NOK 500 million claimed by Norwegian public authorities.

The Norwegian Maritime Code Section 209 first paragraph establishes that the provisions in MC Chapter 10 do not restrict the liability of a licensee (Oil Company) under the Petroleum Act Chapter 7 regarding damage caused by pollution. The Petroleum Act has priority in relation to liability of the licensee (Oil Company). The liability is channeled to the licensee (Oil Company) and only they can be held liable outwards. “MC Section 209 second paragraph establishes that if the licensee (Oil Company) is liable under the Petroleum Act Chapter 7 then no claim can be made pursuant to MC Section 207 and 209 beyond what follows from the Petroleum Act § 7-4 and §7-5. These sections contain channeling provisions for direct liability (§7-4) and for recourse liability (§7-5), and significantly restrict the liability of others than the licensee in relation to damage caused by pollution covered by the Petroleum Act rule.”

The only situations where the marine contractor can be held liable for pollution damage from the GBS is if he/she has “acted through gross negligence and with knowledge that such loss would probably result”, according to Petroleum sloven § 7-5. However, Company shall indemnify Contractor against all pollution claims related to performance of the Work or caused by the Contract Object, according to NSC Art. 30.6. This applies regardless of any form of liability.

Therefore, the marine contractor will not end up with liability for pollution from the GBS.

59 Falkanger / Bull 2004, p. 208
60 Bull, 1988, p. 39
61 Falkanger / Bull, 2004, p. 209
If the accident resulted in pollution damage from the vessels used, on the other hand, then the marine contractor can be held liable. According to Art. 30.3, “Contractor shall indemnify Company…from costs resulting from the requirements of public authorities in connection with…pollution from vessels…provided by Contractor…”. The liability arising out of each accident shall be limited to NOK 5 million and Company shall indemnify Contractor from claims exceeding the limitations, according to Art. 30.3 second and third paragraph. However, the rules in NSC regarding pollution from vessels regulate liability between the contractual parties. Liability towards third parties is governed through the Norwegian Maritime Code. I will discuss the shipowners and charterers liability for ship–sourced pollution damage below in chapter 3.3.2.

3.3.2 The solution in SUPPLYTIME 05

When discussing liability for damage from vessel sourced oil pollution it is interesting to differentiate between liability against third parties (public authorities) and between the contractual parties (Owner and Charterer).

Pollution from vessels will firstly be channeled to the shipowner according to the Norwegian Maritime Code. Pollution damage from fuel oil is a probable scenario for marine contractors. The shipowner has an objective responsibility for pollution damage irrespective of fault when caused by fuel oil, according to MC Section 183. Injured third parties, like public authorities, will therefore have a right to claim against the shipowner in accordance with the Norwegian Maritime Code. The term “shipowner” has a wider interpretation regarding pollution damage from fuel oil than for oil in bulk. “The term “shipowner” is to be interpreted…the registered owner, the “reder”, the bareboat charterer, the managing owner or others responsible for central functions relevant to the running of the ship”, according to MC section 183, paragraph five. Marine contractors will probably not have direct liability for fuel oil pollution against third parties as long as he/she is not a bareboat charterer or is not in any other way responsible for the running of the vessel. However, the interesting question for marine contractors is; who will end up with the liability? This question is not covered in the Norwegian Maritime Code and therefore we use SUPPLYTIME.
According to SUPPLYTIME Clause 15 (a) the “Owners shall be liable for...all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of actual or threatened pollution damage and the cost of cleanup...arising from acts or omissions of the Owners or their personnel which cause...spills or leaks from the Vessel”.

However, Clause 15 (b) sets out a mirrored liability provision for the Charterer. This means that the Owner can claim that he/she shall only be held liable for pollution damage arising from acts or omissions of the Owners or their personnel, everything else shall be carried by the Charterer.

For example, as described above an accident happens during offshore work on a GBS. The accident results in damage to the vessel, which again results in spill of fuel oil and pollution damage. The marine contractor claims that the accident was caused by the shipowner, and an error done by the master on the vessel. The shipowner and the master on the vessel claim that the accident was caused by the marine contractor and because of his/her instructions. If the Charterer can not prove that the Owner has done any fault, according to SUPPLYTIME Clause 15 (a), then the Charterer must pay for the costs of the pollution damage, according to SUPPLYTIME Clause 15 (b).

3.4 Damage

Large vessels, cranes, structures and platforms combined with malfunctioning equipment, bad weather conditions and human fault or error can lead to large damage. The damage can be fatal both with regard to human safety and with regard to economic loss. The regulation of liability for damage used in both SUPPLYTIME and NSC is the so called “knock – for – knock” principle. Please see above in chapter 2.2.1.8 for a description of the knock – for – knock principle. Below I will give a presentation of some central regulations related to economic risk and liability for damage written in NSC and SUPPLYTIME.

3.4.1 Damage to Vessels, Marine Contractors or Company’s Equipment, or the Contract Object

The Charterer can, according to the Norwegian Maritime Code Section 385, only be held liable for damage to the Vessel if they are caused by fault or neglect of the Charterer or anyone for whom the Charterer is responsible. However, SUPPLYTIME have chosen
another apportionment of liability between the parties. As described above in chapter 3.4, SUPPLYTIME have chosen the Knock – for – Knock principle. Damage “arising out of or in any way connected with the performance of this Charterparty”, shall be born by the injured party or the party that suffered the loss, according to Clause 14 (b). Each party shall bear loss to own property as long as the damage has factual connection to the charter party\textsuperscript{62}.

Examples of potential disputes are the situations where Charterer’s equipment results in damage to the Vessel or Owners equipment results in damage to Charterer’s equipment. For example on OCV’s the cranes and stern rollers are usually owned by the Owner of the Vessel, but equipment such as Flexible Deployment Systems, Carousels and ROV’s are usually owned by the Charterer or others such as subcontractors. A malfunctioning FDS or Carousel can result in loss of an Umbilical and damage to the Vessel. On the other hand, a malfunctioning mid – ship – crane can result in damage to the FDS or the Carousel. If, for example, the Charterer damage the Owners stern roller or mid ship crane then the Owner must pay. If the Owner, on the other hand, damage Charterers Carousel while lifting Templates with the mid ship crane then the Charterer must pay for the damage to the Carousel, according to SUPPLYTIME Clause 14 (b). This contractual economic risk is important to be aware of, both for marine contractors and for shipowners.

The Knock – for – Knock principle in NSC 05 regarding personal injury to or loss of life of employees, or damage to property of Contractor and Company is regulated in Art. 30. The Contractor shall indemnify Company from and against any claim concerning “…personal injury to or loss of life of any employee of Contractor Group, and…loss of or damage to any property of Contractor Group…”, according to Art. 30.1. This damage stays with the party where the damage occurs. A similar regulation for the Company is stated in Art. 30.2, however, there is an exception stated in Art. 29.

If loss of or damage to the Contract Object occurs during the contract period then Contractor shall carry out necessary measures to ensure that the Work is completed in accordance with the Contract, according to Art. 29.1. The costs of this Work, as stated in

\textsuperscript{62} Bråfelt, 2008, p. 352.
Art. 29.1, shall be borne by Contractor, according to Art. 29.2, first paragraph. The Contractor can not, as a starting point, claim extra payments for the extra work and equipment necessary to bring the Contract Object back to its original state before the damage or loss occurred\textsuperscript{63}. However, the Contractors liability is limited, according to the rules in Art. 29.2, second paragraph.

A well known example of damage to the Contract Object is the Sleipner A accident\textsuperscript{64}. The concrete gravity base structure for Sleipner A sank on 23 August 1991. Shortly before it was due to be mated with the topside a design error sent the unit to the bottom of the Gands Fjord outside Stavanger more than 200 meters below water. The GBS caused a seismic event registering 3.0 on the Richter scale when it hit the bottom of the fjord. The GBS was reported a total loss. Norwegian Contractors, which had built the original GBS and was responsible for the mating operation, completed a replacement so that gas deliveries from Sleipner East could begin on the contractual date of 1 October 1993. Luckily no lives were lost, but the costs of the accident were enormous. The accident involved a total economic loss of several hundred millions. Norwegian Contractors had to pay for the amount up to the limitation rules in the contract. The oil company and the insurer had to pay for the rest. However, the oil company and the insurer claimed recourse against Norwegian Contractors, but the case was settled with an agreement outside court. The accident was not caused by errors in the marine operation, but the marine contractor was affected economically since the constructor and marine contractor was the same company. The contract was not on NSC terms but on the similar NF terms as described above. The rules regarding damage to the Contract Object are the same in NSC and NF and they are therefore interesting for marine contractors.

Another, more recent, example regarding damage to the Contract Object was the Norne accident in 2004. A marine contractor installed three 250 ton Templates for Statoil in the Norwegian Sea on NSC terms. The installation vessel was an OCV and the marine contractor used the special patented “pencil buoy method”. The “pencil buoy method” is a floating, pencil shaped, yellow buoy used for under water transportation and installation of

\textsuperscript{63} Bull, 1988, p. 380 et seq.

\textsuperscript{64} http://www.statoilhydro.com/en/ouroperations/explorationprod/ncs/sleipner/pages/default.aspx
structures. The method allows offshore installations of heavy structures without the need of large crane vessels. During transportation of one of the Templates to field, one of the Templates was lost to the bottom of the sea. The reason for the accident was a minor design error combined with a malfunction in the steel used on the pencil buoy. It was found that the accident was caused by the marine contractor. The Template was localized on the sea bed and transported back to shore. It was checked and carefully tested. Luckily it was later discovered that the Template was in good shape. It was decided, by Company, that it could still be used after some minor modifications. All equipment destroyed in the accident was owned by the marine contractor. The accident was also caused by the marine contractor. Luckily there were no damage to the vessel and neither did they have to pay for the construction of a new Template. However, the penalty milestones because of delays and other costs in relation to the accident had to be paid by the marine contractor, in accordance with Art 24 and Exhibit C – Contract Schedule of the NSC.

3.5 Variations to the Work

As described above in chapter 2.2.1.4, Variations to the Work can be considered as one of the most central parts of the regulations in the NSC both from the marine contractors’ and from the Company’s point of view. The rules give Company the right to order such variations as in Company’s opinion are desirable, according to NSC Art. 12.1. The Contractor must, normally on short notice, be able to identify potential changes in time and cost because of the variations. The projects are complex and the rules regarding Variations to the Work are complex. Therefore, there are many possibilities to do mistakes that may result in economic loss for the marine contractors. The Contractor can issue a VOR and is normally not obligated to implement the instruction until an answer from Company is received. In other words, Contractor and Company will normally agree on changes in the schedule and compensation before the variation is implemented. However, according to Art 16.1 second paragraph, instructions related to Offshore Work shall be implemented even if Contractor has submitted a VOR. The obligation to do Offshore Work, no matter what, is unique in the NSC and can lead to more economic risks for the marine contractors. There are no similar rules related to Variations to the Work written in the SUPPLYTIME. Variations to Work may change the employment and area of operation of the vessels which
may have consequences in SUPPLYTIME. The mismatch between NSC and SUPPLYTIME is, in my opinion, a contractual economic risk for marine contractors. Therefore, other clauses and contracts should be considered as basis on this area. For example, rig-contracts have similar rules to NSC regarding Variations to Work. These contracts may be used as an interesting basis for marine contractors to secure correspondence between the charter party and the obligations under NSC.

NSC differentiates between Variations before and during Offshore Work. Below I will give presentations of some central economic risks related to Variations of Work in NSC 05.

3.5.1 Variations before Offshore Work

Most of the Variations to the Work will normally happen during the project, but before the offshore phase. The Contract Object is normally not constructed when the installation contract is signed. Therefore, most of the Variations are related to the Contract Object. The Variations in size and weight of the Contract Object may be so significant that the marine contractor must change the installation Vessel or the Spread. There is normally no contractual economic risk for the marine contractors if the Contract Object is decreased in size and weight since the contracts are normally agreed on Lump Sum terms. On the other hand, if the Variations require another Vessel or Spread than originally agreed then the economic risk is present. The first and most important issue for marine contractors is to identify and respond, without undue delay, the consequences of the Variation. “Contractor is not obligated to implement the instruction after having submitted a Variation Order Request”, according to Art 16.1 second paragraph. However, “If Contractor has not presented a Variation Order Request without undue delay after Company has required such work to be performed…then it loses the right to claim that the work is a Variation to the Work”, according to Art 16.1 third paragraph. The Contractor can be obligated to do the Work, but will not be compensated. If the Variation is within the limits of the agreed Scope of Work then the Contractor can loose millions and suffer long delays. As a worst consequence the Contractor must charter another Vessel or Spread, pay for the originally chartered Vessel and do the Work, all with no extra compensation. The regulations for

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Variations before Offshore Work are strict, but fair and balanced in my opinion. The potential risk for economic loss is enormous if the rules are not followed. Therefore, marine contractors must focus on securing the level of knowledge in their organizations related to the rules of Variations to the Work.

### 3.5.2 Variations during Offshore Work

As described above in chapter 3.4.1 the regulations for Variations before Offshore Work are strict, but fair and balanced. The regulation for Variations related to Offshore Work, on the other hand, is not balanced. The Contractor is obligated, according to Art. 16.1 second paragraph second sentence, to implement instructions from Company. Disputes must be solved after the Offshore Work is completed. Contractor’s position is weakened since he/she cannot decide not to implement the Offshore Work until a VO or DVO is received from Company, as is the rules regarding variations before Offshore Work. Therefore, there is a possibility that the Contractor will not get compensated for, what Contractor think is, extra Offshore Work. The regulation is Company friendly and can also result in a major contractual economic risk for the Contractor. The reason for this special regulation is to secure progress in the Work for Company. The regulation is based on a thought that Company will not misuse its contractual power.

One example where the marine contractor can be exposed to contractual economic risk because of Art 16.1 second paragraph second sentence is if Company instructs Contractor in some way to extend the Offshore Work to an extent that it leads to delays. Contractor considers the work as outside the originally planned Scope of Work and issues a VOR to cover the extra costs and to change the Schedule. However, Company’s opinion is that the work is in accordance with the contract and decides to ignore the VOR. Contractor cannot use the balanced system in Art 16 and await response from Company in form of VO or DVO before he/she performs the work. If Company decides to not agree to the variation then, as a starting point, Contractor has to cover all extra cost for the work and to pay for penalty milestones because of the delays. However, if Company has not issued a VO or a DVO within 21 Days after receipt of a VOR, on the basis of instructions made by Company related to Offshore Work, then a DVO shall be deemed to have been issued, according to Art. 16.2 second paragraph. Contractor and Company can therefore use the general rules
regarding variations to Work in Art 16.3 to 16.5. The difference here is that Contractor has already done the disputed Offshore Work, which is opposite to the rules regarding regular Work. Contractor is still obligated to implement the instruction after having submitted a VOR. Disputes can not be solved before the disputed work is done. This weakens the marine contractor’s position. However, if the expert, arbitration or court decides that the disputed Offshore Work is actually a variation, then the marine contractor will get compensation in the end. Therefore, the contractual economic risk for the marine contractor, as described above is more about a weakened negotiation position than for a risk of not getting compensated.
4 Conclusion

The discussion above proves that marine contractors can be exposed to extensive contractual economic risks both through the obligations in NSC 05 and through the obligations in SUPPLYTIME 05. SUPPLYTIME 05 is constructed and published by the shipowner organization BIMCO and therefore also regarded as shipowner friendly. NSC 05, on the other hand, was initiated and constructed by both oil and supplier companies and can be regarded as more balanced.

One interesting contractual economic risk for marine contractors is the obligation in NSC 05 to pay penalty milestones for delays. If the delays are caused by the shipowner then the marine contractor will still end up with the penalty milestones because there is no channeling of penalty milestones over to SUPPLYTIME 05 (analyzed in chapter 3.1.1).

Clause 13 (b) in SUPPLYTIME 05 is also very interesting and represent a vital contractual economic risk for marine contractors regarding off-hire (analyzed in chapter 3.2). Clause 13 (b) is an exclusion of liability clause and limit shipowners total liability to the loss of hire in off-hire situations. Clause 13 (b) is interesting since it deviates from the obligations in NSC 05 and the marine contractor ends up with all consequential loss. Clause 13 (b) is also interesting since it totally deviates from and modifies the background rules of Norwegian law.

The contractual economic risk related to pollution is regulated differently in the contracts (analyzed in chapter 3.3). NSC 05, the Norwegian Maritime Code and the Petroleum Act channels liability for pollution strictly to the licensee (Oil Company). SUPPLYTIME 05 on the other hand covers liability for the vessel. Liability towards third parties is channeled to the Owner through the Norwegian Maritime Code. However, the rules between the Owner and the Charterer are not strict and the marine contractor can end up with liability.

The regulation of liability for damage used in both SUPPLYTIME and NSC is the knock–for–knock principle (analyzed in chapter 3.4). The contracts are therefore back-to-back and correspond on the regulation of damage. However, it is important to be aware that damage
stays with the party where the damage occurs. If the Owner damage Charterers equipment then the Charterer must pay for the damage to this equipment and vice versa. The contractual parties must also sacrifice their mutual right to claim recourse for liability towards certain third parties and the parties must indemnify the other party for liability towards certain third parties.

Another contractual economic risk is the Variation to Work regulation in NSC 05. One of the interesting risks for marine contractors is Art. 16.1 second paragraph second sentence which regulates Offshore Work (analyzed in chapter 3.5.2). Contractor is obligated to implement instructions from Company. Disputes must be solved after the Offshore Work is completed. Marine contractors must be aware of this regulation, that it is Company friendly and in my opinion not very balanced.

For potential marine contractors it is important to be aware that NSC and SUPPLYTIME do not correspond on vital parts. I have two personal advices to marine contractors to avoid contractual economic risk.

The first advice is to change clauses in SUPPLYTIME 05, especially on long term charters, because of the lack of correspondence with NSC 05. In SUPPLYTIME 05 there is also, to some extent, a lack of balance between the parties which is negative for marine contractors. One example is to include penalty milestone clauses similar to those in NSC 05 or NEWBUILDCON into SUPPLYTIME (described in chapter 3.1.1, p.30). Another example is to change clause 13 (b) to avoid exclusion of liability clauses (described in chapter 3.2.1, p.34). A proposed change of Clause 13 (b) is “All expenses incurred whilst the Vessel is off – hire shall be for Owner’s account”. When negotiating contracts the focus on avoiding contractual economic risks, as described above, is crucial to avoid loss. However, negotiations can be difficult for marine contractors because of market situations and other factors.

Therefore, my second advice is to make a completely new standard contract designed to fit the industry that marine contractors are operating in. This contract should be based on contracts towards the customers of marine contractors (for example NSC 05). Especially clauses regarding the above mentioned problems should be as similar to NSC 05 as possible. This new standard contract should also be negotiated and designed both by
marine contractors (charterers) and shipowners, to secure that it ends up more balanced than SUPPLYTIME 05.
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1992 CLC Protocol International Convention on Civil Liability for Oil Pollution Damage (CLC), IMO, 1992

<table>
<thead>
<tr>
<th>Secondary Literature</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>NOU 1993: 36</td>
<td>Godsbefordring til sjøs</td>
</tr>
<tr>
<td>Bimco – Commentary 05</td>
<td>Clause-by-clause comparison with explanatory notes</td>
</tr>
</tbody>
</table>
Annex

A.1 SUPPLYTIME 2005 – Time Charter Party for Offshore Service Vessels - Part II

A.2 Norwegian Subsea Contract – NSC 05 Revision 0, 08.03.2005 - Chosen Articles
ANNEX – A.1

SUPPLYTIME 05
PART II
SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

Definitions

“Owners” shall mean the party stated in Box 2 1
“Charterers” shall mean the party stated in Box 3 2
“Vessel” shall mean the vessel named in Box 4 and 3
with particulars stated in ANNEX “A” 4
“Well” shall mean the time required to drill, test, 5
complete and/or abandon a single borehole including
any side-track thereof. 6
“Offshore Unit” shall mean any vessel, offshore 7
installation, structure and/or mobile unit used in offshore
exploration, construction, pipe-laying or repair, 8
exploitation or production. 9
“Employees” shall mean employees, directors, 10
officers, servants, agents or invitees. 11

1. Charter Period

(a) The Owners let and the Charterers hire the Vessel 12
for the period as stated in Box 9 from the time the Vessel
is delivered to the Charterers. 13
(b) Subject to Clause 12(b), the Charterers have the 14
option to extend the Charter Period in direct continuation
for the period stated in Box 10(i), but such an option
must be declared in accordance with Box 10(ii). 15
(c) The Charter Period shall automatically be
extended for the time required to complete the voyage
or well (whichever is stated in Box 11(i)) in progress,
such time not to exceed the period stated in Box 11(ii). 16

2. Delivery and Redelivery

(a) Delivery. - Subject to Clause 2(b) the Vessel shall
be delivered by the Owners free of cargo and with clean
tanks at any time between the date stated in Box 5 and
the date stated in Box 6 at the port or place stated in
Box 7 where the Vessel can safely lie always afloat. 17
(b) Mobilization. — 18
(i) The Charterers shall pay a lump sum mobilisation
charge as stated in Box 12 without discount. 19
(ii) Should the Owners agree to the Vessel loading
and transporting cargo and/or undertaking any
other service for the Charterers en route to the
port of delivery or from the port of redelivery, then
all terms and conditions of this Charter Party shall
apply to such loading and transporting and/or
other service exactly as if performed during the
Charter Period excepting only that any lump sum
freight agreed in respect thereof shall be payable
and earned on shipment or commencement of
the service as the case may be, the Vessel and/or
goods lost or not lost. 20
(c) Cancelling. - If the Vessel is not delivered by
midnight local time on the cancelling date stated in Box
6, the Charterers shall be entitled to cancel this Charter
Party. However, if the Owners will be unable to deliver
the Vessel by the cancelling date, they may give notice
in writing to the Charterers at any time prior to the delivery
date stated in Box 5 and shall state in such notice the
date by which they will be able to deliver the Vessel. The
Charterers may within 24 hours of receipt of such notice
give notice in writing to the Owners cancelling this Charter
Party. If the Charterers do not give such notice, then the
later date specified in the Owners’ notice shall be
substituted for the cancelling date for all the purposes
of this Charter Party. In the event the Charterers cancel
the Charter Party, it shall terminate on terms that neither
party shall be liable to the other for any losses incurred
by reason of the non-delivery of the Vessel or the
expiration or earlier termination of this Charter Party 67
free of cargo and with clean tanks at the port or place
as stated in Box 8(i) or such other port or place as may
be mutually agreed. The Charterers shall give not less
than the number of days notice in writing of their intention
to redeliver the Vessel, as stated in Box 8(ii). 68
(e) Demobilisation. - The Charterers shall pay a lump
sum demobilisation charge without discount in the amount
as stated in Box 15 which amount shall be paid on the
expiration or on earlier termination of this Charter Party. 69

3. Condition of Vessel

(a) The Owners undertake that at the date of delivery
under this Charter Party the Vessel shall be of the
description and Class as specified in ANNEX “A”, 70
attached hereto, and in a thoroughly efficient state of
hull and machinery. 71
(b) The Owners shall exercise due diligence to
maintain the Vessel in such Class and in every way fit 72
for the service stated in Clause 6 throughout the period
of this Charter Party. 73

4. Structural Alterations and Additional Equipment

The Charterers shall, at their expense, have the option
of making structural alterations to the Vessel or installing
additional equipment with the written consent of the
Owners, which shall not be unreasonably withheld. 74
Unless otherwise agreed, the Vessel is to be redelivered
reinstated, at the Charterers’ expense, to her original
condition. The Vessel is to remain on hire during any
period of these alterations or reinstatement. The
Charterers shall at all times be responsible for repair
and maintenance of any such alteration or additional
equipment. However, the Owners may, upon giving
notice, undertake any such repair and maintenance at
the Charterers’ expense, when necessary for the safe
and efficient performance of the Vessel. 75

5. Survey

The Owners and the Charterers shall jointly appoint an
independent surveyor for the purpose of determining
and agreeing in writing, the condition of the Vessel, any
anchor handling and towing equipment specified in
ANNEX “A”, and the quality and quantity of fuel, 76
lubricants and water at the time of delivery and redelivery
hereunder. The Owners and the Charterers shall jointly
share the time and expense of such surveys. 77

6. Employment and Area of Operation

(a) The Vessel shall be employed in offshore activities
which are lawful in accordance with the law of the place
of the Vessel’s flag and/or registration and of the place
of operation. Such activities shall be restricted to the
service(s) as stated in Box 17, and to voyages between
any good and safe port or place and any place of
operations, whichever is stated in Box 11(ii), where the Vessel can safely lie always afloat within the Area of Operation as stated in Box 16 78
which shall always be within International Navigation
Limits and which shall in no circumstances be exceeded
without prior agreement and adjustment of the Hire and
in accordance with such other terms as appropriate to
be agreed; provided always that the Charterers do not
warrant the safety of any such port or place or offshore
unit but shall exercise due diligence in issuing their
orders to the Vessel as if the Vessel were their own
property and having regard to her capabilities and the	nature of her employment. 79

Unless otherwise stated in Box 18(i), the Charterers

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shall not have the right to use the Vessel for ROV operations. Unless otherwise stated in Box 18(ii), the Vessel shall not be employed as a diving platform.

(b) Relevant permission and licences from responsible authorities for the Vessel to enter, work in and leave the area of Operation shall be obtained by the Charterers and the Owners shall assist, if necessary, in every way possible to secure such permission and licences.

(c) The Vessel's Space. - The whole reach and burden decks of the Vessel shall throughout the Charter Period be at the Charterers' disposal for proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores.

The Charterers shall be entitled to carry, so far as space is available and for their purposes in connection with their operations:

(i) Persons other than crew members, other than fare paying, and for such purposes to make use of the Vessel's available accommodation not being used on the voyage by the Vessel's Crew. The Owners shall provide suitable provisions and requisites for such persons for which the Charterers shall pay at the rate as stated in Box 27 per meal and at the rate as stated in Box 28 per day for the provision of bedding and services for persons using berth accommodation.

(ii) Lawful cargo whether carried on or under deck.

(iii) Explosives and dangerous cargo whether in bulk or packaged, provided proper notification has been given and such cargo is marked and packed in accordance with the national regulations of the Vessel and/or the International Maritime Dangerous Goods Code and/or other pertinent regulations. Failing such proper notification, marking or packing, the Charterers shall indemnify the Owners in respect of any loss, damage or liability whatsoever and howsoever arising therefrom. The Charterers accept responsibility for any additional expenses (including reinstatement expenses) incurred by the Owners in relation to the carriage of explosives and dangerous cargo.

(iv) Hazardous or noxious substances, subject to Clause 14(f), proper notification and any pertinent regulations.

(d) Lay-up of Vessel. - The Charterers shall have the option of laying up the Vessel at an agreed safe port or place for all or any portion of the Charter Period in which case the Hire hereunder shall continue to be paid but, if the period of such lay-up exceeds 30 consecutive days, there shall be credited against such Hire the amount which the Owners shall reasonably have saved by way of reduction in expenses and overheads as a result of the lay-up of the Vessel.

7. Master and Crew

(a) (i) The Master shall carry out his duties promptly and the Vessel shall render all reasonable services within her capabilities by day and by night and at such times and on such schedules as the Charterers may reasonably require without any obligations of the Charterers to pay to the Owners or the Master, Officers or the Crew of the Vessel any excess or overtime payments. The Charterers shall furnish the Master with all instructions and sailing directions and the Master and Engineer shall keep full and correct logs accessible to the Charterers or their agents.

(ii) (1) No Bills of Lading shall be issued for shipments under this Charter Party.

(2) The Master shall sign cargo documents as directed by the Charterers in the form of receipts that are non-negotiable documents and which are clearly marked as such.

(3) The Charterers shall indemnify the Owners against all liabilities that may arise from the signing of such cargo documents in accordance with the directions of the Charterers to the extent that the terms of such cargo documents impose more onerous liabilities than those assumed by the Owners under the terms of this Charter Party.

(b) The Vessel's Crew if required by Charterers will connect and disconnect electric cables, fuel, water and pneumatic hoses when placed on board the Vessel as well as alongside the offshore units; will operate the machinery on board the Vessel for loading and unloading cargoes; and will hook and unhook cargo on board the Vessel when loading or discharging alongside offshore units. If the port regulations or the seamen and/or labour unions do not permit the Crew of the Vessel to carry out any of this work, then the Charterers shall make, at their own expense, whatever other arrangements may be necessary, always under the direction of the Master.

(c) If the Charterers have reason to be dissatisfied with the conduct of the Master or any Officer or member of the Crew, the Owners on receiving particulars of the complaint shall promptly investigate the matter and if the complaint proves to be well founded, the Owners shall as soon as reasonably possible make appropriate changes in the appointment.

(d) The entire operation, navigation, and management of the Vessel shall be in the exclusive control and command of the Owners, Master, Officers and Crew. The Vessel will be operated and the services hereunder will be rendered as requested by the Charterers, subject always to the exclusive right of the Owners or the Master of the Vessel to determine whether operation of the Vessel may be safely undertaken. In the performance of the Charter Party, the Owners are deemed to be an independent contractor, the Charterers being concerned only with the results of the services performed.

Owners to Provide

(a) The Owners shall provide and pay for all provisions, wages and all other expenses of the Master, Officers and Crew; all maintenance and repair of the Vessel's hull, machinery and equipment as specified in ANNEX “A”; also, except as otherwise provided in this Charter Party, for all insurance on the Vessel, all dues and charges directly related to the Vessel's flag and/or registration, all deck, cabin and engine room stores, cordage required for ordinary ship's purposes mooring alongside and in harbour, and all fumigation expenses and de-ratisation certificates. The Owners' obligations under this Clause extend to cover all liabilities for consular charges appertaining to the Master, Officers and Crew, customs or import duties arising at any time during the performance of this Charter Party in relation to the personal effects of the Master, Officers and Crew, and in relation to the stores, provisions and other matters as aforesaid which the Owners are to provide and/or pay for and the Owners shall refund to the Charterers any sums they or their agents may have paid or been compelled to pay in respect of such liability.

(b) On delivery the Vessel shall be equipped, if
part ii

supplytime 2005 time charter party for offshore service vessels

9. Charterers to Provide

(a) While the Vessel is on hire the Charterers shall provide and pay for all fuel, lubricants, water, dispersants, firefighting foam and transport thereof, port charges, pilotage and boatmen and canal steersmen (whether compulsory or not), launch hire (unless incurred in connection with the Owners' business), light dues, tug assistance, canal, dock, harbour, tonnage and other dues and charges, agencies and commissions incurred on the Charterers' business, costs for security or other watchmen, and of quarantine (if occasioned by the nature of the cargo carried or the ports visited whilst employed under this Charter Party but not otherwise).

(b) At all times the Charterers shall provide and pay for the loading and unloading of cargoes so far as not done by the Vessel's crew, cleaning of cargo tanks, all necessary dunnage, uprights and shoring equipment for securing deck cargo, all cargo except as to be provided by the Owners, all ropes, slings and special runners (including bulk cargo discharge hoses) actually used for loading and discharging, inert gas required for the protection of cargo, and electrodes used for offshore works, and shall reimburse the Owners for the actual cost of replacement of special mooring lines to offshore units, wires, nylon spring lines etc. used for offshore works, all hose connections and adaptors, and further, shall refill oxygen/acetylene bottles used for offshore works.

(c) Upon entering into this Charter Party or in any event no later than the time of delivery of the Vessel the Charterers shall provide the Owners with copies of any operational plans or documents which are necessary for the safe and efficient operation of the Vessel. All documents received by the Owners shall be returned to the Charterers on redelivery.

(d) The Charterers shall pay for customs duties, all permits, import duties (including costs involved in establishing temporary or permanent importation bonds), and clearance expenses, both for the Vessel and/or equipment, required for or arising out of this Charter Party.

(e) The Charterers shall pay for any replacement of any anchor handling/towing/lifting wires and accessories which have been placed on board by the Owners or the Charterers, should such equipment be lost, damaged or become unserviceable, other than as a result of the Owners' negligence.

(f) The Charterers shall pay for any fines, taxes or imposts levied in the event that contraband and/or unmanifested drugs and/or cargoes are found to have been shipped as part of the cargo and/or in containers on board. The Vessel shall remain on hire during any time lost as a result thereof. However, if it is established that the Master, Officers and/or Crew are involved in smuggling ten any financial security required shall be provided by the Owners.

10. Bunkers

(a) Quantity at Delivery/Redelivery – The Vessel shall be delivered with at least the quantity of fuel as stated in Box 19 (i) and the Vessel shall be redelivered with about the same quantity as on delivery, provided always that the quantity of fuels at redelivery is at least sufficient to allow the Vessel to safely reach the nearest port at which fuels of the required type or better are available.

(b) Purchase Price – The Charterers shall purchase the fuels on board at delivery at the price prevailing at the time and port of delivery unless otherwise stated in Box 19 (ii) and the Owners shall purchase the fuels on board at redelivery at the price prevailing at the time and port of delivery unless otherwise stated in Box 19 (iii). The Charterers shall purchase the lubricants on board at delivery at the list price and the Owners shall purchase the lubricants on board at redelivery at the list price.

(c) Bunkering – The Charterers shall supply fuel of the specifications and grades stated in Box 19 (iv). The fuels shall be of a stable and homogeneous nature and unless otherwise agreed in writing, shall comply with ISO standard 8217:1996 or any subsequent amendment thereof as well as with the relevant provisions of MARPOL. The Chief Engineer shall co-operate with the Charterers' bunkering agents and fuel suppliers and comply with their requirements during bunkering, including but not limited to checking, verifying and acknowledging sampling, reading or soundings, meters etc. before, during and/or after delivery of fuels. During delivery four representative samples of all fuels shall be taken at a point as close as possible to the Vessel's bunker manifold. The samples shall be labelled and sealed and signed by suppliers, Chief Engineer and the Charterers or their agents. Two samples shall be retained by the suppliers and one each by the Vessel and the Charterers. If any claim arise in respect of the quality or specification or grades of the fuels supplied, the samples of the fuels retained as aforesaid shall be analysed by a qualified and independent laboratory.

(d) Liability – The Charterers shall be liable for any loss or damage to the Owners caused by the supply of unsuitable fuels or fuels which do not comply with the specifications and grades set out in Box 19 (iv) and the Owners shall not be held liable for any reduction in the Vessel's speed performance and/or increased bunker consumption nor for any time lost and any other consequences arising as a result of such supply.

bimco isps/msta clause for time charter parties

(a) (i) The Owners shall comply with the requirements of the International Code for the Security of Ships and Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Vessel and “the Company” (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Owners shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the “Owner” (as defined by the MTSA).

(ii) Upon request the Owners shall provide a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) to the Charterers. The Owners shall provide the Charterers with the full style contact details of the Company Security Officer (CSO).

(iii) Except as otherwise provided in this Charter Party, losses, damages, expense or delay (excluding consequential loss, damages, expense or delay caused by failure on the part of the Owners or the “Company”/“Owner” to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Owners’ account.

(b) (i) The Charterers shall provide the Owners and...
the Master with their full style contact details and, upon request, any other information the Owners require to comply with the ISPS Code/MTSA. Furthermore, the Charterers shall ensure that all sub-charter parties they enter into during the period of this Charter Party contain the following provision:

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

(ii) Except as otherwise provided in this Charter Party, loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers account.

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

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

12. Hire and Payments

(a) Hire. - The Charterers shall pay Hire for the Vessel at the rate stated in Box 20 per day or pro rata for part thereof from the time that the Vessel is delivered to the Charterers until the expiration or earlier termination of this Charter Party.

(b) Extension Hire. - If the option to extend the Charter Period under Clause 1(b) is exercised, Hire for such extension shall, unless stated in Box 21, be agreed between the Owners and the Charterers. Should the parties fail to reach an agreement, then the Charterers shall not have the option to extend the Charter Period.

(c) Adjustment of Hire. - The rate of hire shall be adjusted to reflect documented changes, after the date of entering into the Charter Party or the date of commencement of employment, whichever is earlier, in the Owners' costs arising from changes in the Charterers' requirements, or regulations governing the Vessel and/or its Crew or this Charter Party or the application thereof.

(d) Invoicing. - All invoices shall be issued in the contract currency stated in Box 20. In respect of reimbursable expenses incurred in currencies other than the contract currency, the rate of exchange into the contract currency shall be that quoted by the Central Bank of the country of such other currency as at the date of the Owners' invoice. Invoices covering Hire and any other payments due shall be issued monthly as stated in Box 22(i) or at the expiration or earlier termination of this Charter Party. Notwithstanding the foregoing, bunkers and lubricants on board at delivery shall be invoiced at the time of delivery.

(e) Payments. - Payments of Hire, bunker invoices and disbursements for the Charterers' account shall be received within the number of days stated in Box 24 from the date of receipt of the invoice. Payment shall be made in the currency stated in Box 20 in full without discount to the account stated in Box 23.

However, any advances for disbursements made on behalf of and approved by the Owners may be deducted from Hire due.

If payment is not received by the Owners within 5 banking days following the due date the Owners are entitled to charge interest at the rate stated in Box 25 on the amount outstanding from and including the due date until payment is received.

Where an invoice is disputed, the Charterers shall notify the Owners before the due date and in any event pay the undisputed portion of the invoice but shall be entitled to withhold payment of the disputed portion provided that such portion is reasonably disputed and the Charterers specify such reason. Interest will be chargeable at the rate stated in Box 25 on such disputed amounts where resolved in favour of the Owners.

Should the Owners prove the validity of the disputed portion of the invoice, balance payment shall be received by the Owners within 5 banking days after the dispute is resolved. Should the Charterers' claim be valid, a corrected invoice shall be issued by the Owners.

(f) (i) Where there is a failure to pay Hire by the due date, the Owners shall notify the Charterers in writing of such failure and further may also suspend the performance of any or all of their obligations under this Charter Party until such time as all Hire due to the Owners under the Charter Party has been received by the Owners. Throughout any period of suspended performance under this Clause, the Vessel is to be and shall remain on Hire. The Owners' right to suspend performance under this Clause shall be without prejudice to any other rights they may have under this Charter Party.

(ii) If after 5 days of the written notification referred to in Clause 12(f)(i) the Hire has still not been received the Owners may at any time while Hire remains outstanding withdraw the Vessel from the Charter Party. The right to withdraw is to be exercised promptly and in writing and is not dependent upon the Owners first exercising the right to suspend performance of their obligations under the Charter Party pursuant to Clause 12(f)(i) above. The receipt by the Owners of a payment referred to above has expired but prior to the notice of withdrawal shall not be deemed a waiver of the Owners' right to cancel the Charter Party.

(iii) Where the Owners choose not to exercise any of the rights afforded to them by this Clause in respect of any particular late payment of Hire, or a series of late payments of Hire, under the Charter Party, this shall not be construed as a waiver of their right either to suspend performance under Clause 12(f)(i) or to withdraw the Vessel from the Charter Party under Clause 12(f)(i) in respect of any subsequent late payment under this Charter Party.

(iv) The Charterers shall indemnify the Owners in respect of any liabilities incurred by the Owners under the Bill of Lading or any other contract of carriage as a consequence of the Owners' proper suspension of and/or withdrawal from any or all of their obligations under this Charter Party.
13. Suspension of Hire

(a) If as a result of any deficiency of Crew or of the Owners' stores, strike of Master, Officers and Crew, breakdown of machinery, damage to hull or other accidents to the Vessel, the Vessel is prevented from working, no Hire shall be payable in respect of any time lost and any Hire paid in advance shall be accordingly provided always however that Hire shall not cease in the event of the Vessel being prevented from working as aforesaid as a result of:

(i) the carriage of cargo as noted in Clause 6(c)(iii) and (iv);

(ii) quarantine or risk of quarantine unless caused by the Master, Officers or Crew having communication with the shore at any infected area not in connection with the employment of the Vessel without the consent or the instructions of the Charterers;

(iii) deviation from her Charter Party duties or exposure to abnormal risks at the request of the Charterers;

(iv) detention in consequence of being driven into port or to anchorage through stress of weather or for any cause whatsoever incident to the Vessel, or for personal injury or death of any member of the Charterers' Group, whether owned or chartered, including the Charterers' Group, whether owned or chartered, including

In the event of less time being taken by the Owners for repairs and drydocking or, alternatively, the Charterers not making the Vessel available for all or part of this time, the Charterers shall, upon expiration or earlier termination of the Charter Party, pay the equivalent of the daily rate of Hire then prevailing in addition to Hire otherwise due under this Charter Party in respect of all such time not so taken or made available.

(b) Upon commencement of the Charter Period, the Owners agree to furnish the Charterers with the Owners' proposed drydocking schedule and the Charterers agree to make every reasonable effort to assist the Owners in adhering to such predetermined drydocking schedule for the Vessel.

14. Liabilities and Indemnities

(a) Definitions

For the purpose of this Clause “Owners’ Group” shall mean: the Owners, and their contractors and sub-contractors, and Employees of any of the foregoing.

For the purpose of this Clause “Charterers’ Group” shall mean: the Charterers, and their contractors, sub-contractors, co-venturers and customers (having a contractual relationship with the Charterers, always with respect to the job or project on which the Vessel is employed), and Employees of any of the foregoing.

(b) Knock for Knock

(i) Owners - Notwithstanding anything else contained in this Charter Party excepting Clauses 6(c)(iii), 9(b), 9(e), 9(f), 10(d), 11, 12(f)(iv), 14(d), 15(b), 18(c), 26 and 27, the Charterers shall not be responsible for loss or damage to the property of any member of the Owners’ Group, including the Vessel, or for personal injury or death of any member of the Owners’ Group arising out of or in connection with the performance of this Charter Party, even if such loss, damage, injury or death is caused wholly or partially by the act, neglect, or default of the Charterers’ Group, and even if such loss, damage, injury or death is caused wholly or partially by the act, neglect, or default of the Charterers’ Group, and
to anyone on board anything towed by the Vessel, or for personal injury or death of any member of the Charterers’ Group or of anything towed by the Vessel, of any member of the Charterers’ Group, whether owned or chartered, including the Charterers’ Group, whether owned or chartered, including

(ii) Charterers - Notwithstanding anything else contained in this Charter Party excepting Clause 17, 11, 15(a), 16 and 26, the Owners shall not be liable for loss or damage to, or any liability arising out of anything towed by the Vessel, or for personal injury or death of any member of the Charterers’ Group or of anyone on board anything towed by the Vessel, or arising out of or in any way connected with the performance of this Charter Party, even if such loss, damage, injury or death is caused wholly or partially by the act, neglect, or default of the Owners’ Group, and even if such loss, damage, injury or death is caused wholly or partially by the act, neglect, or default of the Owners’ Group, and

(g) Audit. - The Charterers shall have the right to appoint an independent chartered accountant to audit the Owners’ books directly related to work performed under this Charter Party at any time after the conclusion of the Charter Party, up to the expiry of the period stated in Box 26, to determine the validity of the Owners’ charges hereunder. The Owners undertake to make their records available for such purposes at their principal place of business during normal working hours.

Any discrepancies discovered in payments made shall be promptly resolved by invoice or credit as appropriate.
proceedings, suits, demands, and liabilities 667
whatsoever arising out of or in connection with 668
such loss, damage, liability, personal injury or 669
death. 670
(c) Consequential Damages.- 671
Neither party shall be liable to the other for any 672
consequential damages whatsoever arising out of or in 673
connection with the performance or non-performance 674
of this Charter Party, and each party shall protect, defend 675
and indemnify the other from and against all such claims 676
from any member of its Group as defined in Clause 677
14(a). 678
“Consequential damages” shall include, but not be 679
limited to, loss of use, loss of profits, shut-in or loss of 680
production and cost of insurance, whether or not 681
foreseeable at the date of this Charter Party. 682
(d) Limitations.- 683
Nothing contained in this Charter Party shall be 684
construed or held to deprive the Owners or the 685
Charterers, as against any person or party, including 686
as against each other, of any right to claim limitation of 687
liability provided by any applicable law, statute or 688
convention, save that nothing in this Charter Party shall 689
create any right to limit liability. Where the Owners or 690
the Charterers may seek an indemnity under the 691
provisions of this Charter Party or against each other in 692
respect of a claim brought by a third party, the Owners 693
or the Charterers shall seek to limit their liability against 694
such third party. 695
(e) Himalaya Clause.- 696
(i) All exceptions, exemptions, defences, immunities, 697
limitations of liability, indemnities, privileges and 698
conditions granted or provided by this Charter Party 699
or by any applicable statute, rule or regulation for 700
the benefit of the Charterers shall also apply to 701
and be for the benefit of the Charterers’ parent, 702
affiliated, related and subsidiary companies; the 703
Charterers’ contractors, sub-contractors, co- 704
venturers and customers (having a contractual 705
relationship with the Charterers, always with 706
respect to the job or project on which the Vessel is 707
employed); their respective Employees and their 708
respective underwriters. 709
(ii) All exceptions, exemptions, defences, immunities, 710
limitations of liability, indemnities, privileges and 711
conditions granted or provided by this Charter Party 712
or by any applicable statute, rule or regulation for 713
the benefit of the Owners shall also apply to and 714
be for the benefit of the Owners’ parent, affiliated, 715
related and subsidiary companies, the Owners’ 716
contractors, sub-contractors, the Vessel, its Master, 717
Officers and Crew, its registered owner, its operator, 718
its demise charterer(s), their respective Employees 719
and their respective underwriters. 720
(iii) The Owners or the Charterers shall be deemed 721
to be acting as agent or trustee of and for the 722
benefit of all such persons and parties set forth 723
above, but only for the limited purpose of 724
contracting for the extension of such benefits to 725
such persons and parties. 726
(f) Hazardous or Noxious Substances. 727
Notwithstanding any other provision of this Charter Party 728
to the contrary, the Charterers shall always be 729
responsible for any losses, damages or liabilities 730
suffered by the Owners’ Group, by the Charterers, or 731
by third parties, with respect to the Vessel or other 732
property, personal injury or death, pollution or otherwise, 733
which losses, damages or liabilities are caused, directly 734
or indirectly, as a result of the Vessel’s carriage of any 735
hazardous or noxious substances in whatever form as 736
ordered by the Charterers, and the Charterers shall 737
defend, indemnify the Owners and hold the Owners 738
harmless for any expense, loss or liability whatsoever 739
or howsoever arising with respect to the carriage of 740
hazardous or noxious substances. 741
15. Pollution 742
(a) Except as otherwise provided for in Clause 18(c)(iii), 743
the Owners shall be liable for, and agree to indemnify, 744
defend and hold harmless the Charterers against all 745
claims, costs, expenses, actions, proceedings, suits, 746
demands and liabilities whatsoever arising out of actual 747
or threatened pollution damage and the cost of cleanup 748
or control thereof arising from acts or omissions of the 749
Owners or their personnel which cause or allow 750
discharge, spills or leaks from the Vessel, except as may 751
eemanate from cargo thereon or therein. 752
(b) The Charterers shall be liable for and agree to 753
indemnify, defend and hold harmless the Owners from 754
all claims, costs, expenses, actions, proceedings, suits, 755
demands, liabilities, loss or damage whatsoever arising 756
out of or resulting from any other actual or threatened 757
pollution damage, even where caused wholly or partially 758
by the act, neglect or default of the Owners, their 759
Employees, contractors or sub-contractors or by the 760
unseaworthiness of the Vessel. 761
(c) The Charterers shall, upon giving notice to the 762
Owners or the Master, have the right (but shall not be 763
obliged) to place on board the Vessel and/or have in 764
attendance at the site of any pollution or threatened 765
incident one or more Charterers’ representative to 766
observe the measures being taken by Owners and/or 767
national or local authorities or their respective servants, 768
agents or contractors to prevent or minimise pollution 769
damage and to provide advice, equipment or manpower 770
or undertake such other measures, at Charterers’ risk 771
and expense, as are permitted under applicable law 772
and as Charterers believe are reasonably necessary to 773
prevent or minimise such pollution damage or to remove 774
the threat of pollution damage. 775
16. Wreck Removal 776
If the Vessel becomes a wreck and is an obstruction to 777
navigation and has to be removed by order of any lawful 778
authority having jurisdiction over the area where the 779
Vessel is placed or as a result of compulsory law, the 780
Owners shall be liable for any and all expenses in 781
connection with the raising, removal, destruction, 782
lighting or marking of the Vessel. 783
17. Insurance 784
(a) (i) The Owners shall procure and maintain in 785
effect for the duration of this Charter Party, with 786
reputable insurers, the insurances set forth in 787
ANNEX “B”. 788
Policy limits shall not be less than those indicated. 789
Reasonable deductibles are acceptable and shall 790
be for the account of the Owners. 791
(ii) The Charterers shall upon request be named as 792
co-insured. The Owners shall upon request cause 793
insurers to waive subrogation rights against the 794
Charterers (as encompassed in Clause 14(e)(ii)). 795
Co-insurance and/or waivers of subrogation shall 796
be given only insofar as these relate to liabilities 797
which are properly the responsibility of the Owners 798
under the terms of this Charter Party. 799
PART II
SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

18. Saving of Life and Salvage

(a) The Vessel shall be permitted to deviate for the purpose of saving life at sea without prior approval of the Charterers or to the Charterers and without loss of Hire provided however that notice of such deviation is given as soon as possible.

(b) Subject to the Charterers' consent, which shall not be unreasonably withheld, the Vessel shall be at liberty to undertake attempts at salvage, it being understood that the Vessel shall be off-hire from the time she leaves port or commences to deviate and she shall remain off-hire until she is again in every way ready to resume the Charterers' service at a position which is not less favourable to the Charterers than the position at the time of leaving port or deviating for the salvage services.

All salvage monies earned by the Vessel shall be divided equally between the Owners and the Charterers, after deducting the Master's, Officers' and Crew's share, legal expenses, value of fuel and lubricants consumed, Hire of the Vessel lost by the Owners during the salvage, repairs to damage sustained, if any, and any other extraordinary loss or expense sustained as a result of the salvage.

The Charterers shall be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount.

(c) The Owners shall waive their right to claim any award for salvage performed on property owned or contracted to the Charterers, always provided such property was the object of the operation the Vessel was chartered for, and the Vessel shall remain on hire when rendering salvage services to such property. This waiver is without prejudice to any right the Vessel's Master, Officers and Crew may have under any title.

If the Owners render assistance to such property in distress on the basis of "no claim for salvage", then, the charters for, and the Vessel shall remain on hire when repairing salvage services to such property. The waiver is without prejudice to any right the Vessel's Master, Officers and Crew may have under any title.

20. Sublet and Assignment

(a) Charterers. - The Charterers shall have the option of subletting, assigning or loaning the Vessel to any person or company not competing with the Owners, provided the Owners' prior approval which shall not be unreasonably withheld, upon giving notice in writing to the Owners, but the original Charterers shall always remain responsible to the Owners for due performance of the Charter Party. The person or company taking such subletting, assigning or loan and their contractors and sub-contractors shall be deemed contractors of the original Charterers for all the purposes of this Charter Party.

(b) Owners. - The Owners may not assign or transfer any part of this Charter Party without the written approval of the Charterers, which approval shall not be unreasonably withheld. Approval by the Charterers of such subletting or assignment shall not relieve the Owners of their responsibility for due performance of the part of the services which is sublet or assigned.

21. Substitute Vessel

The Owners shall be entitled at any time, whether before delivery or at any other time during the Charter Period,
22. BIMCO War Risks Clause “CONWARTIME 2004”

(a) For the purpose of this Clause, the words:

(i) “Owners” shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and

(ii) “War Risks” shall include any actual, threatened or reported: war; act of war; civil war; hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy; acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever); by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.

(b) The Vessel, unless the written consent of the Owners be first obtained, shall not be ordered to or required to continue to or through, any port, place, area or zone (whether of land or sea), or any waterway or canal, where it appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, she shall be at liberty to leave it.

(c) The Vessel shall not be required to load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent’s right of search and/or confiscation.

(d) The Owners may effect war risks insurance in respect of the Hull and Machinery of the Vessel and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefor shall be for their account.

(i) If the Owners or any other person on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, she shall be at liberty to leave it.

(ii) The Vessel shall have liberty:

(f) The Vessel shall have liberty:-

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

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

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

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

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

(g) If in accordance with their rights under the foregoing provisions of this Clause, the Owners shall refuse to proceed to the loading or discharging ports, or any one or more of them, they shall immediately inform the Charterers. No cargo shall be discharged at any alternative port without first giving the Charterers notice of the Owners’ intention to do so and requesting them to nominate a safe port for such discharge. Failing such nomination by the Charterers within 48 hours the receipt of such notice and request, the Owners may discharge the cargo at any safe port of their own choice.

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

23. War Cancellation Clause 2004

Either party may cancel this Charter Party on the outbreak of war (whether there be a declaration of war or not).

(a) between any two or more of the following countries:

- the United States of America; Russia; the United Kingdom; France; and the People’s Republic of China,

(b) between the countries stated in Box 30.
about to be withdrawn by reason of ice, nor where on account of ice there is, in the Master’s sole discretion, a risk that, in the ordinary course of events, the Vessel will not be able safely to enter and remain at the port or area or to depart after completion of loading or discharging. If, on account of ice, the Master in his sole discretion considers it unsafe to proceed to, enter or remain at the place of loading or discharging for fear of the Vessel being frozen in and/or damaged, he shall be at liberty to sail to the nearest ice-free and safe place and there await the Charterers’ instructions.

25. Epidemic/Fever
The Vessel shall not be ordered to nor bound to enter without the Owners’ written permission any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel. Notwithstanding the terms of Clause 13, Hire shall be paid for all time lost including any lost owing to loss of or sickness to the Master, Officers, Crew or passengers or to the action of the Crew in refusing to proceed to such place or to be exposed to such risks.

26. General Average and New Jason Clause
General Average shall be adjusted in accordance with the law and practice of the United States of America, the following provision shall apply:

“In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owners are not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the Owners in General Average to the payment of any sacrifices, loss or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salvaging vessel is owned or operated by the Owners, salvage shall be paid for as fully as if the said salvaging vessel or vessels belonged to strangers. Such deposit as the Owners, or their agents, may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the Owners before delivery”. 

27. Both-to-Blame Collision Clause
If the Vessel comes into collision with another ship or as a result of the negligence of the other ship and act, neglect or default of the Master, mariner, pilot or the servants of the Owners in the navigation or the management of the Vessel, the Charterers will indemnify the Owners against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represent loss of or damage to, or any claim whatsoever of the owners of any goods carried under this Charter Party paid or payable by the other or non-carrying ship or her owners as part of their claim against the Vessel or the Owners. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than in or to the colliding ships or objects are at fault in respect of a collision or contact.

28. Health and Safety
The Owners shall comply with and adhere to all applicable international, national and local regulations pertaining to health and safety, and such Charterers’ instructions as may be appended hereto.

29. Drugs and Alcohol Policy
The Owners undertake that they have, and shall maintain for the duration of this Charter Party, a policy on Drugs and Alcohol Abuse applicable to the Vessel (the “D & A Policy”) that meets or exceeds the standards in the OCIMF Guidelines for the Control of Drugs and Alcohol Onboard Ship 1995 as amended from time to time. The Owners shall exercise due diligence to ensure that the D & A Policy is understood and complied with on board the Vessel. An actual impairment, shall not in and itself mean that the Owners have failed to exercise due diligence.

30. Taxes
Within the day rate the Owners shall be responsible for the taxes stated in Box 32 and the Charterers shall be responsible for all other taxes.

31. Early Termination
(a) At Charterers’ Convenience. - The Charterers may terminate this Charter Party at any time by giving the Owners written notice of termination as stated in Box 14, upon expiry of which, this Charter Party will terminate. Upon such termination, Charterers shall pay the compensation for early termination stated in Box 13 and the demobilisation charge stated in Box 15, as well as Hire or other payments due under the Charter Party up to the time of termination. Should Box 13 be left blank, Clause 31(a) shall not apply.

(b) For Cause. - If either party becomes informed of the occurrence of any event described in this Clause 31, the party shall so notify the other party promptly in writing and in any case within 3 days after such information is received. If the occurrence has not ceased within 3 days after such notification has been given, this Charter Party may be terminated by either party, without prejudice to any other rights which either party may have, under any of the following circumstances:

(i) Requisition. - If the government of the state of registry and/or the flag of the Vessel, or any agency thereof, requisitions for hire or title or otherwise takes possession of the Vessel during the Charter Period.

(ii) Confiscation. - If any government, individual or
32. Force Majeure

Neither party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions:

(a) acts of God;
(b) any Government requisition, control, intervention, requirement or interference;
(c) any circumstances arising out of war, threatened war, act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
(d) riots, civil commotion, blockades or embargoes;
(e) epidemics;
(f) earthquakes, landslides, floods or other extraordinary weather conditions;
(g) strikes, lockouts or other industrial action; and

33. Confidentiality

All information and data provided or obtained in connection with the performance of this Charter Party is and shall remain confidential and not be disclosed to any third party by any of their sub-contractors, employees or agents.

34. BIMCO Dispute Resolution Clause

(a) This Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Charter Party shall be referred to arbitration in London according to the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

(b) The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice.

Part II

SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels
and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators. Inc.

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

(c) This Charter Party shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Charter Party shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.

(d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Charter Party.

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

(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the “Mediation Notice”) calling on the other party to agree to mediation.

(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal (“the Tribunal”) or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator’s costs and expenses.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

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

If Box 34 in PART I is not appropriately filled in, sub-clause 34(a) of this Clause shall apply. Sub-clause (d) shall apply in all cases.

*Sub-clauses 34(a), 34(b) and 34(c) are alternatives; indicate alternative agreed in Box 34.

35. Notices

(a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Charter Party shall be in writing.

(b) For the purposes of this Charter Party, “in writing” shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.

36. Headings

The headings of this Charter Party are for identification purposes only and shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction of this Charter Party.

37. Severance

If by reason of any enactment or judgement any provision of this Charter Party shall be deemed or held to be illegal, void or unenforceable in whole or in part, all other provisions of this Charter Party shall be unaffected thereby and shall remain in full force and effect.

38. Entire Agreement

This Charter Party, including all Annexes referenced herein and attached hereto, is the entire agreement of the parties, which supersedes all previous written or oral understandings and which may not be modified except by a written amendment signed by both parties.
ANNEX – A.2

NSC 05 – Chosen Articles
## Contents

**PART I**  GENERAL PROVISIONS

Art. 1  DEFINITIONS  5
Art. 2  CONTRACT DOCUMENTS - INTERPRETATION  8
Art. 3  REPRESENTATIVES OF THE PARTIES  8

**PART II**  PERFORMANCE OF THE WORK

Art. 4  OBLIGATIONS OF CONTRACTOR AND COMPANY - MAIN RULES  9
Art. 5  AUTHORITY REQUIREMENTS - PERMITS  10
Art. 6  DRAWINGS AND SPECIFICATIONS - COMPANY PROVIDED ITEMS  11
Art. 7  SUBCONTRACTS  12
Art. 8  CONTRACTOR'S PERSONNEL  13
Art. 9  THE SPREAD  13
Art. 10  QUALITY ASSURANCE AND HEALTH, SAFETY AND ENVIRONMENT  14

**PART III**  PROGRESS OF THE WORK

Art. 11  CONTRACT SCHEDULE – DELAYED PROGRESS  15

**ART IV**  VARIATIONS AND CANCELLATION

Art. 12  RIGHT TO VARY THE WORK  16
Art. 13  EFFECTS OF A VARIATION TO THE WORK  16
Art. 14  ISSUE OF VARIATION ORDERS  17
Art. 15  CONSEQUENCES OF VARIATION ORDERS - DISPUTES ABOUT CONSEQUENCES  18
Art. 16  DISPUTE AS TO WHETHER A VARIATION TO THE WORK EXISTS - DISPUTED VARIATION ORDER  19
Art. 17  CANCELLATION  20
Art. 18  COMPANY’S RIGHT TO TEMPORARILY SUSPEND THE WORK  22

**PART V**  DELIVERY AND PAYMENT

Art. 19  DELIVERY AND COMPLETION OF THE WORK  23
Art. 20  PAYMENT, INVOICING AND AUDIT  24
Art. 21  SECURITY FOR COMPANY’S CLAIMS  26
Art. 22  TITLE - RIGHT TO DEMAND DELIVERY  26
Art. 23  CONTRACTOR’S GUARANTEE - ACCEPTANCE CERTIFICATE  27
This Contract is entered into between .......................................... on behalf of the participants in the Owner Group (Company) having an address at ................................on the one part and ...............................................(Contractor) having an address at ....................................................... on the other part.

The parties hereto agree as follows:

PART I  GENERAL PROVISIONS

ART. 1  DEFINITIONS

a) **Acceptance Certificate** means the certificate to be issued by Company in accordance with Art. 23.5, when the Work, including guarantee work, is complete.

b) **Affiliated Company** means the parent company of one of the parties to the Contract, together with any company which, according to the Norwegian Joint Stock Company Act (Aksjeloven/Allmennaksjeloven) Section 1-3, shall be regarded as a subsidiary company of the parent company or a party to the Contract.

c) **Company** means……………………..….on behalf of the Owner Group.

d) **Company Group** means the Owner Group, each of the participants therein, their Affiliated Companies, Company's other contractors and their subcontractors and the employees and directors of the aforementioned companies and others whose services are used by Company.

e) **Company Provided Items** means items provided by Company for the performance of the Work.

f) **Company’s Representative** means the person who at any time is appointed in accordance with Art. 3 to act on behalf of Company.

g) **Completion Certificate** means the certificate to be issued by Company in accordance with Art. 19.5 when the Work, with the exception of guarantee work, is completed.

h) **Contract** means these Conditions of Contract and the Exhibits as stated in Art. 2.1.

i) **Contract Object** means any item which Contractor according to the Contract shall deliver, except for Company Provided Items before their incorporation into the Contract Object.
j) **Contract Price** means the total sum payable to Contractor in accordance with Exhibit B, as that sum is increased or decreased in accordance with the provisions of the Contract.

k) **Contractor** means ………………………………

l) **Contractor Group** means Contractor, its Affiliated Companies participating in the Work, its Subcontractors and their contractors and subcontractors, participating companies in an enterprise established for the performance of the Work, and the employees and directors of the aforementioned companies.

m) **Day** means a consecutive calendar day unless otherwise stated.

n) **Delivery Date** means the date of delivery as set out in Exhibit C, or as varied in accordance with the provisions of Art. 12 to 16.

o) **Delivery Protocol** means the document to be concluded by both parties in accordance with Art. 19 upon the delivery of the Contract Object and/or completion of the Offshore Work.

p) **Disputed Variation Order** means a Variation Order issued in accordance with Art. 16.2.

q) **Force Majeure** means an occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time of entering into the Contract and could not reasonably have avoided or overcome it or its consequences.

r) **Guarantee Period** means the period stated in Art. 23.2.

s) **Interim Delivery Protocol** means the protocol issued by Company in accordance with Art. 19.4.

t) **Materials** means all items required for the Work, other than Company Provided Items, Spread and other equipment and tools provided by Contractor in its performance of the Work.

u) **Mobilisation** means, and shall be deemed to have taken place, when Contractor has provided the Spread at the relevant offshore Site, all required tests performed, the Spread fully equipped and manned in accordance with the Contract and provided with all necessary supplies, certification and documentation and ready to commence the Offshore Work.

v) **Offshore Work** means the part of the Work performed by Contractor at an offshore and/or inshore Site.
w) **Owner Group** means the owners (at any time) of the ...................... field covered by Production Licence No. ........ on the Norwegian part of the continental shelf and at the commencement of the Contract consisting of:

<table>
<thead>
<tr>
<th>% Owner Group 1</th>
<th>% Owner Group 2</th>
<th>% Owner Group 3</th>
<th>% Owner Group 4</th>
<th>100.00%</th>
</tr>
</thead>
</table>

x) **Site** means a place where Work is performed.

y) **Spread** means all vessels and barges provided by Contractor for the performance of the Work together with all necessary personnel, equipment and consumables.

z) **Subcontract** means an agreement entered into between Contractor and a Subcontractor for the supply of goods or services in connection with the Work.

aa) **Subcontractor** means a Third Party who has entered into an agreement with Contractor for the supply of goods or services in connection with the Work.

bb) **Third Party** means any party other than Company and Contractor.

c) **Variation Order** means an instruction of Variation to the Work issued in accordance with Art. 14.

d) **Variation Order Request** means a request submitted by Contractor in accordance with Art. 16.1.

ee) **Variation to the Work** means a variation to the Work, Scope of Work, Contract Schedule, Specifications, Drawings and Company Provided Items and Services made in accordance with the provisions of Art. 12 to 16.

ff) **Weather Downtime** means a period of time when the progress of the Work is prevented solely due to adverse weather conditions in excess of the capabilities of the Spread.

gg) **Work** means all work which Contractor shall perform or cause to be performed in accordance with the Contract.

hh) **Work Package** means a part of the Work identified as such in the Contract.
ART. 2  CONTRACT DOCUMENTS - INTERPRETATION

2.1 The Contract consists of these Conditions of Contract and the following Exhibits:

Exhibit A: Scope of Work
Exhibit B: Compensation
Exhibit C: Contract Schedule
Exhibit D: Administration Requirements
Exhibit E: Specifications
Exhibit F: Drawings
Exhibit G: Company Provided Items and Services.
Exhibit H: Subcontractors
Exhibit I: Company's Insurances
Exhibit J: Standard Bank Guarantee
Exhibit K: Contractor's Proprietary Information
Exhibit L: Parent Company Guarantee

2.2 References made in the Contract to the expressions stated in Art. 2.1 are references to the content of the specific Exhibit referred to, including such variations as may have been made in accordance with the provisions of Art. 12 to 16.

2.3 In the event of any conflict between the provisions of the Contract documents, they shall be given priority in the following order:

   a) these Conditions of Contract,
   b) all Exhibits, except Exhibit D, in the order as listed in Art. 2.1,
   c) Exhibit D.

ART. 3  REPRESENTATIVES OF THE PARTIES

3.1 Prior to commencement of the Work each party shall appoint a representative with authority to act on its behalf in all matters concerning the Contract, and appoint a deputy to act on his behalf. Without prejudice to Art. 8.1 first paragraph each party may, by giving 14 Days notice to the other party, substitute a representative or deputy.
from the relevant HSE laws and regulations, fails to take the required immediate actions such failure shall be considered a substantial breach of Contract.

10.4 Company’s Representative and personnel authorised by him shall have the right to undertake audits and verification of Contractor’s and Subcontractor’s quality assurance system and system for HSE.

PART III  PROGRESS OF THE WORK

ART. 11  CONTRACT SCHEDULE – DELAYED PROGRESS

11.1 Contractor shall perform the Work in accordance with Exhibit C - Contract Schedule.

If Contractor should have cause to believe that the Work cannot be carried out in accordance with the milestones set out in the Exhibit C – Contract Schedule, it shall promptly notify Company accordingly.

11.2 If in Contractor's opinion the Work cannot be performed according to the Exhibit C – Contract Schedule owing to circumstances for which Company is to indemnify Contractor, the provisions of Art. 16 apply accordingly.

11.3 If in Contractor’s opinion the Work cannot be performed according to Exhibit C – Contract Schedule, for reasons for which Contractor is responsible, it shall within 14 Days after notification according to Art. 11.1 communicate

   a) the cause of delay,

   b) its estimated effect on the Contract Schedule and other parts of the Work, and

   c) the measures which Contractor considers appropriate to avoid, recover or limit the delay.

Company shall without undue delay notify Contractor of its view of the information provided by Contractor in accordance with Art. 11.3 a), b) and c). Such notification shall not release Contractor from any of its obligations under Art. 11.1.

11.4 If the measures proposed or implemented by Contractor are insufficient to avoid or recover the delay, then Company may require Contractor to take measures considered necessary. If Contractor maintains that it has no obligation to implement the measures required by Company, the provisions of Art. 12 to 16 apply accordingly.
PART IV VARIATIONS AND CANCELLATION

ART. 12 RIGHT TO VARY THE WORK

12.1 Company has the right to order such Variations to the Work as in Company’s opinion are desirable by means of a Variation Order or a ”drawing revision”, ref. Art. 14.1.

Variations may include an increase or decrease in the quantity, character, quality, kind or execution of the Work or any part thereof, as well as changes to the Contract Schedule.

Nevertheless, Company has no right to order variation work which cumulatively exceeds that which the parties could reasonably have expected when the Contract was entered into.

12.2 When Company orders a variation to the Work to be performed, Contractor shall without undue delay submit an estimate to Company, unless the parties agree that it is unnecessary.

The estimate shall contain

a) a description of the variation work in question,
b) a detailed schedule for the execution of the variation work showing the required resources and significant milestones,
c) the effect on the Contract Price, showing the rates used when preparing the estimate, and
d) the effect on the Contract Schedule, with documentation demonstrating such effect.

Company may require the submission of such estimate prior to ordering variation work to be performed. Company shall pay Contractor’s necessary and documented costs for preparing the estimates required by Company. The provisions of Art. 12 to 15 apply accordingly.

12.3 Contractor may propose a Variation to the Work.

ART. 13 EFFECTS OF A VARIATION TO THE WORK

13.1 All obligations under the Contract apply to Variations to the Work, unless otherwise agreed.

13.2 Unless otherwise agreed between the parties, the price for Variations to the Work shall be determined according to the following provisions:

a) If specific rates are included in Exhibit B - Compensation, such rates shall be used.
b) If specific rates are not included in Exhibit B – Compensation, any appropriate or comparable rates included therein shall be used.

c) In the absence of specific, appropriate or comparable rates a fair valuation shall be made.

13.3 The effects of a Variation to the Work on the Contract Schedule shall be agreed upon in the Variation Order for such work, on the basis of the accumulated net effect of the individual variation, and with due consideration to, inter alia,

a) the effect on Contractor’s float,

b) Contractor’s commitments under other contracts, and

c) the accumulated delaying effects of previous variation work.

Subject to the limitations which follow from Art. 12.1, Company may require Contractor to undertake special measures to avoid Variations to the Work having an effect on the Contract Schedule, or to limit delays as much as possible. The provisions of Art. 12 to 16 apply accordingly.

13.4 A Variation to the Work caused by circumstances for which Contractor is responsible shall not entail any variations to the Contract Price or the Contract Schedule in favour of Contractor.

ART. 14 ISSUE OF VARIATION ORDERS

14.1 All Variations to the Work required in accordance with the provisions of Art. 12 and 13 shall be made by means of a Variation Order issued by Company in accordance with the provisions of this Article.

Company may also order Variations to the Work by means of a “drawing revision”. “Drawing revision” means any change to Drawings or Specifications where the change is clearly identified and has been submitted to Contractor in accordance with such special procedures as are set forth in Exhibit D – Administration Requirements.

14.2 A Variation Order shall be expressly identified as such and be issued on a prescribed form.

The initial Variation Order shall at least contain a description of the variation work and the preliminary schedule for its execution and, to the extent practicable, the effects on the Contract Price, the Contract Schedule and, if any, on the other provisions of the Contract.

Effects that are not recorded on the initial Variation Order shall be formalised by issuing numbered revisions.
ART. 15  CONSEQUENCES OF VARIATION ORDERS - DISPUTES ABOUT CONSEQUENCES

15.1 On receipt of a Variation Order or a “drawing revision”, Contractor shall implement it without undue delay, even if the effect of the Variation Order or “drawing revision” on the Contract Price, the Contract Schedule and other provisions of the Contract has not yet been agreed.

15.2 If the parties agree that there is a variation, but disagree as to the variation’s effect on the Contract Price, then Company shall pay Contractor provisional compensation calculated in accordance with Art. 13.2. Payment shall be made in accordance with the provisions of Art. 20. The amount falls due for payment 30 Days after Company has received the invoice.

Compensation paid for the Variation to the Work shall be considered final unless, within 6 months of the issue of the Variation Order by Company, court proceedings have been instituted or the parties have agreed to initiate arbitration concerning the payment.

If the price for the Variation to the Work which is finally decided differs from the compensation paid in accordance with the first paragraph, interest shall be paid on the difference between the compensation paid and the final price, in accordance with “Forsinkelsesrenteloven” (Interest on overdue payment).

If Contractor has presented a Variation Order Request, interest shall be charged as from the date when the Work would have been paid for if it originally had been part of the Work, but no earlier than 30 Days after the presentation of the Variation Order Request. Interest shall similarly accrue on amounts which are not disputed between the parties. If Company issues a Variation Order without any previous request having been presented for the variation work, interest shall begin to accrue from the due date according to the first paragraph.

15.3 If the parties disagree as to the effect on the Contract Schedule, then the views of both parties shall be recorded on the Variation Order.

If Company requires implementation of the measures stated in Art. 13.3, to avoid or limit the delay which, in the opinion of Contractor, will be the effect of the Variation Order to the Contract Schedule, then the provisions of Art. 15.2 shall apply accordingly. Company shall in this case require such measures to be taken in accordance with the provisions of Art. 16.2 regarding Disputed Variation Orders.

15.4 Neither Company’s payment nor Contractor’s implementation of a Variation Order or a “drawing revision” shall affect the parties’ possible claims for variations to the Contract Price or the Contract Schedule.
ART. 16  DISPUTE AS TO WHETHER A VARIATION TO THE WORK EXISTS - DISPUTED VARIATION ORDER

16.1 Company may, by written instruction, require the performance of specific work. If the work so required in the opinion of Contractor is not part of its obligations under the Contract, then Contractor shall submit a Variation Order Request and as soon as possible thereafter prepare an estimate in accordance with Art. 12.2.

Contractor is not obligated to implement the instruction after having submitted a Variation Order Request. However, instructions made by Company related to Offshore Work shall be implemented even if Contractor has submitted a Variation Order Request.

If Contractor has not presented a Variation Order Request without undue delay after Company has required such work to be performed in the manner prescribed in the first paragraph, then it loses the right to claim that the work is a Variation to the Work.

A Variation Order Request shall be expressly identified as such and be presented on a prescribed form. It shall contain a specified description of the work the request concerns and the justification for requesting a Variation Order.

16.2 If Contractor within the prescribed time-limit has made a request as stated in Art. 16.1, Company shall, within a reasonable time, either issue a Variation Order in accordance with the provisions of Art. 14 or a Disputed Variation Order. A Disputed Variation Order shall be expressly identified as such and shall be presented on a prescribed form, which shall identify the work in dispute between the parties and state Company’s reason for regarding this as a part of the Work. If Company will claim that Contractor’s request is submitted too late, this must be stated in the Disputed Variation Order.

If Company has not issued a Variation Order or a Disputed Variation Order within 21 Days after receipt of a Variation Order Request presented on the basis of instructions made by Company related to Offshore Work, then a Disputed Variation Order shall be deemed to have been issued.

Upon receipt of a Disputed Variation Order, Contractor shall implement it without undue delay.

16.3 Contractor may, within 30 Days after issue of the Disputed Variation Order, request that the question as to whether the work covered by a Disputed Variation Order is a part of the Work, shall be provisionally decided by an expert. At Company’s request the expert shall also decide whether a Variation Order Request was submitted within the deadline in Art. 16.1. Such requests by Company must be presented within 7 Days of receipt of Contractor’s request. Unless the parties have agreed upon an expert within 14 Days of such request, the expert shall be appointed in accordance with Exhibit D – Administration Requirements.
Each of the parties shall, within 7 Days after the appointment, submit to the expert, with a copy to the other party, the relevant documentation together with a written argument. The parties have the right to submit one further written presentation to the expert with a copy to the other party within 7 Days following the deadline for the first submission. The expert’s decision and reasons for reaching it shall be made known within 30 Days of his appointment.

The cost of the expert shall be irrevocably borne by the party whose view was not accepted. Each party shall bear irrevocably its own expenses connected with the provisional decision.

16.4 If Contractor’s views are accepted in a provisional decision made in accordance with Art. 16.3, the Disputed Variation Order shall be treated as an ordinary Variation Order in accordance with Art. 14 and 15 until the dispute has been resolved by agreement, arbitration, court proceedings or in accordance with the provisions of the third paragraph of Art. 16.4. If hereunder a preliminary payment is made in accordance with Art. 15.2, it shall not under any circumstance be considered as final until three months after the dispute was finally solved.

If Company’s views are accepted in the provisional decision made in accordance with Art. 16.3, the work described in the Disputed Variation Order shall be treated as part of the Work until the dispute has been resolved by agreement, arbitration, court proceedings, or in accordance with the provisions of Art. 16.4, third paragraph.

If no court proceedings have been instituted or agreement made to submit the decision to arbitration within 6 months after the provisional decision, then that decision shall become final.

16.5 If Contractor has not requested a decision under Art. 16.3, nor instituted court proceedings, nor agreed to submit the decision to arbitration within 8 months after the issue of the Disputed Variation Order, it shall be recorded on the Disputed Variation Order that it is deemed to be a part of the Work.

ART. 17 CANCELLATION

17.1 Company may by notice to Contractor cancel the Contract, or parts thereof, with the consequence that the performance of the Work, or the relevant parts of the Work, ceases.

17.2 Following such cancellation, Company shall pay

   a) the unpaid balance due to Contractor for that part of the Work already performed,

   b) all costs incurred by Contractor and its Subcontractors in connection with Materials ordered prior to receipt of the notice of cancellation by Contractor, and compensation for work performed on such Materials prior to the said date, provided that such costs are not covered by payment under Art. 17.2 a),
paragraph item b), c) and d). The same applies after 7 Days when Contractor invokes Force Majeure.

Without undue delay after the Force Majeure situation has ended, Contractor shall present to Company its proposed adjustment of the Contract Price and/or Contract Schedule in accordance with the provisions of Art. 12 to 16. Any adjustment to the Contract Schedule shall be made with due regard to the delay caused to Contractor by the Force Majeure situation.

28.4 If a Force Majeure situation lasts without interruption for 60 Days or more, then Company shall have the right to cancel the Contract. If a Force Majeure situation lasts without interruption for 180 Days or more then Contractor shall have the right to cancel the Contract by notice to Company.

The provisions of Art. 17.2, 17.4, 17.5 and 17.6 apply accordingly.

28.5 When the Delivery Date which would have applied in the absence of Force Majeure is reached and Force Majeure still continues, Company is entitled to demand delivery of the Contract Object. In such case the parties shall sign a Delivery Protocol and the Completion Certificate shall be issued in accordance with Art. 24.3, first paragraph. Company shall, in addition, issue a Variation Order in accordance with Art. 12 to 16.

PART VIII LIABILITY AND INSURANCES

ART. 29 LOSS OR DAMAGE TO THE CONTRACT OBJECT OR COMPANY PROVIDED ITEMS

29.1 If loss of or damage to the Contract Object occurs between the start of the Work until the time when the Delivery Protocol has been signed or should have been signed in accordance with Art. 19.1 and 19.2, Contractor shall carry out necessary measures to ensure that the Work is completed in accordance with the Contract. The same applies if any loss of or damage to Materials or Company Provided Items occurs while they are at Site under Contractor Group's safekeeping and control.

Contractor's obligation to carry out measures stated herein applies regardless of whether negligence in any form has been shown by Company Group.

29.2 The costs of carrying out such measures as are stated in Art. 29.1 shall be borne by Contractor, unless the loss or damage is caused by Company Group or the loss or damage is due to war or nuclear damage.

Contractor's liability for such costs for any one occurrence is limited to the deductibles stated in Exhibit I - Company’s Insurances, provided that

a) the loss or damage is covered by Company's insurance policies mentioned in Art. 31.1, or
b) the loss or damage is not covered by Company’s insurance policies as a result of circumstances for which Company carries the risk, or

c) the loss or damage to Company Provided Items, whether or not incorporated into the Contract Object, is not covered by Company’s insurance policies and is not caused by Contractor’s non-compliance with the requirements of the Contract.

Contractor’s liability according to this Art. 29.2 does not apply for loss or damage occurring in the period starting when an Interim Delivery Protocol is issued pursuant to Art. 19.4 and ending upon completion of Mobilisation for the next Work Package.

**ART. 30 EXCLUSION OF LIABILITY - INDEMNIFICATION**

30.1 Contractor shall indemnify Company Group from and against any claim concerning

a) personal injury to or loss of life of any employee of Contractor Group, and

b) loss of or damage to any property of Contractor Group, arising out of or in connection with the Work or caused by the Contract Object in its lifetime. This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Company Group.

Contractor shall, as far as practicable, ensure that other companies in Contractor Group waive their right to make any claim against Company Group when such claims are covered by Contractor’s obligation to indemnify under the provisions of Art. 30.1.

30.2 Company shall indemnify Contractor Group from and against any claim concerning

a) personal injury to or loss of life of any employee of Company Group, and

b) loss of or damage to any property of Company Group, except as stated in Art. 29,

arising out of or in connection with the Work or caused by the Contract Object in its lifetime. This applies regardless of any form of liability whether strict or by negligence, in whatever form, on the part of Contractor Group.

Company shall, as far as practicable, ensure that other companies in Company Group waive their right to make any claim against Contractor Group when such claims are covered by Company’s obligation to indemnify under the provisions of this Art. 30.2.
30.3 Until the issue of the Acceptance Certificate, Contractor shall indemnify Company Group from

a) costs resulting from the requirements of public authorities in connection with the removal of wrecks, debris, dropped objects or pollution from vessels or other floating devices provided by Contractor Group for use in connection with the Work, and removal of such wrecks, debris and dropped objects if they obstruct Company’s operation, and

b) claims arising out of loss or damage suffered by anyone other than Contractor Group and Company Group in connection with the Work, or caused by the Contract Object,

even if the loss or damage is the result of any form of liability, whether strict or by negligence, in whatever form, on the part of Company Group.

Contractor's liability for loss or damage arising out of each accident shall be limited to NOK 5 million. For incidents covered by Art. 30.3 a) this limit does not apply to Contractor's liability for loss or damage for each accident covered by insurances provided in accordance with Art. 31.2. a) and b), where Contractor's liability extends to the sum recovered under the insurance for the loss or damage.

Company shall indemnify Contractor Group from and against claims mentioned in the first paragraph above, to the extent that they exceed the limitations of liability mentioned above, regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Company Group.

Company shall indemnify Contractor Group from and against any loss or damage to property of anyone other than Contractor Group and Company Group on which Contractor according to the Contract shall perform part of the Work, including crossing of umbilicals, cables and pipelines, if any.

After issue of the Acceptance Certificate, Company shall indemnify Contractor Group from and against any claims of the kind mentioned in the first paragraph above, regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Contractor Group.

30.4 Contractor shall indemnify Company Group from claims resulting from infringement of patent or other industrial property rights arising out of or in connection with the Work, or Company’s use of the Contract Object.

Nevertheless, this does not apply where such an infringement results from the use of Drawings, Specifications, Company Provided Items or process licences nominated by Company from Third Parties or is the result of compliance with an instruction from Company. In such cases Company shall correspondingly indemnify Contractor Group.

Contractor’s liability shall be limited to infringements in the country where the Contract Object, in accordance with the Contract, is to be used, and in the countries in which the Sites are located.
30.5 A party shall promptly notify the other party if it receives a claim that the other party is obliged to indemnify. Whenever possible, the other party shall take over treatment of the claim, provided always that Company shall handle all claims which may result in liability under Art. 30.3, third, fourth and fifth paragraph.

The parties shall give each other information and other assistance needed for handling the claim. Neither party shall, without the consent of the other party, approve of a claim which shall be indemnified, in whole or in part, by the other party.

30.6 Company shall indemnify Contractor Group against all claims and losses which arise out of or in any way relate directly and/or indirectly to performance of the Work or is caused by the Contract Object in its lifetime and resulting from one or more of the following:

a) Reservoir seepage or pollution originating under ground.

b) Fire, explosion or blow-out of any well or reservoir

c) Escape of product from any facility, including pipeline or other subsea or surface facility, at any offshore and/or inshore Site.

This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Contractor Group.

ART. 31 INSURANCE

31.1 Company shall provide and maintain the insurances described below and in Exhibit I - Company's Insurances.

a) Construction all risk insurance, or equivalent insurance, covering the Contract Object, Materials and Company Provided Items against physical loss or damage, in accordance with the insurance conditions.

b) Transport insurance covering the Contract Object, Materials and Company Provided Items against physical loss or damage during transportation, in accordance with the insurance conditions.

c) Liability insurance covering Company’s liability under Art. 30.3 for a minimum amount of NOK 500 million for claims arising from each accident.

Such insurance cover shall be effective from the start of the Work and shall not expire until issue of the Acceptance Certificate.

To the extent possible, the policies shall state that Company Group and Contractor Group are co-insured, and the insurers shall waive any right of subrogation against Contractor Group.

31.2 Contractor shall provide and maintain the following insurance: