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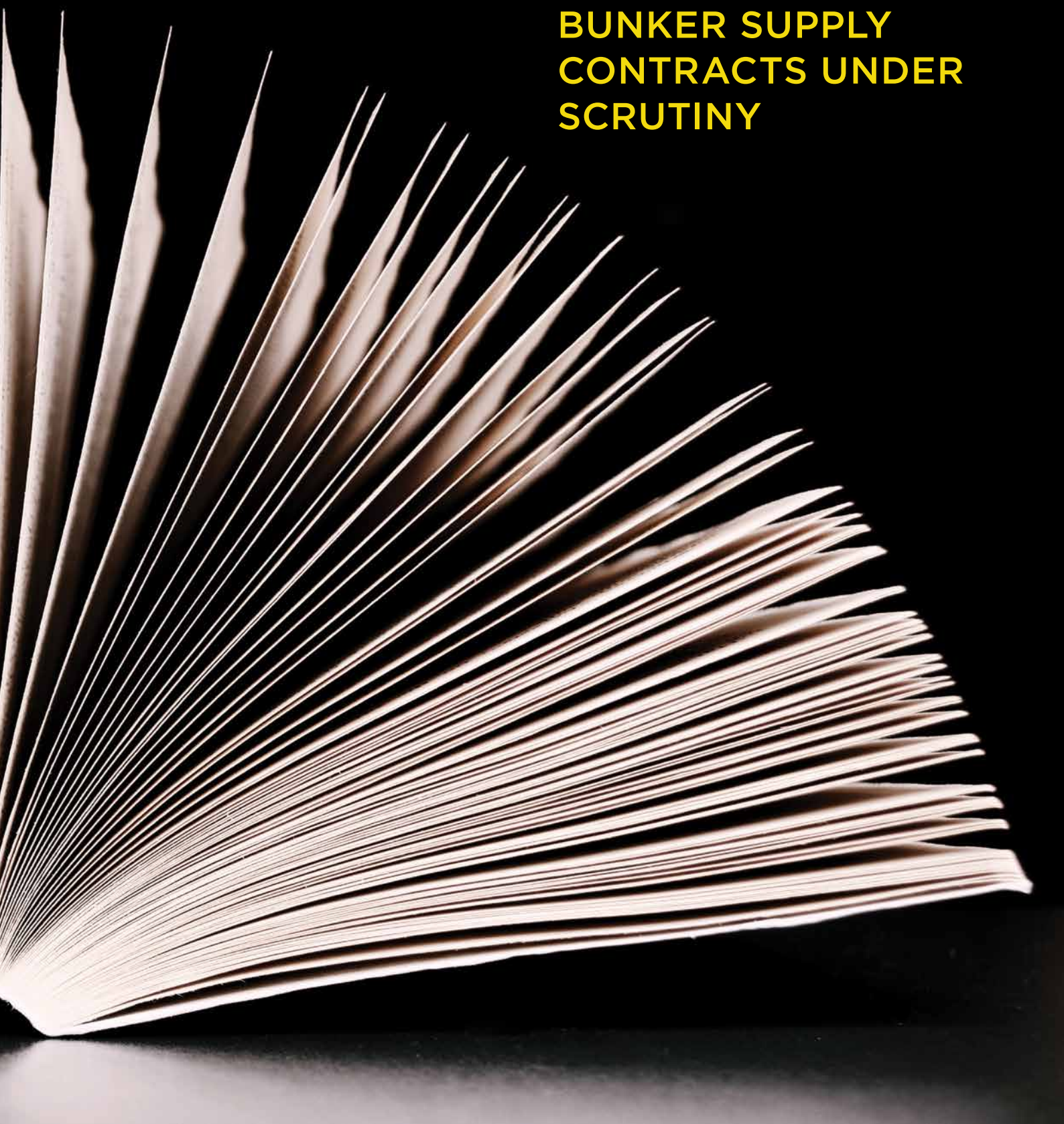
BUNKER SUPPLY CONTRACTS UNDER SCRUTINY



Common purpose

In his close analysis of the BIMCO Terms 2015 Standard Bunker Contract, Steve Simms calls for greater consistency in marine fuels sales terms and conditions throughout the bunker purchasing chain

Ralph Waldo Emerson was a leading 19th century American philosopher who hated consistency. In his 1841 book, *Self Reliance*, he wrote:

> *(a) foolish consistency is the hobgoblin of little minds... With consistency a great soul has simply nothing to do. He may as well concern himself with his shadow on the wall. Speak what you think now in hard words, and to-morrow speak what to-morrow thinks in hard words again, though it contradict every thing you said to-day. – 'Ah, so you shall be sure to be misunderstood.'*

The 20th Century British philosopher Aldous Huxley (*Do What You Will* (1929)) concurred:

> *Consistency is contrary to nature, contrary to life. The only completely consistent people are the dead.*

Since the 1990s, the Baltic and International Maritime Council (BIMCO) – a mostly shipowners' group – has attempted to work with the International Bunker Industry Association (IBIA) and other marine fuel supplier groups to develop consistent international marine fuel sales terms and conditions. Owners complained that the only consistency of fuel suppliers' terms and conditions was that they one-sidedly favoured suppliers. After BIMCO issued FUELCON in 1995, however, bunker providers indicated that FUELCON was biased in favour of owners. Few adopted FUELCON entirely. Seven years later, therefore, BIMCO, along with IBIA, made a further attempt with the 2002 'Standard Bunker Contract'. However, this contract never as a whole became 'standard', in part because owners, this time, considered it to favour suppliers.

From 2014, therefore, BIMCO brought together further groups of owners and suppliers to attempt to achieve consistency in bunker sales terms and conditions. The result is the 'BIMCO Terms 2015 – Standard Bunkering Contract'.

In a striking convergence of events, on 7 November 2014, BIMCO's Documentary Committee met in Copenhagen and approved the BIMCO Terms 2015 for publication. That very same day, some 400 kilometres (km) northwest of the Danish capital, OW Bunker Denmark made its insolvency filing in Aalborg.

Before the OW collapse – and the BIMCO Terms 2015 – it could accurately be said that most marine fuel buyers and sellers were avid Emerson and Huxley followers. Consistency in marine fuel sales terms and conditions generally was at best given low priority and perhaps considered foolish and contrary to commercial life.

The convergence of the BIMCO Terms 2015 and the OW collapse, however, should encourage marine fuel buyers and sellers to achieve greater consistency in marine fuels sales terms and conditions.

Nearly a year after the OW collapse, inconsistency in sales terms has proven to be expensive. There now are thousands of disputes arising out OW's demise, and at the root of many of these is the inconsistency between the general sales terms and conditions applied by the physical suppliers, brokers and traders along the stream from physical supply. In the OW transactions and often in others today, frequently with multiple hedges and counterparties, there may be three or more 'sellers', from the physical supplier to the ultimate seller to the vessel owner, manager or charterer. Each of these 'sellers' often has sales terms and conditions which differ as to passage of title, testing and sampling requirements, liability limits and even basic definitions of when payment is due or exactly what fuel is to be provided.

The vessel owners and at least one of the bunker suppliers involved in the recent UK High Court decision in *PST Energy 7 Shipping LLC and another v OW Bunker Malta Ltd* (*the Res Cogitans*), [2015] EWHC 2022 (Comm), have direct, fresh experience of the cost of inconsistency in marine fuel sales terms.

Affirming an arbitral decision, the High Court wrote that even though the documentation of the bunker provision to the vessel, *Res Cogitans*, referred to the provision as a 'sale', there was 'not a contract of sale within the definition in section 2 of the [U.K.] Sale of Goods Act 1979.' (Opinion para. 56.) OW Malta had sold to owners; OW Malta had bought from OW Denmark, OW Denmark bought from Rosneft, and Rosneft bought from its subsidiary and physical supplier, RN-Bunker Ltd, which had delivered the bunkers to the vessel.

Both OW's and Rosneft's sales terms and conditions chose UK law and had retention of title (ROT) clauses. Rosneft's, unlike OW's, however, did not contain terms prohibiting resale of the bunkers or permitting their consumption by the vessel. The High Court wrote (para. 17) that accordingly:

> *Rosneft knew that it was (or at least might be) selling to a trader for resale to an end user and that the vessel to which its subsidiary was to deliver the bunkers would have placed an order with an [OW] group company. It knew that the [OW] terms would include or were likely to include a retention of title clause which permitted the vessel to consume the bunkers prior to payment and that some or all of the bunkers might well be consumed within the 30 day period before payment fell due under its contract with [OW Denmark]. By necessary implication, in my judgment, Rosneft permitted [OW Denmark] to resell the bunkers and contemplated that it would do so on terms which permitted the Owners to use them*

in the vessel's normal employment.

The bank, ING, had claimed against the vessel owners, as assignee of the OW contracts. The owners were concerned about the inconsistent result that, if they paid ING, they might later have to pay Rosneft (which OW never paid). They claimed that under the Sale of Goods Act, because neither OW entity had paid Rosneft, OW Malta had no title ('property') to properly pass to the owners, and therefore the owners did not have to pay ING. The problem, wrote the High Court, was that in order to qualify under UK law as a 'sale of goods' contract, there had to be simultaneous passage of title with the sale. Because the ROT clause prevented this simultaneous passage of title, even though the bunkers were 'goods', the contract was not a 'sale of goods' under the Sale of Goods Act. Instead, it was a simple debt which ING could collect regardless of whether OW (or ING) had ever paid for the goods. Thus, inconsistency may force owners to pay twice for the same bunkers, and the High Court (para. 53) was not especially concerned about this:

As already indicated, I cannot exclude the possibility that the Owners may have a liability to Rosneft under some system of law other than English law and, if so, that the vessel may be exposed to arrest in some jurisdictions. However, in circumstances where the bunkers were delivered onboard the vessel pursuant to an English law contract between Rosneft and [OW Denmark] which by necessary implication authorised the consumption of the bunkers prior to payment, and which contemplated another English law contract between [OW Malta] and Owners which expressly authorised such consumption, I see no reason why the possibility of such a claim should affect the decision in this case. Exposure to claims with the possibility of arrests is one of the risks which shipowners run.

At the same time, however, while not stating any position that Rosneft (which is not a party to the *Res Cogitans* case) had no right of recovery outside English law, the High Court also (para. 62) noted that:

as a matter of construction of the contract not only is a right to consume the bunkers given by the supplier, but it is also a condition of the contract that the supplier is in a position to give such permission on behalf of whichever entity in the supply chain is the owner of the bunkers. That is sufficient protection for the Owners.

So, in other words, for Rosneft, on the side of the unpaid supplier, yes, it might proceed against the owners 'under some system of law other than English law.' At the same time, it will – because of the inconsistent sales terms and conditions involved – apparently there have to face the owners' 'protection' arising from the High Court's reading of the various sales terms, applying (which Rosneft's terms do) English law. The result of inconsistency is that both the buyer/owner, and seller/supplier, may face a loss; hardly a wise result.

Comparing the 1995 FUELCON with the BIMCO Terms 2015, however, after 20 years of what might be called 'hard words' (or at least long committee meetings, and outcomes of disputes and resolved disputes among marine fuel buyers and sellers), there has been more consistency – and industry-wide acceptance – of certain marine fuel sales terms and conditions. The High Court in *Res Cogitans* (para. 36) also observed that:

the industry has chosen instead to operate with payment on credit terms, affording security to the supplier in the form of a retention of title clause. (I was shown various standard terms, not only of individual bunker suppliers or purchasers but standard terms issued by BIMCO for industry wide use, which are all broadly to the same effect, generally with a credit period of 30 days).

Both the 2002 Standard Bunker Contract (2002 SBC) and BIMCO Terms 2015 have many identical terms, including that:

Payment for the Marine Fuels shall be made by the Buyers within thirty (30) days or, if otherwise agreed, within the number of days stated in the Confirmation Note after the completion of delivery. In the event payment has been made in advance of delivery, such payment shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and additional payment and/or refund shall be made within [7 – Terms 2015] [30 – 2002 SBC] days after the completion of delivery.

(b) Payment shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges.
(Terms 2015 paras. 8(a)-(b); 2002 SBC para, 8(a)).

The 30 (2002 SBC) versus 7 (Terms 2015) difference in the days for making additional quantity-based payment or refund is an example of how the Terms 2015 reflect both present industry standard, but also many sensible approaches to avoiding disputes which should be common ground between buyers and sellers.

> 'Owners complained that the only consistency of fuel suppliers' terms and conditions, was that they one-sidedly favoured suppliers. After BIMCO issued FUELCON in 1995, however, bunker providers indicated that FUELCON was biased in favour of owners'

Shortening the refund time to seven days, for example, allows both parties to quickly confirm quantities delivered and make adjustments; waiting to 30 days could contribute to disputes (particularly where one party became unable to make a payment or refund and might be inclined to claim, with the bunkers consumed, a much more difficult to prove – after 30 days – difference from reported quantity delivered). A shorter payment or refund term may not yet be industry standard, but it benefits both buyer and seller.

Common terms carried over without change in the Terms 2015 from the 2002 SBC also include:

Preamble

'These General Terms and Conditions shall apply to all deliveries contracted for unless the Sellers expressly confirm otherwise in the Confirmation Note. Each delivery shall constitute a separate contract.'

Specifications/Grades/Quality

(a) The Buyers shall have the sole responsibility for the nomination of the

specifications and grades of Marine Fuels fit for use by the Vessel.

Quantities/Measurements

(c) The Marine Fuels to be delivered under this Contract shall be measured and calculated in accordance with the ISO-ASTM-API-IP Petroleum Measurement Tables.

Delivery – in its entirety including:

(a) Delivery of the Marine Fuels shall be made day and night, Sundays and holidays included, at the port or place of delivery, subject always to the custom of that port or place, including responsibilities of buyers and sellers on delivery.

Price

(a) The price of the Marine Fuels shall be in the amount expressed per unit and in the currency stated in the Confirmation Note for each grade of Marine Fuels delivered into the Vessel's tanks free delivered/ex-wharf as applicable and stated in the Confirmation Note. In the event the price is quoted in volume units, conversion to standard volume shall be at sixty (60) degrees Fahrenheit or at fifteen (15) degrees Celsius.

These terms, and their carryover from the 2002 SBC, are indications of the continued development of industry standards among bunker buyers and sellers – inconsistencies on any of which otherwise could lead to expensive disputes.

The Terms 2015 also carry forward 2002 SBC terms which are not necessarily industry standard. Although buyers and sellers would agree that a 'Bunker Tanker' 'means bunker barge or tanker or tank truck supplying Marine Fuels to the Vessel[ ],' marine fuel suppliers generally would not agree that the term 'Buyer' should mean only 'the party contracting to purchase, take delivery and pay for the Marine Fuels.' OW's final (before insolvency) sales terms and conditions ('OW BUNKER GROUP, Terms and Conditions of sale for Marine Bunkers Edition 2013), for example, defined 'Buyer' to mean:

the vessel supplied and jointly and severally her Master, Owners, Managers/Operators, Disponent Owners, Time Charterers, Bareboat Charterers and Charterers or any party requesting offers or quotations for or ordering Bunkers and/or Services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made.

OW's General Counsel was a member of the Terms 2015 drafting group. The definition of 'buyer' in sales terms and conditions is a persistent ground for dispute, when there is an insolvent charterer which has failed to pay its bunker supplier – and the supplier then must pursue vessel owners or others for payment. This difference between OW's own terms and those of the Terms 2015 (and the fact that even a member of the group advised different terms) illustrates BIMCO's commentary to the Terms 2015:

'Perhaps a common ground for marine fuel sellers and buyers to take up, before further taking up any revisions to the Terms 2015, would be to draft together with insurer representatives an acceptable, standard form for bunker tanker insurance'

The objective of the BIMCO Terms 2015 is quite simple – to provide the industry with carefully thought through terms and conditions for the purchase and delivery of bunkers that are fair to both parties and provide a comprehensive starting point for negotiations. Harmonisation helps to bring certainty to these negotiations and assist parties to a bunker contract manage their risk and reduce the likelihood of disputes occurring.

Creating a globally acceptable set of terms and conditions for the purchase of bunkers is a task that has challenged BIMCO's documentary experts. The stumbling block has always been finding common ground between sellers and buyers, while taking into account different regional practices... [Y]ou shouldn't need to add anything or amend the standard text in most cases, but you are certainly free to do so if you wish.

Some terms new to the BIMCO Terms 2015 – or modified from the 2002 SBC – should be the subject of present focus and agreement for both bunker sellers and buyers – and particularly among those who act as sellers, beginning with physical supply, to the point of ultimate contract directly with a vessel owner, charterer or manager.

These generally are what could be called 'technical but important' – for fuel specifications, grades and quality (Terms 2015 para. 2), quantities and measurements (Terms 2015 para. 3, allowing for manual soundings or other measurement tools, and buyer witnessing of measurements), sampling (Terms 2015 para. 4, providing for the taking, distribution, retention and as needed testing of five (5) samples, these terms drawn from the Guidelines for the Sampling of Fuel Oil the Determination of Compliance with MARPOL 73/78 Annex VI) and claims for quantity, quality, and delay (Terms 2015 paras. 9(a)-(c)).

For a seller at the end of a chain of counterparties beginning with a physical supplier, the uniformity brought by the BIMCO Terms 2015 could result in a significant saving of resources which that seller otherwise would have to devote to resolving quality or quantity disputes – or – seeking indemnity against the fault of 'downstream' suppliers. For example, a seller ahead of several counterparties, likely has no contact with the physical supplier and may have no idea of that physical supplier's actual operations for taking and retaining samples, and confirming quality and quantity. Uniformity of such 'technical but important' terms as in Terms 2015 paras. 2, 3, 4, and 9 – and, of course, focus as a result of actual practice complying with those terms – would be a benefit not only to all sellers in the stream to the ultimate buyer, but also to the buyer which could be better assured of uniform quality and quantity measurement, regardless of the physical supplier which that buyer's ultimate seller chooses.

The BIMCO Terms 2015 also set out several new 'legal but important' terms which also should be accepted by bunker suppliers and their customers. These include Terms 2015 para. 9(d) ('Claims – Exclusions') providing that:

Other than those mentioned above in connection with delivery time, quantities or qualities proven to be other than contracted for, neither the Buyers nor the Sellers shall be liable to the other Party for:

(i) any loss of profit, loss of use or loss of production whatsoever and whether arising directly or indirectly from the performance or non-performance of this Contract, and whether or not the same is due to negligence or any other fault on the part of either Party, their servants or agents, or (ii) any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence or any other fault on the part of either Party, their servants or agents.

Both sellers and buyers should welcome this term, which limits what otherwise could be relatively unlimited damages claims from something other than a difference in contracted quality, quantity or delivery time. Although such claims for damages might be remote, all sides should agree that the only damages which either should claim from the other, if they must make that claim, should be limited to those direct to the contract.

BIMCO Terms 2015 also states new, law-related terms for 'Compliance with Laws and Regulations' (para. 11), sanctions compliance (para. 12) and expanded from the 2002 SBC, drug and alcohol policy (para 17), 'Force Majeure' (para. 14, defining certain conditions beyond the parties' control which limit the parties' liability for loss, damage or delay), 'Partial Validity' (para. 21, stating that if some terms are invalid, the remainder stay in force), Notices' (para. 23, stating that notice should be effectively given) and the 'merger clause' of sub-paragraphs 24(a) and (b) (Entire Agreement', this subparagraph stating that the terms and conditions comprise the buyer's and seller's entire agreement and exclude prior oral or written agreements, and no reliance on other assurances than in the terms and conditions). These also should be part of sellers' standard sales terms and conditions, of equal benefit both to buyers and sellers.

From both buyers' and sellers' standpoints, however, several of the Terms 2015 would benefit from further focus before being used as written.

Paragraph 18 ('Confidentiality'), new from the 2002 SBC, states that no 'confidential information' shall be disclosed to 'third parties'. What one party might consider to be 'confidential', however, might be considered common knowledge to another party, particularly one operating in a legal or social environment more open than that of the other party. This term could give rise to disputes, rather than limit them.

Paragraphs 19 ('Third Party Rights') and 20 ('Assignment') also are new from the 2002 SBC, stating that '[n]o third parties may enforce any term of this Contract.' (19) and that '[n]either Party shall assign any of their rights under this Contract without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.' A physical supplier may want to benefit from the terms and conditions of its buyer, the seller on to the ultimate buyer, including rights of payment and limitations of liability. Likewise, a seller may want to pledge its assets for financing (and may already have in place a security agreement to do that). Under certain maritime legal regimes, furthermore, buyers which pay for product take assignment of the seller's claims to be paid for that product, including maritime liens. A seller downstream from a physical supplier would want, after paying the physical supplier, to take assignment by operation of law, of the physical supplier's rights of claim. So, these terms also could give rise to disputes and not limit them.

Although the Terms 2015 Dispute Resolution Clause (para. 22) is substantially carried over from the 2002 SBC, and is materially identical to the dispute resolution clauses standard across BIMCO forms, both sellers and buyers also should consider this clause very carefully. As the *Res Cogitans* decision showed, choice of English law has disadvantaged both the buyers (owners) and downstream bunker sellers, in a situation of non-payment by a seller to the downstream supplier. Because of the choice of English law combined with the ROT clause, the buyers may have to pay twice, that is, if the downstream seller (in addition to assignee ING) can recover from the buyers. Likewise, bunker providers have very limited rights of recovery from owners under either English or Singapore law, in the common situation where a charterer/customer has become insolvent and the charter party terminated.

Choosing US law often will give a maritime lien *in rem* against the vessel, regardless of the identity of the charterer or manager at the time of arrest. If there is no explicit US law choice, the suggested paragraph defaults to a choice of English law. Sellers/suppliers therefore should always make a US law choice but also assure that the clause used includes a specification that it includes, but it is not limited to, the 'United States Commercial Instruments and Maritime Liens Act, 46 U.S.C. 31101 et seq.,' which specifies rights on provision of necessaries, to maritime liens against vessels *in rem*. Some US courts have had to consider whether a general reference to 'Maritime Law of the United States' is sufficient to confirm maritime lien rights.

Buyers also should consider, if the sales terms and conditions otherwise do contain a ROT clause, whether to accept them, given the *Res Cogitans* decision. Had there been no ROT clause, owners in the *Res Cogitans* arguably may have been able (under the reasoning of the decision, which presently is on appeal) to avoid paying ING and instead pay Rosneft, the entity with the actual right of payment, having paid the physical supplier. ROT clauses are, however, still desirable for marine fuel sellers, particularly in situations where there is an insolvency but some of the bunkers sold remain on the vessel and can be recovered. Further, those using ROT clauses should consider incorporating English law to govern those clauses only. Under the United States Uniform Commercial Code, a retention of title is considered only to be a 'security interest', which is perfected only by the filing of a 'UCC-1' form in a jurisdiction where the debtor can be found. Sale with only US law applying to title retention, to an entirely offshore entity, may give few rights of recovery to the marine fuel seller in an insolvency situation.

Credit and security continues to be the forbidden area – the 'third rail' (referring to the dangerous, electrically-charged rail often powering an electric train) – of bunker supply terms and conditions' uniformity. Sellers want security in all situations; owners want no situation when their vessel will be arrested; charterers many times are willing to accept any security term as long as they can receive credit. Charterers often depend entirely on the extension of credit (and thus the seller's willingness to do that, relying on the credit of and possibility to arrest the vessel provided) and sellers often will refuse instantly a bunkers order, on receiving notice of a 'no lien' provision in a charter party. Such 'no lien' provisions are, however, standard in most charter parties, including BIMCO charter parties which are largely industry uniform standard.

Ironically perhaps, in the very same, January 2015 announcement of the Terms 2015, BIMCO also announced its separately-issued 'new Bunker Non-Lien Clause for Time Charter Parties.' With this new form issue, BIMCO explained that:

Arrest of a vessel for charterers' unpaid bunker debts is an age-old problem. The purchase contract is between the time charterer and the bunker supplier who, often through intermediate traders, arranges for physical delivery of fuels ordered. The shipowner is therefore not a party to the arrangements but the vessel is often seen as an easy target for security for a claim in the event of charterers'

default.

In order to protect owners' interests, a new Bunker Non-Lien Clause for Time Charter Parties requires time charterers to inform their counterparty seller at the outset that bunkers are being ordered and supplied to the vessel for their account and credit and that no lien can be placed over the vessel. While the provision may not always prevent determined seller interests from arresting a vessel, a copy of charterers' note to sellers can be used as evidence by owners to refute their liability in any arbitration or litigation.

The author understands that BIMCO's present intention is to continue to receive industry comments about acceptance of the Terms 2015 and suggested changes to them. Anecdotal reports to the author, including those from discussions with several of the Terms 2015 members, and Google searches of the Terms 2015, show that a good number of the Terms 2015 (particularly those carried over from the 2002 SBC) already are a part of standard marine fuel sellers' terms and conditions, including many of those from the 2002 SBC which the author recommends, as set out above.

Further revisions are sure to be needed with industry changes. With the further acceptance of liquefied natural gas (LNG) fueling, for example, further revision of Terms 2015 will be needed. Paragraph 2 (b) cites ISO Standard 8217:1996; 3 (c) refers to ISO-ASTM-API-IP Petroleum Measurement Tables are to be used; these are both petroleum standards, with different standards for LNG.

Terms 2015, paragraph 5, also requires buyers' accurate reporting of pumping rates and other conditions with the vessel which could affect the loading of product. While, of course, buyers (that is, vessels' crews) should be in the best position to know this, the Terms 2015 also would place on sellers liability for delay if they could not achieve what buyers have reported to be the vessel pumping rates. Further discussion, with the benefit of data from technological improvements such as new flow meter models, might result in an agreed way to confirm flow rates before connection to the vessel bunker manifold.

Terms 2015 paragraph 16(d) (as did a similar clause in the 2002 SBC) further requires that:

The Sellers shall use their best endeavours to ensure that the owners of the Bunker Tanker are fully insured for oil spill liabilities as required by statutory rules or regulations. If such coverage or insurance is not obtained by the owners of the Bunker Tanker, it shall be the sole responsibility of the Sellers to establish such coverage for their account. Proof and conditions of such coverage, whether established by the bunker supplying company or by the Sellers, shall be made available to the Buyers at their request, as soon as practically possible.

All insurance is not the same, of course; while there may be required liability limits, policy terms frequently differ. Perhaps a common ground for marine fuel sellers and buyers to take up, before further taking up any revisions to the Terms 2015, would be to draft together with insurer representatives an acceptable, standard form for bunker tanker insurance. This would minimise disputes, should the insurance have to be called on, over whether the 'Bunker Tanker are fully insured...' The next version of Terms then could reference this standard form (just as, for example, contracts often reference Insurance Service Office ('ISO') standard forms for general liability insurance).

To further enliven the Terms discussion in the future, however, what if sellers and buyers dare leap together onto the third rail of credit? A modest proposition might be that in exchange for acceptance of BIMCO's 'Bunker Non-Lien Clause for Time Charter Parties', owners would agree that they in turn have a duty to inform marine fuel sellers of charter party payment terms, and to immediately inform marine fuel sellers (whose identity they will know, if their charterer complies with the 'Non-Lien Clause') if their charterers are in default of charter party terms. That way, sellers might effectively enforce their English law-based ROT rights for remaining fuel, and proceed quickly against the charterers for payment. On the other hand, too, if owners fail to insist that their charterers inform suppliers of 'no lien' provision, then it also should be common ground that the unpaid supplier has the right to arrest the vessel, *in rem* and otherwise.

'The OW disputes are projected to extend for years. They will bring further decisions like the *Res Cogitans* which will further focus the industry on the need for uniformly understood and practiced procedures'

This modest proposal might raise some 'hard words' but it would certainly further enliven any next discussion of the Terms 2015 and any revisions to them.

This author had not intended this article to comprehensively review the Terms 2015. As BIMCO's comment to the Terms 2015 notes, the Terms are a starting point for discussion, and hopefully this article continues that. The important thing is that the discussion actually starts, particularly with the benefit (and it can properly be called that) of the OW situation.

The Terms 2015 go further in the direction of reaching desirable, and not deadly, uniformity in bunker sales terms and conditions. The OW disputes are projected to extend for years. They will bring further decisions like the *Res Cogitans* which will further focus the industry on the need for uniformly understood and practiced procedures, at least for the measures of quality and quantity, resolution of quality disputes, decision about title, and protection for the payment due to the physical supply of bunkers.

The industry, sellers and buyers together, should continue to work to achieve mutually-beneficial consistency in sales terms and conditions. All should determine to move from what has historically has been consistent, often mutually wasteful, inconsistency.

The author particularly thanks Claus Kesting (Lauritzen, 2015 Terms Drafting Sub-Committee Chairman), and Grant Hunter, BIMCO General Counsel, for their very helpful comments and input.

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