

## Offshore Energy Law

# LNGVoy and ShellLNGtime Compared

In 2015, 29% of the world's LNG was traded under agreements with terms of less than two years. Many of these cargoes are carried on spot terms, often as a trip-time charter based upon a heavily amended ShellLNGTime form. A new alternative is provided by the publication of LNGVoy, a standard form charterparty designed specifically for this purpose.

There will inevitably be some nervousness in switching to a new, unfamiliar form, even one tailored to the needs of this growing market. This article considers some of the main terms of LNGVoy and contrasts them with ShellLNGTime1.

The purpose is to demonstrate that, other than the conventional differences between contracting on time charter or voyage charter terms, the allocation of risks between shipowner and charterers in these two forms of LNG charter, when applied to spot voyages, is essentially the same.

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### Comparison Table

We set out below terms of the two charters of particular importance. The comparison is made against ShellLNGTime 2005. A second ShellLNGTime is now being published. We shall consider this in more detail in our next edition, suffice to say here that the new Shell form does not materially alter the allocation of risk. A comprehensive table comparing all LNGVoy and Shell LNG time terms is available on request to [joanne.champkins@shlegal.com](mailto:joanne.champkins@shlegal.com).

### Safe port warranty

Clause 4(c) of the ShellLNGTime1 form provides that "Charterers shall use due diligence to ensure that the Vessel is only employed between and at safe places". In voyage charters, generally, charterers do not give a safe port warranty, as the loading and discharge ports

are identified in advance, and so owners can check for themselves whether the port is safe. However, under LNGVoy, the definition of Loading Port and Discharging Port requires that they be a "safe place", and clause 7(b) provides that "Charterers warrant that they have exercised due diligence to ensure that the Loading and Discharging Ports are safe." Therefore, unless amended, charterers are under similar obligations as those imposed under ShellLNGTime1.

Voyage charterers may be surprised that LNG owners should take only a passive role in vetting the safety of terminals. However, owners are required under both forms to ensure the compatibility of the vessel to load at the nominated terminals. Also the key point in the drafting of LNGVoy on this issue was to mirror the allocation of risk found in a trip-time charter, even though this departs from normal voyage chartering practice.

### Arrival at the loading port and condition of the vessel

For longer term charterparties, owners generally have more information about the vessel's schedule and are therefore in a better position to plan for periods between cargoes, to ensure that the vessel's tanks are kept cool and ready to load without delay. Vessels employed in the spot market are often unable to do this. LNGVoy therefore provides flexibility as to how the vessel would be presented. Clause 5 offers three options for the condition of the vessel upon arrival at the loading port; (i) with tanks cooled down and ready to load, (ii) with tanks warm (either under natural gas vapours or (iii) inerted).

If the vessel is required to arrive with tanks cooled and ready to load and there is a delay in reaching the loading port, charterers' position would differ depending upon whether the vessel had been chartered under LNGVoy or ShellLNGTime1.

Under clause 5(b) of LNGVoy owners would be entitled to tender Notice of Readiness, but any time lost in cooling down the tanks would not count as laytime or

time on demurrage, unless cooling down is required owing to a delay in loading (see 5(b)(iii)). Any additional LNG required to cool down the tanks would be paid for by owners (although supplied by charterers), unless the delay had been caused by charterers' breach or where clause 5(b)(iii) applies.

Under ShellNGTime1, if cooling down is required because some or all of the heel has boiled-off before reaching the loading port, the default position would be that the time spent cooling down would be for charterers' account, unless time had been lost as a result of an off-hire event under clause 22 or as a result of owners' breach.

There is also a wider range of circumstances in which charterers would be required to pay for the LNG used in cooling down. For example, under clause 16(b)(ii) of ShellNGTime1, charterers would be required to pay for the LNG if it was required by reason of a strike or act of God, whereas under LNGVoy, the default position would be that owners pay in these circumstances, unless they had been caused by something for which charterers were responsible.

Despite the precise consequences of the vessel not being ready to load differing according to which form is used, it may seem that such differences are due to the nature of voyage charters compared to time charters, whilst the underlying allocation of risk and liability is the same.

### Boil-off during the voyage

Under ShellNGTime1, the general position is that boil-off caused by a delay which was not caused by owners' breach or an off-hire event would be for charterers' account. So owners may be liable where the delay did not result from their breach, such as where time is lost due to an off-hire event (see clause 22(g)).

Under LNGVoy, owners warrant that the daily natural boil-off shall not exceed a certain rate, which is set out in the charterparty at the time of fixing (see clause 23(a)). Any boil-off up to the level of this cap can be used as fuel for propulsion without cost to the owners. But how would charterers be compensated for additional boil-off if, for example, due to a delay on the sea passage, the voyage took a day longer than it should have taken? Would charterers not be entitled to compensation for the boil-off which occurred during that extra day, even though the daily limit had not been exceeded?

This problem is addressed by the inclusion of a limit for the total amount of boil-off that may occur during the sea passage. This is set out in box 27 of the LNGVoy form and is defined as the "Boil-off Cap". This will be calculated in advance, and will depend upon factors such as the length of the voyage, the specification of

the vessel, charterers' requirements as to how quickly the vessel should proceed and whether owners are entitled to "force boil-off" so as to speed up on the voyage.

Where the Boil-off Cap is exceeded, LNGVoy takes a strict approach in favour of charterers, as owners will be liable for any excess boil-off above the Boil-off Cap unless the delay is caused by charterers' breach or one of the limited range of circumstances in clause 23(b). Owners cannot rely upon the clause paramount or the general exceptions to escape liability. Given the importance in the LNG trade of maintaining a tight schedule, this arguably strikes the right balance in allocating the risk between the parties, and mirrors the allocation of liability found in ShellNGTime. In any event, owners can mitigate the effect of this, when using LNGVoy, by ensuring that they are conservative when determining the Boil-Off Cap, and that sufficient margin is built into their calculations to account for the exigencies of the typical voyage.

### Adjusting to LNGVoy

Given the significant differences between the two forms, some reluctance to start doing business on the new form is understandable. However, as demonstrated above, many terms, such as the safe port provisions, are largely indistinguishable, and the differences are largely a consequence of chartering on voyage rather than time charterparty terms.

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