

MARINE CONTRACTING

Contractual Economic Risks – analysis of
SUPPLYTIME 05 and NSC 05



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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 deal with complex projects and regulate 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 own vessels and work 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 modes¹.

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 methods².

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 C³. 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>

³ <http://www.boa.no/Default.aspx?ID=49>

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 men⁴. 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

⁴ <http://hmc.heerema.com/About/Fleet/Thialf/tabid/378/language/nl-NL/Default.aspx>

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, Petrolueumskontrakter, 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 borders.

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 BIMCO⁵ and adopted by ISOA⁶. 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 Baltimore 39 and the standard contracts of the Dutch shipowner Smith-Loyd, the German Offshore Supply Association (OSA) and the Norwegian shipowner Whilhelmsen⁷. 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 TOWHIRE⁸.

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 Gade⁹,

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 2008¹⁰.

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

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 confidentiality and competition in the market.

states, including Norway, have ratified the New York Convention of 1958¹¹ 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 Gade¹², 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

¹¹ http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html

¹² Woxholt & Gade 1979, p.47.

stated in Box 7¹³. 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 parties¹⁴. 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 Gade¹⁵.

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 parties¹⁶ 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

¹³ SUPPLYTIME 2005, Clause 2 (d), Line 27 – 32.

¹⁴ SUPPLYTIME 2005, Clause 2 (d), Line 66 – 70.

¹⁵ Woxholt & Gade 1979, p.47.

¹⁶ Please see. Gram, s. 173f, Baltimise 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 conditions¹⁷.

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...”¹⁸. 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 payments¹⁹.

2.1.4.2 Off – Hire

The Charterer is, as a main rule²⁰, 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.

¹⁸ SUPPLYTIME 2005, Clause 12 (a), Line 435 – 436.

¹⁹ SUPPLYTIME 2005, Clause 12 (f), Line 503 – 507.

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 vessels²¹.

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 Shelf²². 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 vessels²³. 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

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>

²³ Kaasen, 2006, pp. 46 – 47.

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.

²⁵ Kaasen, 2006, p. 47.

2.2.1.2 Part 2 – Performance of the Work

Part 2 regulates central areas of the Contractors planned Work according to the agreed contract²⁶. 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 16²⁷.

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. 4th 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 Company²⁸. 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 contract²⁹. 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 loses its right to

²⁸ Kaasen, 2006, p. 219.

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 systems³⁰. 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.

³⁰ Kaasen, 2006, p. 424.

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 demobilized³¹. 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 Kaasen³², 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).

³² Kaasen, 2006, p. 584.

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 suspended³³. 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 State³⁴.

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 parties³⁵.

The central part of this principle is that the risk for damage is distributed on the basis of for whom the damage occurs, not on the basis of who caused the damage, or if it was caused by fault or neglect³⁶. 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 Work³⁷.

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.

³⁴ Bull, 1988, p. 333 et seq. & The Knock-for-knock agreement, AfS 3 p. 448 et seq.

³⁵ Bull. 1988, p. 346-347.

³⁶ Bråfelt, 2008, p. 352.

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 NEWBUILDCON³⁸ 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 lose 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 law³⁹. “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 loses its right to freight hire⁴⁰. However, between 30% and 50% of world fleet buy Loss of Hire Insurance⁴¹ 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 IMO⁴² 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 damage⁴³. 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

³⁹ Larsen, Andreas Fjærvoll. *Supplyrederens rett til ansvarsbegrensning når skipet er ute av drift*. Master Thesis. Oslo, 2008. p. 2.

⁴⁰ Askheim/Bull/Lange. 1983. MarIus nr 87. p 29.

⁴¹http://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-mandatory⁴⁴, 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 parties⁴⁵ 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 arbitration⁴⁶. 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.

⁴⁵ Hagstrøm 2003 p. 622, Krüger 1989 p. 383 et. Al, Selvig 1993 p. 546-547 and NOU 1993: 39 p. 15.

⁴⁶ Michelet, 1997. p. 342-353. & Falkanger, 1996. p. 149-150.

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 89⁵⁰. 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 inadequate⁵¹.

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

⁵⁰ Evje/Solvang 2007 p. 18-19.

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 al⁵², 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 Act⁵³ 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 mud⁵⁴. Pollution damage from vessels (used by marine contractors) is not covered by the Petroleum Act⁵⁵. 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

⁵² Falkanger / Bull, 2004, p. 199

⁵³ LOV-2009-06-19-104, Lov om petroleumsvirksomhet.

⁵⁴ Ot.prp. nr. 72 (1982-83) p. 31 and p. 93

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 contractors⁵⁶.

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 Protocol⁵⁷ 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 rules⁵⁸.

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.

⁵⁶ Bull, 1988, p. 39

⁵⁷ Eve de Coning,, Maritime Law 2008, *Oil Pollution Liability* ppt, p 7.

⁵⁸ Brautaset, *Oljesølansvaret* - 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 pollution⁵⁹. 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 outwards⁶⁰. “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”⁶¹. 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 Petroleumsloven § 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 party⁶².

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

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 occurred⁶³. 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 accident⁶⁴. 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

⁶³ Bull, 1988, p. 380 et seq.

⁶⁴ <http://www.statoilhydro.com/en/ouoperations/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 Work⁶⁵. 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 lose 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

⁶⁵ Bråfelt, 2008, pp. 333 -334.

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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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	1	the expiration or earlier termination of this Charter Party	67
“ Owners ” shall mean the party stated in Box 2	2	free of cargo and with clean tanks at the port or place	68
“ Charterers ” shall mean the party stated in Box 3	3	as stated in Box 8(i) or such other port or place as may	69
“ Vessel ” shall mean the vessel named in Box 4 and with particulars stated in ANNEX “A”	4	be mutually agreed. The Charterers shall give not less	70
“ Well ” shall mean the time required to drill, test, complete and/or abandon a single borehole including any side-track thereof.	5	than the number of days notice in writing of their intention to redeliver the Vessel, as stated in Box 8(ii).	71
“ Offshore Unit ” shall mean any vessel, offshore installation, structure and/or mobile unit used in offshore exploration, construction, pipe-laying or repair, exploitation or production.	6	(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.	72
“ Employees ” shall mean employees, directors, officers, servants, agents or invitees.	7		73
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	12	3. Condition of Vessel	77
	13	(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”, attached hereto, and in a thoroughly efficient state of hull and machinery.	78
	14	(b) The Owners shall exercise due diligence to maintain the Vessel in such Class and in every way fit for the service stated in Clause 6 throughout the period of this Charter Party.	79
1. Charter Period	15		80
(a) The Owners let and the Charterers hire the Vessel for the period as stated in Box 9 from the time the Vessel is delivered to the Charterers.	16		81
(b) Subject to Clause 12(b), the Charterers have the 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).	17		82
(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).	18		83
	19		84
	20		85
	21		86
	22	4. Structural Alterations and Additional Equipment	87
	23	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. 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.	88
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SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

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.	131 132 133	(ii)(1) No Bills of Lading shall be issued for shipments under this Charter Party.	198 199
(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.	134 135 136 137 138 139	(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.	200 201 202 203
(c) <u>The Vessel's Space</u> . - The whole reach and burden and decks of the Vessel shall throughout the Charter Period be at the Charterers' disposal reserving 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:	140 141 142 143 144 145 146 147	(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.	204 205 206 207 208 209 210
(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.	148 149 150 151 152 153 154 155 156 157	(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 in port 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.	211 212 213 214 215 216 217 218 219 220 221 222
(ii) Lawful cargo whether carried on or under deck.	158	(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.	223 224 225 226 227 228 229
(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.	159 160 161 162 163 164 165 166 167 168 169 170 171 172	(d) The entire operation, navigation, and management of the Vessel shall be in the exclusive control and command of the Owners, their 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.	230 231 232 233 234 235 236 237 238 239 240 241
(iv) Hazardous or noxious substances, subject to Clause 14(f), proper notification and any pertinent regulations.	173 174 175		
(d) <u>Laying-up of Vessel</u> . - 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.	176 177 178 179 180 181 182 183 184	8. Owners to Provide	242
7. Master and Crew	185	(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 engineroom stores, cordage required for ordinary ship's purposes mooring alongside 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.	243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263
(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.	186 187 188 189 190 191 192 193 194 195 196 197	(b) On delivery the Vessel shall be equipped, if	264

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SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

appropriate, at the Owners' expense with any towing and anchor handling equipment specified in ANNEX "A".	265 266	which fuels of the required type or better are available.	331
9. Charterers to Provide	267	(b) <u>Purchase Price.</u> – 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 redelivery 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.	332 333 334 335 336 337 338 339 340 341
(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).	268 269 270 271 272 273 274 275 276 277 278 279 280	(c) <u>Bunkering.</u> – 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 amendments 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 should 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.	342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363
(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 cordage 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.	281 282 283 284 285 286 287 288 289 290 291 292 293 294 295	(d) <u>Liability.</u> – 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.	364 365 366 367 368 369 370 371
(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.	296 297 298 299 300 301 302	11. BIMCO ISPS/MTSA Clause for Time Charter Parties	372
(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.	303 304 305 306 307 308	(a) (i) The Owners shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Vessel and "the Company" (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Owners shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the "Owner" (as defined by the MTSA).	373 374 375 376 377 378 379 380 381 382 383
(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.	309 310 311 312 313 314	(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).	384 385 386 387 388 389
(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 then any financial security required shall be provided by the Owners.	315 316 317 318 319 320 321 322 323	(iii) 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 Owners or "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Owners' account.	390 391 392 393 394 395 396
10. Bunkers	324	(b) (i) The Charterers shall provide the Owners and	397
(a) <u>Quantity at Delivery/Redelivery.</u> – 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	325 326 327 328 329 330		

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SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

the Master with their full style contact details and,	398	and disbursements for the Charterers' account shall be	465
upon request, any other information the Owners	399	received within the number of days stated in Box 24	466
require to comply with the ISPS Code/MTSA.	400	from the date of receipt of the invoice. Payment shall	467
Furthermore, the Charterers shall ensure that all	401	be made in the currency stated in Box 20 in full without	468
sub-charter parties they enter into during the	402	discount to the account stated in Box 23.	469
period of this Charter Party contain the following	403	However, any advances for disbursements made on	470
provision:	404	behalf of and approved by the Owners may be deducted	471
"The Charterers shall provide the Owners with	405	from Hire due.	472
their full style contact details and, where sub-	406	If payment is not received by the Owners within 5	473
letting is permitted under the terms of the charter	407	banking days following the due date the Owners are	474
party, shall ensure that the contact details of all	408	entitled to charge interest at the rate stated in Box 25	475
sub-charterers are likewise provided to the	409	on the amount outstanding from and including the due	476
Owners".	410	date until payment is received.	477
(ii) Except as otherwise provided in this Charter Party,	411	Where an invoice is disputed, the Charterers shall notify	478
loss, damages, expense or delay (excluding	412	the Owners before the due date and in any event pay	479
consequential loss, damages, expense or delay)	413	the undisputed portion of the invoice but shall be entitled	480
caused by failure on the part of the Charterers to	414	to withhold payment of the disputed portion provided	481
comply with this Clause shall be for the Charterers'	415	that such portion is reasonably disputed and the	482
account.	416	Charterers specify such reason. Interest will be	483
(c) Notwithstanding anything else contained in this	417	chargeable at the rate stated in Box 25 on such disputed	484
Charter Party all delay, costs or expenses whatsoever	418	amounts where resolved in favour of the Owners.	485
arising out of or related to security regulations or	419	Should the Owners prove the validity of the disputed	486
measures required by the port facility or any relevant	420	portion of the invoice, balance payment shall be received	487
authority in accordance with the ISPS Code/MTSA	421	by the Owners within 5 banking days after the dispute	488
including, but not limited to, security guards, launch	422	is resolved. Should the Charterers' claim be valid, a	489
services, tug escorts, port security fees or taxes and	423	corrected invoice shall be issued by the Owners.	490
inspections, shall be for the Charterers' account, unless	424	(f) (i) Where there is a failure to pay Hire by the due	491
such costs or expenses result solely from the Owners'	425	date, the Owners shall notify the Charterers in	492
negligence. All measures required by the Owners to	426	writing of such failure and further may also suspend	493
comply with the Ship Security Plan shall be for the	427	the performance of any or all of their obligations	494
Owners' account.	428	under this Charter Party until such time as all the	495
(d) If either party makes any payment which is for the	429	Hire due to the Owners under the Charter Party	496
other party's account according to this Clause, the other	430	has been received by the Owners. Throughout any	497
party shall indemnify the paying party.	431	period of suspended performance under this	498
		Clause, the Vessel is to be and shall remain on	499
		Hire. The Owners' right to suspend performance	500
		under this Clause shall be without prejudice to any	501
		other rights they may have under this Charter Party.	502
		(ii) If after 5 days of the written notification referred	503
		to in Clause 12(f)(i) the Hire has still not been	504
		received the Owners may at any time while Hire	505
		remains outstanding withdraw the Vessel from the	506
		Charter Party. The right to withdraw is to be	507
		exercised promptly and in writing and is not	508
		dependent upon the Owners first exercising the	509
		right to suspend performance of their obligations	510
		under the Charter Party pursuant to Clause 12(f)(i)	511
		above. The receipt by the Owners of a payment	512
		from the Charterers after the five day period	513
		referred to above has expired but prior to the	514
		notice of withdrawal shall not be deemed a waiver	515
		of the Owners' right to cancel the Charter Party.	516
		(iii) Where the Owners choose not to exercise any of	517
		the rights afforded to them by this Clause in	518
		respect of any particular late payment of Hire, or	519
		a series of late payments of Hire, under the	520
		Charter Party, this shall not be construed as a	521
		waiver of their right either to suspend performance	522
		under Clause 12(f)(i) or to withdraw the Vessel	523
		from the Charter Party under Clause 12(f)(ii) in	524
		respect of any subsequent late payment under	525
		this Charter Party.	526
		(iv) The Charterers shall indemnify the Owners in	527
		respect of any liabilities incurred by the Owners	528
		under the Bill of Lading or any other contract of	529
		carriage as a consequence of the Owners' proper	530
		suspension of and/or withdrawal from any or all	531
		of their obligations under this Charter Party.	532
12. Hire and Payments	432		
(a) <u>Hire</u> . - The Charterers shall pay Hire for the Vessel	433		
at the rate stated in Box 20 per day or pro rata for part	434		
thereof from the time that the Vessel is delivered to the	435		
Charterers until the expiration or earlier termination of	436		
this Charter Party.	437		
(b) <u>Extension Hire</u> . - If the option to extend the Charter	438		
Period under Clause 1(b) is exercised, Hire for such	439		
extension shall, unless stated in Box 21, be agreed	440		
between the Owners and the Charterers. Should the	441		
parties fail to reach an agreement, then the Charterers'	442		
shall not have the option to extend the Charter Period.	443		
(c) <u>Adjustment of Hire</u> . - The rate of hire shall be	444		
adjusted to reflect documented changes, after the date	445		
of entering into the Charter Party or the date of	446		
commencement of employment, whichever is earlier,	447		
in the Owners' costs arising from changes in the	448		
Charterers' requirements, or regulations governing the	449		
Vessel and/or its Crew or this Charter Party or the	450		
application thereof.	451		
(d) <u>Invoicing</u> . - All invoices shall be issued in the	452		
contract currency stated in Box 20. In respect of	453		
reimbursable expenses incurred in currencies other than	454		
the contract currency, the rate of exchange into the	455		
contract currency shall be that quoted by the Central	456		
Bank of the country of such other currency as at the	457		
date of the Owners' invoice. Invoices covering Hire and	458		
any other payments due shall be issued monthly as	459		
stated in Box 22(i) or at the expiration or earlier	460		
termination of this Charter Party. Notwithstanding the	461		
foregoing, bunkers and lubricants on board at delivery	462		
shall be invoiced at the time of delivery.	463		
(e) <u>Payments</u> . - Payments of Hire, bunker invoices	464		

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SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

<p>(g) <u>Audit</u>. - 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.</p>	<p>533 534 535 536 537 538 539 540 541 542 543</p>	<p>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. 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.</p>	<p>600 601 602 603 604 605 606 607 608 609 610 611 612 613</p>
<p>13. Suspension of Hire</p> <p>(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 adjusted 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:</p> <p>(i) the carriage of cargo as noted in Clause 6(c)(iii) and (iv);</p> <p>(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;</p> <p>(iii) deviation from her Charter Party duties or exposure to abnormal risks at the request of the Charterers;</p> <p>(iv) detention in consequence of being driven into port or to anchorage through stress of weather or trading to shallow harbours or to river or ports with bars or suffering an accident to her cargo, when the expenses resulting from such detention shall be for the Charterers' account howsoever incurred;</p> <p>(v) detention or damage by ice;</p> <p>(vi) any act or omission of the Charterers, their servants or agents.</p> <p>(b) <u>Liability for Vessel not Working</u>. - 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, except as provided in Clause 11(a)(iii).</p> <p>(c) <u>Maintenance and Drydocking</u>. - Notwithstanding Clause 13(a), the Charterers shall grant the Owners a maximum of 24 hours on hire, which shall be cumulative, per month or pro rata for part of a month from the commencement of the Charter Period for maintenance and repairs including drydocking (hereinafter referred to as "maintenance allowance"). The Vessel shall be drydocked at regular intervals. The Charterers shall place the Vessel at the Owners' disposal clean of cargo, at a port (to be nominated by the Owners at a later date) having facilities suitable to the Owners for the purpose of such drydocking. During reasonable voyage time taken in transits between such port and Area of Operation the Vessel shall be on hire and such time shall not be counted against the accumulated maintenance allowance. Hire shall be suspended during any time taken in maintenance repairs and drydocking in excess of the accumulated maintenance allowance.</p>	<p>544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599</p>	<p>14. Liabilities and Indemnities</p> <p>(a) <u>Definitions</u></p> <p>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.</p> <p>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.</p> <p>(b) <u>Knock for Knock</u></p> <p>(i) <u>Owners</u>. - 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 of 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 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 Charterers' Group, and even if such loss, damage, injury or death is caused wholly or partially by unseaworthiness of any vessel; and the Owners shall indemnify, protect, defend and hold harmless the Charterers from any and against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of or in connection with such loss, damage, personal injury or death.</p> <p>(ii) <u>Charterers</u>. - Notwithstanding anything else contained in this Charter Party excepting Clause 11, 15(a), 16 and 26, the Owners shall not be responsible for loss of, damage to, or any liability arising out of anything towed by the Vessel, any cargo laden upon or carried by the Vessel or her tow, the property of any member of the Charterers' Group, whether owned or chartered, including their Offshore Units, or for personal injury or death of any member of the Charterers' Group or of anyone on board anything towed by the Vessel, arising out of or in any way connected with the performance of this Charter Party, even if such loss, damage, liability, injury or death is caused wholly or partially by the act, neglect or default of the Owners' Group, and even if such loss, damage, liability, injury or death is caused wholly or partially by the unseaworthiness of any vessel; and the Charterers shall indemnify, protect, defend and hold harmless the Owners from any and against all claims, costs, expenses, actions,</p>	<p>614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666</p>

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

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<p>(b) The Owners shall upon request furnish the Charterers with copies of certificates of insurance which provide sufficient information to verify that the Owners have complied with the insurance requirements of this Charter Party.</p> <p>(c) If the Owners fail to comply with the aforesaid insurance requirements, the Charterers may, without prejudice to any other rights or remedies under this Charter Party, purchase similar coverage and deduct the cost thereof from any payment due to the Owners under this Charter Party.</p> <p>18. Saving of Life and Salvage</p> <p>(a) The Vessel shall be permitted to deviate for the purpose of saving life at sea without prior approval of or notice to the Charterers and without loss of Hire provided however that notice of such deviation is given as soon as possible.</p> <p>(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.</p> <p>(c) The Owners shall waive their right to claim any award for salvage performed on property owned by 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, notwithstanding any other provisions contained in this Charter Party and even in the event of neglect or default of the Owners, Master, Officers or Crew:</p> <p>(i) The Charterers shall be responsible for and shall indemnify the Owners against payments made, under any legal rights, to the Master, Officers and Crew in relation to such assistance.</p> <p>(ii) The Charterers shall be responsible for and shall reimburse the Owners for any loss or damage sustained by the Vessel or her equipment by reason of giving such assistance and shall also pay the Owners' additional expenses thereby incurred.</p> <p>(iii) The Charterers shall be responsible for any actual or potential spill, seepage and/or emission of any pollutant howsoever caused occurring within the offshore site and any pollution resulting therefrom wheresoever it may occur and including but not limited to the cost of such measures as are reasonably necessary to prevent or mitigate</p>	<p>800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866</p>	<p>pollution damage, and the Charterers shall indemnify the Owners against any liability, cost or expense arising by reason of such actual or potential spill, seepage and/or emission.</p> <p>(iv) The Vessel shall not be off-hire as a consequence of giving such assistance, or effecting repairs under Clause 18(c)(ii), and time taken for such repairs shall not count against time granted under Clause 13(c).</p> <p>(v) The Charterers shall indemnify the Owners against any liability, cost and/or expense whatsoever in respect of any loss of life, injury, damage or other loss to person or property howsoever arising from such assistance.</p> <p>19. Lien</p> <p>The Owners shall have a lien upon all cargoes and equipment for all claims against the Charterers under this Charter Party and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned. The Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the Vessel. Except as provided in Clause 14, the Charterers shall indemnify and hold the Owners harmless against any lien of whatsoever nature arising upon the Vessel during the Charter Period while she is under the control of the Charterers, and against any claims against the Owners arising out of the operation of the Vessel by the Charterers or out of any neglect of the Charterers in relation to the Vessel or the operation thereof. Should the Vessel be arrested by reason of claims or liens arising out of her operation hereunder, unless brought about by the act or neglect of the Owners, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released and at their own expense put up bail to secure release of the Vessel.</p> <p>20. Sublet and Assignment</p> <p>(a) <u>Charterers</u>. - The Charterers shall have the option of subletting, assigning or loaning the Vessel to any person or company not competing with the Owners, subject to 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 Charterers for all the purposes of this Charter Party. The Owners make it a condition of such consent that additional Hire shall be paid as agreed between the Charterers and the Owners in Box 29, having regard to the nature and period of any intended service of the Vessel.</p> <p>(b) <u>Owners</u>. - 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.</p> <p>21. Substitute Vessel</p> <p>The Owners shall be entitled at any time, whether before delivery or at any other time during the Charter Period,</p>	<p>867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931</p>
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to provide a substitute vessel, subject to the Charterers' prior approval which shall not be unreasonably withheld.	932 933	time as the next payment of hire is due, or upon redelivery, whichever occurs first.	999 1000
22. BIMCO War Risks Clause "CONWARTIME 2004"	934	(f) The Vessel shall have liberty:-	1001
(a) For the purpose of this Clause, the words:	935	(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;	1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012
(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	936 937 938 939	(ii) to comply with the order, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;	1013 1014 1015 1016
(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.	940 941 942 943 944 945 946 947 948 949 950 951 952 953 954	(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;	1017 1018 1019 1020 1021 1022 1023 1024
(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.	955 956 957 958 959 960 961 962 963 964 965 966	(iv) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;	1025 1026 1027
(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.	967 968 969 970 971 972 973 974	(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.	1028 1029 1030 1031 1032
(d) (i) 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.	975 976 977 978 979 980 981	(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 of the receipt of such notice and request, the Owners may discharge the cargo at any safe port of their own choice.	1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043
(ii) If the Underwriters of such insurance should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, or pass through any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then the actual premiums and/or calls paid shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due, or upon redelivery, whichever occurs first.	982 983 984 985 986 987 988 989 990 991 992	(h) If 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.	1044 1045 1046 1047
(e) If the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous in the manner defined by the said terms, then the actual bonus or additional wages paid shall be reimbursed to the Owners by the Charterers at the same	993 994 995 996 997 998	23. War Cancellation Clause 2004	1048
		Either party may cancel this Charter Party on the outbreak of war (whether there be a declaration of war or not)	1049 1050 1051
		(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, or,	1052 1053 1054 1055
		(b) between the countries stated in Box 30.	1056
		24. BIMCO Ice Clause for Time Charter Parties	1057
		(a) The Vessel shall not be obliged to force ice but, subject to the Owners' prior approval having due regard to its size, construction and class, may follow ice-breakers.	1058 1059 1060 1061
		(b) The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or area where lights, lightships, markers or buoys have been or are	1062 1063 1064

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about to be withdrawn by reason of ice, nor where on	1065	claim whatsoever of the owners of any goods carried	1130
account of ice there is, in the Master's sole discretion,	1066	under this Charter Party paid or payable by the other or	1131
a risk that, in the ordinary course of events, the Vessel	1067	non-carrying ship or her owners to the owners of the	1132
will not be able safely to enter and remain at the port or	1068	said goods and set-off, recouped or recovered by the	1133
area or to depart after completion of loading or	1069	other or non-carrying ship or her owners as part of their	1134
discharging. If, on account of ice, the Master in his sole	1070	claim against the Vessel or the Owners. The foregoing	1135
discretion considers it unsafe to proceed to, enter or	1071	provisions shall also apply where the owners, operators	1136
remain at the place of loading or discharging for fear of	1072	or those in charge of any ship or ships or objects other	1137
the Vessel being frozen in and/or damaged, he shall	1073	than or in addition to the colliding ships or objects are	1138
be at liberty to sail to the nearest ice-free and safe place	1074	at fault in respect of a collision or contact.	1139
and there await the Charterers' instructions.	1075		
(c) Any delay or deviation caused by or resulting from	1076	28. Health and Safety	1140
ice shall be for the Charterers' account and the Vessel	1077	The Owners shall comply with and adhere to all	1141
shall remain on-hire.	1078	applicable international, national and local regulations	1142
(d) Any additional premiums and/or calls required by	1079	pertaining to health and safety, and such Charterers'	1143
the Vessel's underwriters due to the Vessel entering or	1080	instructions as may be appended hereto.	1144
remaining in any icebound port or area, shall be for the	1081		
Charterers' account.	1082	29. Drugs and Alcohol Policy	1145
		The Owners undertake that they have, and shall maintain	1146
25. Epidemic/Fever	1083	for the duration of this Charter Party, a policy on Drugs	1147
The Vessel shall not be ordered to nor bound to enter	1084	and Alcohol Abuse applicable to the Vessel (the "D & A	1148
without the Owners' written permission any place where	1085	Policy") that meets or exceeds the standards in the	1149
fever or epidemics are prevalent or to which the Master,	1086	OCIMF Guidelines for the Control of Drugs and Alcohol	1150
Officers and Crew by law are not bound to follow the	1087	Onboard Ship 1995 as amended from time to time.	1151
Vessel.	1088	The Owners shall exercise due diligence to ensure that	1152
Notwithstanding the terms of Clause 13, Hire shall be	1089	the D & A Policy is understood and complied with on	1153
paid for all time lost including any lost owing to loss of	1090	and about the Vessel. An actual impairment, shall not	1154
or sickness to the Master, Officers, Crew or passengers	1091	in and itself mean that the Owners have failed to	1155
or to the action of the Crew in refusing to proceed to	1092	exercise due diligence.	1156
such place or to be exposed to such risks.	1093		
		30. Taxes	1157
26. General Average and New Jason Clause	1094	Within the day rate the Owners shall be responsible for	1158
General Average shall be adjusted and settled in	1095	the taxes stated in Box 32 and the Charterers shall be	1159
London unless otherwise stated in Box 31, according to	1096	responsible for all other taxes.	1160
York-Antwerp Rules, 1994.	1097	In the event of change in the Area of Operation or	1161
Hire shall not contribute to General Average. Should	1098	change in local regulation and/or interpretation thereof,	1162
adjustment be made in accordance with the law and	1099	resulting in an unavoidable and documented change of	1163
practice of the United States of America, the following	1100	the Owners' tax liability after the date of entering into	1164
provision shall apply:	1101	the Charter Party or the date of commencement of	1165
"In the event of accident, danger, damage or disaster	1102	employment, whichever is the earlier, Hire shall be	1166
before or after the commencement of the voyage,	1103	adjusted accordingly.	1167
resulting from any cause whatsoever, whether due to	1104		
negligence or not, for which, or for the consequence of	1105	31. Early Termination	1168
which, the Owners are not responsible, by statute,	1106	(a) At Charterers' Convenience. - The Charterers may	1169
contract or otherwise, the cargo, shippers, consignees	1107	terminate this Charter Party at any time by giving the	1170
or owners of the cargo shall contribute with the Owners	1108	Owners written notice of termination as stated in Box	1171
in General Average to the payment of any sacrifices,	1109	14, upon expiry of which, this Charter Party will	1172
loss or expenses of a General Average nature that may	1110	terminate. Upon such termination, Charterers shall pay	1173
be made or incurred and shall pay salvage and special	1111	the compensation for early termination stated in Box	1174
charges incurred in respect of the cargo.	1112	13 and the demobilisation charge stated in Box 15, as	1175
If a salving vessel is owned or operated by the Owners,	1113	well as Hire or other payments due under the Charter	1176
salvage shall be paid for as fully as if the said salving	1114	Party up to the time of termination. Should Box 13 be	1177
vessel or vessels belonged to strangers. Such deposit	1115	left blank, Clause 31(a) shall not apply.	1178
as the Owners, or their agents, may deem sufficient to	1116	(b) For Cause. - If either party becomes informed of	1179
cover the estimated contribution of the cargo and any	1117	the occurrence of any event described in this Clause	1180
salvage and special charges thereon shall, if required,	1118	that party shall so notify the other party promptly in	1181
be made by the cargo, shippers, consignees or owners	1119	writing and in any case within 3 days after such	1182
of the cargo to the Owners before delivery".	1120	information is received. If the occurrence has not ceased	1183
		within 3 days after such notification has been given,	1184
27. Both-to-Blame Collision Clause	1121	this Charter Party may be terminated by either party,	1185
If the Vessel comes into collision with another ship as a	1122	without prejudice to any other rights which either party	1186
result of the negligence of the other ship and any act,	1123	may have, under any of the following circumstances:	1187
neglect or default of the Master, mariner, pilot or the	1124	(i) <u>Requisition.</u> - If the government of the state of	1188
servants of the Owners in the navigation or the	1125	registry and/or the flag of the Vessel, or any	1189
management of the Vessel, the Charterers will	1126	agency thereof, requisitions for hire or title or	1190
indemnify the Owners against all loss or liability to the	1127	otherwise takes possession of the Vessel during	1191
other or non-carrying ship or her owners insofar as such	1128	the Charter Period.	1192
loss or liability represent loss of or damage to, or any	1129	(ii) <u>Confiscation.</u> - If any government, individual or	1193

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group, whether or not purporting to act as a government or on behalf of any government, confiscates, requisitions, expropriates, seizes or otherwise takes possession of the Vessel during the Charter Period (other than by way of arrest for the purpose of obtaining security).	1194 1195 1196 1197 1198 1199	limited to the Employees of the party seeking to invoke force majeure;	1261 1262
(iii) Bankruptcy. - In the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed or if it suspends payment or ceases to carry on business.	1200 1201 1202 1203 1204 1205	(h) fire, accident, explosion except where caused by negligence of the party seeking to invoke force majeure;	1263 1264
(iv) Loss of Vessel. - If the Vessel is lost or becomes a constructive total loss, or is missing unless the Owners promptly state their intention to provide, and do in fact provide, within 14 days of the Vessel being lost or missing, at the port or place from which the Vessel last sailed (or some other mutually acceptable port or place) a substitute vessel pursuant to Clause 21. In the case of termination, Hire shall cease from the date the Vessel was lost or, in the event of a constructive total loss, from the date of the event giving rise to such loss. If the date of loss cannot be ascertained or the Vessel is missing, payment of Hire shall cease from the date the Vessel was last reported.	1206 1207 1208 1209 1210 1211 1212 1213 1214 1215 1216 1217 1218 1219	(i) any other similar cause beyond the reasonable control of either party. The party seeking to invoke force majeure shall notify the other party in writing within 2 working days of the occurrence of any such event/condition.	1265 1266 1267 1268 1269
(v) Breakdown. - If, at any time during the term of this Charter Party a breakdown of the Owners' equipment or Vessel result in the Owners being unable to perform their obligations hereunder for a period exceeding that stated in Box 33 and have not initiated reasonable steps within 48 hours to remedy the non-performance or provided a substitute vessel pursuant to Clause 21.	1220 1221 1222 1223 1224 1225 1226 1227	33. Confidentiality All information or data provided or obtained in connection with the performance of this Charter Party is and shall remain confidential and not be disclosed without the prior written consent of the other party. The parties shall use their best efforts to ensure that such information shall not be disclosed to any third party by any of their sub-contractors, Employees and agents. This Clause shall not apply to any information or data that has already been published or is in the public domain. All information and data provided by a party is and shall remain the property of that party.	1270 1271 1272 1273 1274 1275 1276 1277 1278 1279 1280 1281 1282
(vi) Force Majeure. - If a force majeure condition as defined in Clause 32 prevents or hinders the performance of the Charter Party for a period exceeding 15 consecutive days from the time at which the impediment causes the failure to perform if notice is given without delay or, if notice is not given without delay, from the time at which notice thereof reaches the other party.	1228 1229 1230 1231 1232 1233 1234 1235	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 in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator. In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.	1283 1284 1285 1286 1287 1288 1289 1290 1291 1292 1293 1294 1295 1296 1297 1298 1299 1300 1301 1302 1303 1304 1305 1306 1307 1308 1309 1310 1311 1312 1313 1314 1315 1316 1317 1318 1319 1320
(vii) Default. - If either party is in repudiatory breach of its obligations hereunder. Termination as a result of any of the above mentioned causes shall not relieve the Charterers of any obligation for Hire and any other payments.	1236 1237 1238 1239 1240	* (b) This Charter Party shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Charter Party shall be referred to three persons at New York, one to be appointed by each of the parties hereto,	1321 1322 1323 1324 1325 1326
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 to the extent the party invoking force majeure is prevented or hindered from performing any or all of their obligations under this Charter Party, provided they have made all reasonable efforts to avoid, minimize or prevent the effect of such events and/or conditions:	1241 1242 1243 1244 1245 1246 1247 1248 1249	(a) acts of God;	1250
(b) any Government requisition, control, intervention, requirement or interference;	1251 1252	(c) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;	1253 1254 1255
(d) riots, civil commotion, blockades or embargoes;	1256	(e) epidemics;	1257
(f) earthquakes, landslides, floods or other extraordinary weather conditions;	1258 1259	(g) strikes, lockouts or other industrial action, unless	1260

PART II
SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels

and the third by the two so chosen; their decision or	1327	have agreed to mediation. The arbitration	1381
that of any two of them shall be final, and for the	1328	procedure shall continue during the conduct of	1382
purposes of enforcing any award, judgement may be	1329	the mediation but the Tribunal may take the	1383
entered on an award by any court of competent	1330	mediation timetable into account when setting the	1384
jurisdiction. The proceedings shall be conducted in	1331	timetable for steps in the arbitration.	1385
accordance with the rules of the Society of Maritime	1332	(vi) Unless otherwise agreed or specified in the	1386
Arbitrators, Inc.	1333	mediation terms, each party shall bear its own	1387
In cases where neither the claim nor any counterclaim	1334	costs incurred in the mediation and the parties	1388
exceeds the sum of US\$50,000 (or such other sum as	1335	shall share equally the mediator's costs and	1389
the parties may agree) the arbitration shall be conducted	1336	expenses.	1390
in accordance with the Shortened Arbitration Procedure	1337	(vii) The mediation process shall be without prejudice	1391
of the Society of Maritime Arbitrators, Inc. current at	1338	and confidential and no information or documents	1392
the time when the arbitration proceedings are	1339	disclosed during it shall be revealed to the Tribunal	1393
commenced.	1340	except to the extent that they are disclosable under	1394
* (c) This Charter Party shall be governed by and	1341	the law and procedure governing the arbitration.	1395
construed in accordance with the laws of the place	1342	<i>(Note: The parties should be aware that the mediation</i>	1396
mutually agreed by the parties and any dispute arising	1343	<i>process may not necessarily interrupt time limits.)</i>	1397
out of or in connection with this Charter Party shall be	1344	If Box 34 in PART I is not appropriately filled in, sub-	1398
referred to arbitration at a mutually agreed place, subject	1345	clause 34(a) of this Clause shall apply. Sub-clause (d)	1399
to the procedures applicable there.	1346	shall apply in all cases.	1400
(d) Notwithstanding (a), (b) or (c) above, the parties	1347	* Sub-clauses 34(a), 34(b) and 34(c) are alternatives;	1401
may agree at any time to refer to mediation any	1348	indicate alternative agreed in Box 34.	1402
difference and/or dispute arising out of or in connection	1349		
with this Charter Party.	1350	35. Notices	1403
In the case of a dispute in respect of which arbitration	1351	(a) All notices given by either party or their agents to	1404
has been commenced under (a), (b) or (c) above, the	1352	the other party or their agents in accordance with the	1405
following shall apply:	1353	provisions of this Charter Party shall be in writing.	1406
(i) Either party may at any time and from time to	1354	(b) For the purposes of this Charter Party, "in writing"	1407
time elect to refer the dispute or part of the dispute	1355	shall mean any method of legible communication. A	1408
to mediation by service on the other party of a	1356	notice may be given by any effective means including,	1409
written notice (the "Mediation Notice") calling on	1357	but not limited to, cable, telex, fax, e-mail, registered or	1410
the other party to agree to mediation.	1358	recorded mail, or by personal service.	1411
(ii) The other party shall thereupon within 14 calendar	1359		
days of receipt of the Mediation Notice confirm that	1360	36. Headings	1412
they agree to mediation, in which case the parties	1361	The headings of this Charter Party are for identification	1413
shall thereafter agree a mediator within a further	1362	only and shall not be deemed to be part hereof or be	1414
14 calendar days, failing which on the application	1363	taken into consideration in the interpretation or	1415
of either party a mediator will be appointed	1364	construction of this Charter Party.	1416
promptly by the Arbitration Tribunal ("the Tribunal")	1365		
or such person as the Tribunal may designate for	1366	37. Severance	1417
that purpose. The mediation shall be conducted	1367	If by reason of any enactment or judgement any	1418
in such place and in accordance with such	1368	provision of this Charter Party shall be deemed or held	1419
procedure and on such terms as the parties may	1369	to be illegal, void or unenforceable in whole or in part,	1420
agree or, in the event of disagreement, as may be	1370	all other provisions of this Charter Party shall be	1421
set by the mediator.	1371	unaffected thereby and shall remain in full force and	1422
(iii) If the other party does not agree to mediate, that	1372	effect.	1423
fact may be brought to the attention of the Tribunal	1373		
and may be taken into account by the Tribunal	1374	38. Entire Agreement	1424
when allocating the costs of the arbitration as	1375	This Charter Party, including all Annexes referenced	1425
between the parties.	1376	herein and attached hereto, is the entire agreement of	1426
(iv) The mediation shall not affect the right of either	1377	the parties, which supersedes all previous written or	1427
party to seek such relief or take such steps as it	1378	oral understandings and which may not be modified	1428
considers necessary to protect its interest.	1379	except by a written amendment signed by both parties.	1429
(v) Either party may advise the Tribunal that they	1380		

ANNEX – A.2

NSC 05 – Chosen Articles

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This Contract is entered into between on behalf of the participants in the Owner Group (Company) having an address aton 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:

.....%
.....%
.....%
.....%
	100.00%

- 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.

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

- dd) **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 Contractor 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: