

A comparative review of BIMCO's WINDTIME and SUPPLYTIME

In 2013, BIMCO issued their standard time Charterparty form, WINDTIME, which is designed for the purpose of transferring wind farm personnel and equipment to and from offshore wind farm installations. Although the WINDTIME form was modelled on SUPPLYTIME 2005, many of the adjustments that were made for WINDTIME were later incorporated into SUPPLYTIME 2017. In some ways, therefore, WINDTIME is more closely aligned with SUPPLYTIME 2017.

Some of the changes made to WINDTIME simply reflect the nature of operations and bring the form in line with its intended use, for example the removal of cargo-specific clauses. However, with some Members weighing up the options between SUPPLYTIME 2005, 2017 and WINDTIME, the purpose of this article is to highlight the most significant differences and similarities between the standard forms.

Working Day

One of the first differences noted in WINDTIME is the addition of the definitions “Working Day” and “Working Hours”. The SUPPLYTIME forms are based upon a 24-hour day as standard. However, the usual working practice for vessels servicing the offshore wind industry is that the transfer of personnel and equipment is carried out only during daylight hours. In WINDTIME, parties should enter the daily working hours that have been agreed in Box 24. If the number of hours worked exceed the agreed upon Working Day, Clause 8 provides for the payment of additional hire at a pre-agreed hourly rate. It also allows an increase to a 24-hour working day, upon special agreement between the parties.

Liabilities and Indemnities

In the SUPPLYTIME 2005 form, “Charterers’ Group” and “Owners’ Group” were defined within the “Liabilities and Indemnities” Clause. In both SUPPLYTIME 2017 and WINDTIME, “Charterers’ Group” and “Owners’ Group” have been moved to the “Definitions” section. While in the WINDTIME form the content of the definitions remain the same as SUPPLYTIME 2005, in SUPPLYTIME 2017, the Charterers’ group and Owners’ group have been expanded. For a useful snapshot of all parties included within “Charterers’ Group” and “Owners’ Group”, for each SUPPLYTIME form, please refer to our [interactive indemnity map](#).

In both the SUPPLYTIME 2017 and WINDTIME forms the scope of the potential cause of losses has been widened by the inclusion of the words ‘non-performance’, thus making it clear that the knock for knock applies not only to the performance but also non-performance of the

Charterparty. This change was deemed necessary following cases such as the *A Turtle Offshore SA v Superior Trading Inc (The A Turtle)* [2009] 1 Lloyd's Rep. 177, in which the potential for future disputes on the subject was highlighted. When drafting WINDTIME it was felt necessary to expressly include "gross neglect" to make it clear that the knock for knock applies even in the event of the gross negligence of either party. Drafters of SUPPLYTIME 2017 felt the inclusion of "gross neglect" to be unnecessary as it is likely that the term "neglect" will cover all forms of negligence. Instead, "breach of duty" is now included within the knock for knock provisions of SUPPLYTIME 2017. Interestingly, a sentence has also been added to WINDTIME to the effect that, in the event of wilful misconduct, the knock for knock does not apply. Neither of the SUPPLYTIME forms contain a similar exclusion in relation to wilful misconduct. The prevailing wisdom on the exact formulation of the indemnity clause has changed over time, and this is reflected in the variations in language across the three forms. As the 2017 form is most reflective of current thinking on the subject, Members using earlier forms such as SUPPLYTIME 2005 or WINDTIME may wish to adopt the latest 2017 indemnity wording through an appropriate amendment.

Consequential losses

The consequential loss clause in WINDTIME was taken from the TOWCON 2008 wording, which in turn had been amended from the earlier SUPPLYTIME 2005/TOWCON wording. The amendment sought to clarify that consequential losses are excluded, whether direct or indirect. Taking into consideration feedback on the clause from within the offshore community, the clause was redrafted from scratch in SUPPLYTIME 2017 and is now more in line with other standard contracts within the offshore construction industry. The SUPPLYTIME 2017 clause encompasses a wider range of potential consequential or excluded losses and also provides parties with the right to be indemnified from any claims brought by members of the other party's groups. As such, Members using the WINDTIME form may wish to incorporate the latest version of this clause, as found in SUPPLYTIME 2017.

Exceptions

The number of exceptions to the knock for knock provisions have been significantly reduced in the SUPPLYTIME 2017 to make it simpler and clearer. These changes, combined with the clarification that non-performance of the contract is included, help to reinforce the knock for knock regime.

See Appendix A for a helpful comparison table of exceptions across the forms.

Limitation

Under the SUPPLYTIME 2017 form, parties expressly retain their statutory rights to limit liability. Under WINDTIME, while the statutory right to limit remains in place, parties also agree a cap on certain liabilities based on a percentage of hire. BIMCO explained that this additional right for the Owner to limit was intended to provide some balance for the fact that there are more opportunities for liabilities to arise under WINDTIME than SUPPLYTIME.

Pollution

Under these forms Owners are generally liable for pollution damage caused by discharge, spills, or leaks from the vessel, except as may emanate from cargo. Under WINDTIME and SUPPLYTIME 2005 this liability only arises when caused by acts or omissions of the Owners or their personnel, whereas under SUPPLYTIME 2017, Owners are liable even if caused by the Charterers' group.

Early Termination

Some observers commented that Clause 31 of SUPPLYTIME 2005 dealing with early termination was poorly drafted and it was unclear how the procedure for it was intended to be applied in practice. In both WINDTIME and SUPPLYTIME 2017 the notice provisions have been simplified, making them much clearer. Both forms have also been redrafted to include a new subclause (c), entitled Default in WINDTIME and Repudiatory Breach in SUPPLYTIME 2017. As a result of this only the innocent party may terminate in the event of a repudiatory breach and there is no longer a need for a three-day grace period. In contrast, SUPPLYTIME 2005 arguably allows either party to terminate in the event of repudiatory breach, after the stated grace period and giving appropriate notices.

The WINDTIME and SUPPLYTIME 2017 forms also replace the 'Breakdown' section of this clause with a new sub-clause headed "Off-hire". This is explained in the BIMCO notes on WINDTIME to be for two reasons. Firstly, the original breakdown clause potentially enabled owners to terminate which, it was felt, was unlikely to be the original intention of the SUPPLYTIME draftsmen. Secondly, it was not clear what, in practice, might constitute owners taking "reasonable steps" to remedy the non-performance and/or provide a substitute vessel.

See Appendix B for a full comparison of the applicable notice periods under this clause for each form.

Summary

WINDTIME is a contract tailored to the offshore wind service industry. Changes such as the addition of a working day and the removal of references to cargo were intended to avoid the need for extensive alterations of more general supply boat forms. SUPPLYTIME 2017 does, however, contain some significant improvements to specific clauses that WINDTIME and SUPPLYTIME have in common. It also contains a purer knock for knock, which makes it more attractive, providing greater clarity on the scope of liabilities.

In the years since WINDTIME was drafted, BIMCO have also released several standard clauses which are now included in the SUPPLYTIME 2017 form, (such as the "Infectious or Contagious Diseases Clause" (2015), the "Anti-Corruption Clause for Charter Parties" (2015)). Some other clauses, for example the consequential losses section of the 'Liabilities and Indemnities' clause, have also been significantly updated in SUPPLYTIME 2017.

Many Members operating in the offshore wind industry will no doubt consider that they would, therefore, be best served through the use of a WINDTIME form with adaptations to incorporate some of the latest BIMCO standard clauses and certain SUPPLYTIME 2017 revisions. As always, the Club would recommend that any amendments to standard form contracts are reviewed carefully to ensure they are cohesive with the remainder of the form into which they are placed, and legal advice should be sought where appropriate.

Appendix A – Exceptions to the knock-for-knock regimes (*some wordings have been abridged for ease of reference)

SUPPLYTIME 2005	WINDTIME	SUPPLYTIME 2017
Owners	Owners	Owners
6(c)(iii) Employment and Area of Operation / The Vessel's Space / Explosives and dangerous cargo.	7(c)(iii) Employment and Area of Operation / The Vessel's Space / Explosives and dangerous cargo.	
9(b) Charterers to Provide / loading and unloading of cargoes so far as not done by the Vessel's crew, cleaning of cargo tanks etc.	11(b) Charterers to Provide / loading and unloading of cargoes so far as not done by the Vessel's crew, cleaning of cargo tanks etc.	
9(e) Charterers to Provide / replacement of any anchor handling/towing/lifting wires.	11(e) Charterers to Provide / replacement of any lifting slings/wires and fuel transfer hoses and accessories... should such equipment be lost, damaged or become unserviceable, other than as a result of the Owners' negligence.	9(e) Charterers to Provide / replacement of any anchor handling/towing/lifting wires and accessories,... should such equipment be lost or damaged, other than as a result of the Owners' negligence.
9(f)	11(g)	

Charterers to Provide / 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 ...	Charterers to Provide / 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 ...	
10(d) Bunkers / Charterers shall be liable for any loss or damage to the Owners caused by the supply of unsuitable fuels ...	12(c) Bunkers / Liability – Charterers shall be liable for any loss or damage to the Owners caused by the supply of fuels which are not in accordance with clause 12(b).	
11 BIMCO ISPS/MTSA Clause for Time Charter Parties.	13 BIMCO ISPS/MTSA Clause for Time Charter Parties.	
12(f)(iv) Hire and Payments / Charterers shall indemnify the Owners in respect of any liabilities incurred by the Owners under the Bill of Lading or any other contract of carriage as a consequence of the Owners' proper suspension of and/or withdrawal from any or all of their obligations under this Charter Party.		
14(d) Liabilities and Indemnities / Limitations.	16(c) Liabilities and Indemnities / Limitations.	14(c) Liabilities and Indemnities / Limitations.
15(b)	17(b)	

Pollution / Charterers liable for any other actual or threatened pollution other than from the vessel.	Pollution / Charterers liable for actual or threatened pollution emanating from anything towed by the Vessel, 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 ...	
18(c)	20(c)	18(c)
Saving of Life and Salvage / Owners waive the right to claim a salvage award on property owned by or contracted to the Charterers ...	Saving of Life and Salvage / Owners waive their right to claim any salvage award on property owned by or contracted to the Charterers ...	Saving of Life and Salvage / Owners waive their right to claim any salvage award on property owned by or contracted to the Charterers' Group ...
26		
General Average and New Jason Clause.		
27		
Both-to-Blame Collision Clause.		
Charterers	Charterers	Charterers
11	13	
BIMCO ISPS/MTSA Clause for Time Charter Parties.	BIMCO ISPS/MTSA Clause for Time Charter Parties.	
15(a)	17(a)	9(e)

Pollution / Owners liable for pollution from the Vessel.	Pollution / Owners liable for pollution from the Vessel.	Charterers to Provide / replacement of any anchor handling/towing/lifting wires and accessories,... should such equipment be lost or damaged, other than as a result of the Owners' negligence.
16	18	16
Wreck Removal.	Wreck Removal.	Wreck Removal.
26		
General Average and New Jason Clause.		

Appendix B – Notice periods

SUPPLYTIME 2005	WINDTIME	SUPPLYTIME 2017
(a) At Charterers' convenience (optional clause): As stated in Box 14	At Charterers' convenience (optional clause): As stated in box 35	At Charterers' convenience (optional clause): As stated in Box 14
(b) For Cause: (i) Requisition; (ii) Confiscation; (iii) Bankruptcy; (iv) Loss of Vessel; (v) Breakdown; (vi) Force Majeure; (vii) Default: 3 days' notice to be given within 3 days of being informed of an event	For cause: (i) Requisition; (ii) Confiscation; (iii) Bankruptcy; (iv) Loss of Vessel; (v) Force Majeure; (vi) Insurance: 3 days' notice for termination event to remedied. Thereafter notice of termination to be given,	For cause: (i) Requisition; (ii) Confiscation; (iii) Bankruptcy; (iv) Loss of Vessel; Force Majeure; (vi) Insurance: 14 days' notice for termination event to be remedied. Further notice of termination to be given within

<p>Although:</p> <p>(iv) Owners have 14 days to provide a suitable substitute vessel.</p> <p>(v) Owners have 48 to initiate reasonable steps to remedy the non-performance. Thereafter the 3 days' notice can be given.</p> <p>(vi) Force Majeure event must prevent or hinder performance for a period exceeding 15 consecutive days - Notice to be given within 2 days of force majeure event occurring.</p>	<p>effective immediately.</p> <p>Although:</p> <p>(iii) Bankruptcy – Petitions for winding up or administration will not be a termination event if discharged within 14 days.</p> <p>(iv) Loss of Vessel – Owners have 14 days to provide a suitable substitute vessel.</p> <p>(v) Force Majeure event must prevent or hinder the performance for a period exceeding 15 consecutive days – Notice to be given within 2 days of force majeure event occurring.</p>	<p>3 days of expiry of 14 days' notice, effective immediately.</p> <p>Notice in relation to force majeure to be given within 5 days of force majeure event occurring.</p>
	<p>(c) Default:</p> <p>Immediate effect</p>	<p>(c) Repudiatory Breach:</p> <p>Immediate effect</p>
	<p>(d) Off-hire:</p> <p>As per the periods entered in Box 36</p>	<p>(d) Off-hire:</p> <p>As per the periods entered in Box 32</p>