

**Cláusulas de jurisdicción y arbitraje  
en los principales contratos  
marítimos: ¿Algo se mueve en el  
arbitraje marítimo?**

## SITUACIÓN DE LA CLÁUSULAS DE JURISDICCIÓN Y ARBITRAJE EN LOS CONTRATOS MÁRITIMOS

- Como todos sabemos: GRAN PREDOMINIO CONTRATOS BIMCO:
- Hasta hace pocos años, dichos formularios tenían sólo la posibilidad de Ley Inglesa y Arbitraje LMAA en Londres. En algunos casos se incluía Ley USA y SMA en Nueva York.
- Pero algo está cambiando: Varias tendencias:
  - La BIMCO está abriendo más el campo a otras alternativas. Sobre todo desde la BIMCO Dispute resolution Clause de 2017. Y el modelo alternativo de las Law and Arbitration Clauses de 2020
  - En conocimientos de embarque, se opta por ir a Juzgado no por arbitraje y las navieras están más abiertas al uso de Leyes distintas de la de UK
  - Aunque es un campo muy especializado, también son muy interesantes las normas de arbitraje para salvamentos en su nueva versión de 2020

## BIMCO DISPUTE RESOLUTION CLAUSE 2017

### ❑ BIMCO Dispute Resolution Clause 2017 (4 opciones)

#### Opción 1

- Ley inglesa, Arbitraje en Londres bajo el Arbitration Act 1996, o modificaciones posteriores.
- Reglas del LMAA.
- Por defecto 3 árbitros, aunque las partes pueden acordar nombrar un solo árbitro.
- Si la suma no excede de 100,000 USD - LMAA Small Claims Procedure.
- Si la suma excede los 100,000 USD y hasta los 400,000 USD - LMAA Intermediate Claims Procedure.

#### Opción 2

- Ley EEUU y si no es un contrato marítimo, las del Estado de NY.
- Por defecto 3 árbitros.
- SMA Rules.
- Si la suma no excede de 100,000 USD - SMA Rules for Shortened Arbitration Procedure.

#### Opción 3

- Ley de Singapur o Ley inglesa.
- Arbitraje en Singapur bajo el Singapore International Arbitration Act.
- Reglas del Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA).
- Por defecto 3 árbitros, aunque las partes pueden acordar nombrar un solo árbitro.
- Si la suma no excede de 150,000 USD - SCMA Small Claims Procedure.

#### Opción 4

- Ley aplicable y lugar de arbitraje acordado por las partes.

- Las partes acordar acudir a mediación.
- Las tres opciones anteriores son alternativas, por lo que se debe indicar una en la Parte I del contrato.
- Si ninguna opción de las anteriores se indica – la Opción 1 por defecto.

## DISPUTE RESOLUTION CLAUSE 2017 - BIMCO

- **BIMCO Dispute Resolution Clause 2017**

(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 fourteen (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 the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (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 the 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 USD 100,000 (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.

In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of USD 400,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced.

(b) This Charter Party shall be governed by U.S. maritime law or, if this Charter Party is not a maritime contract under U.S. law, by the laws of the State of New York. Any dispute arising out of or in connection with this Charter Party shall be referred to three (3) persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen. The decision of the arbitrators or any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the SMA Rules current as of the date of this Charter Party.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the SMA Rules for Shortened Arbitration Procedure current as of the date of this Charter Party.

(c) This Charter Party shall be governed by and construed in accordance with Singapore\*\*/English\*\*law.

Any dispute arising out of or in connection with this Charter Party, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The reference to arbitration of disputes under this Clause 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 and give notice that it has done so within fourteen (14) calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not give notice that it has done so within the fourteen (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 USD 150,000 (or such other sum as the parties may agree) the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

\*\*Delete whichever does not apply. If neither or both are deleted, then English law shall apply by default.

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

(e) [Mediation]

Sub-clauses (a), (b), (c) and (d) are alternatives; indicate alternative agreed in Box 26.

If Box 26 in PART I is not filled in, sub-clause (a) shall apply. Subclause (e) shall apply in all cases.

## BIMCO LAW AND ARBITRATION CLAUSE 2020

### ❑ BIMCO Law and Arbitration Clause 2020 (4 opciones de cláusula diferente)

#### Cláusula 1

- Ley inglesa, Arbitraje en Londres bajo el Arbitration Act 1996, o modificaciones posteriores.

#### Cláusula 2

- Ley EEUU y si no es un contrato marítimo, las del Estado de NY.
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#### Cláusula 3

- Ley de Singapur o Ley inglesa.
- Arbitraje en Singapur bajo el Singapore International Arbitration Act.

#### Cláusula 4

- Ley aplicable y lugar de arbitraje Hong Kong.

#### Cláusula 5 (no incluida en versión 2020 per existente en BIMCO):

- Ley aplicable japonesa y lugar de arbitraje Tokio.

- Se elimina la opción por mediación que, no obstante, puede incluirse con cláusula aparte.
- Demuestra que la cláusula de 2017 ha generado debate porque nominalmente ha sido eliminada.
- CONCLUSIÓN: ESTE TEMA GENERA DEBATE E IMPORTANTE

## LAW AND JURISDICTION CLAUSE 2020 - BIMCO

- **BIMCO Law and Arbitration Clause 2020**

Hong Kong / English Law | Hong Kong Arbitration

(a) This contract shall be governed by and construed in accordance with Hong Kong/English\* law and any dispute arising out of or in connection with this contract shall be referred exclusively to arbitration in Hong Kong in accordance with the Arbitration Ordinance (Cap.609) or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this clause. The seat of arbitration shall be Hong Kong even where any hearing takes place in another jurisdiction.

\*Delete whichever does not apply. If neither or both are deleted, Hong Kong law shall apply.

(b) The reference shall be to three (3) arbitrators unless the parties agree otherwise.

(c) The arbitration shall be conducted in accordance with the Hong Kong Maritime Arbitration Group Terms.

(d) In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Hong Kong Maritime Arbitration Group Small Claims Procedure.

(e) The terms and procedures referred to in subclauses (c) and (d) shall be those current at the time when the arbitration proceedings are commenced.

(f) Any and all notices and communications in relation to any arbitration proceedings under this clause, including commencement notices and appointment of arbitrators, shall be treated as effectively served from the date and time the e-mail was sent if sent by e-mail to the e-mail addresses below:

Name of party to this contract:

E-mail address(es) for receipt of notices and communications on behalf of the above party: [insert]

Name of other party to this contract:

E-mail address(es) for receipt of notices and communications on behalf of the above party: [insert]

Either party shall be entitled to change and/or add to the e-mail addresses above by sending notice of change to the other party at the above address (or, if previously amended by notice, the relevant amended addresses).

Nothing in this clause shall prevent any notice and communication in re

### **BiMCO JAPANESE LAW AND ARBITRATION CLAUSE**

This Charter Party shall be governed by Japanese Law. Any dispute arising from this Charter Party shall be referred to arbitration held in Tokyo by the Tokyo Maritime Arbitration Commission (TOMAC) of The Japan Shipping Exchange, Inc. in accordance with the Rules of TOMAC and any amendment thereto, and the award given by the arbitrators shall be final and binding on both parties.

# CLÁUSULAS DE LAS PRINCIPALES NAVIERAS

## MAERSK

- **Law & Jurisdiction** - For shipments to or from the U.S. any dispute relating to this bill of lading shall be governed by U.S. law and the United States Federal Court of the Southern District of New York is to have exclusive jurisdiction to hear all disputes in respect thereof. In all other cases, this bill of lading shall be governed by and construed in accordance with English law and all disputes arising hereunder shall be determined by the English High Court of Justice in London to the exclusion of the jurisdiction of the courts of another country. Alternatively and at the Carrier's sole option, the Carrier may commence proceedings against the Merchant at a competent court of a place of business of the Merchant.

## MSC

- **Jurisdiction** - It is hereby specifically agreed that any suit by the Merchant, and save as additionally provided below any suit by the Carrier, shall be filed exclusively in the High Court of London and English Law shall exclusively apply, unless the carriage contracted for hereunder was to or from the United States of America, in which case suit shall be filed exclusively in the United States District Court, for the Southern District of New York and U.S. law shall exclusively apply. The Merchant agrees that it shall not institute suit in any other court and agrees to be responsible for the reasonable legal expenses and costs of the Carrier in removing a suit filed in another forum. The Merchant waives any objection to the personal jurisdiction over the Merchant of the above agreed fora.

In the case of any dispute relating to Freight or other sums due from the Merchant to the Carrier, the Carrier may, at its sole option, bring suit against the Merchant in the fora agreed above, or in the countries of the Port of Loading, Port of Discharge, Place of Delivery or in any jurisdiction where the Merchant has a place of business.

- **Law & Jurisdiction**

(1) Except as provided in Clause 27(2) below, all claims against the Carrier must be brought and heard exclusively in the Shanghai Maritime Court of P. R. China. Except as provided elsewhere in this Bill of Lading, laws of P. R. China shall apply to such claims.

(2) Where the shipment covered by this Bill of Lading is to or from the United States of America (including its districts, territories and possessions), all claims arising hereunder must be brought and heard exclusively in the United States District Court for the Southern District of New York, or if that court is not competent to hear the matter, in any competent state or city court located in New York County. Except as otherwise set out herein, the United States law, including the Carriage of Goods by Sea Act 1936, shall apply to such claims. Where U.S. COGSA applies, then the provisions stated in said Act shall govern during carriage of the Goods before loading on the vessel at the port of loading and following discharge from the vessel at the port of discharge, and throughout the time that the Goods are in the Carrier's possession, custody or control.

(3) This Law and Jurisdiction Clause is intended solely for the Carrier's benefit and may be unilaterally waived by the Carrier, in whole or in part, before or after proceedings are commenced. The Carrier shall be entitled, at its sole option, to pursue any claim against the Merchant in the jurisdiction agreed above, or in any jurisdiction of competent court in the Place of Receipt, the Port of Loading, the Port of Discharging, the Place of Delivery, or any other place related to the carriage, or where the Merchant has a place of business or has assets.

## CMA - CGM

- **Law**

Except as specifically provided elsewhere herein, French law shall apply to the Terms and Conditions of this Bill of Lading, and French law shall also be applied in interpreting the Terms and Conditions hereof, excluding its conflict of law provisions.

- **Jurisdiction**

All claims and actions arising between the Carrier and the Merchant in relation with the contract of Carriage evidenced by this Bill of Lading shall be brought before the Tribunal de Commerce de Marseille and no other Court shall have jurisdiction with regards to any such claim or action. Notwithstanding the above, the Carrier is also entitled to bring the claim or action before the Court of the place where the defendant has his registered office.

## OCEAN NETWORK EXPRESS - ONE

- **Governing Law and Jurisdiction**

25.1. Subject to Clause 25.2 below, the contract evidenced by or contained in this Bill shall be governed by Singapore law except as may be otherwise provided for herein. Unless otherwise agreed by the Carrier, any action against the Carrier hereunder must be brought exclusively before the Singapore High Court. Any action by the Carrier to enforce any provision of this Bill may be brought before any court of competent jurisdiction at the option of the Carrier.

25.2. For shipments to or from the United States of America (including its districts territories and possessions), the contract evidenced by or contained in this Bill shall be governed by U.S law.

25.3. Where the Goods are subject to adverse or competing claims, the Carrier may place the Goods in the custody of a court of competent jurisdiction for a determination of ownership and/or right to possession at the sole expense of the Merchant, including Carrier's legal fees and disbursements. The Carrier shall have no liability to the Merchant arising out of such placement and the Merchant consents to the exclusive jurisdiction of such Court.

## HAPAG - LLOYD

- **Law & Jurisdiction** – Except as otherwise provided specifically herein any claim or dispute arising under this Bill of lading shall be governed by the law of the Federal republic of Germany and determined in Hamburg courts to the exclusion of the jurisdiction of the courts of any other place. In case the Carrier intends to sue the Merchant, the Carrier has also the option to file a suit at the Merchant's place of business. In the event that this clause is inapplicable under local law then jurisdiction and choice of law shall lie in either the port of loading or the port of discharge at the Carrier's option.

**LLOYD'S STANDARD FORM OF SALVAGE  
AGREEMENT**

## LOF 2020

- Normas muy interesantes
- Arbitrajes de cuantías importantes
- Esquema interesante:
  - i. El “Council of Lloyd’s” es quien nombra al árbitro único.
  - ii. Si los cargadores no nombran uno, se entenderá que su representante es quien ha puesto la garantía en su nombre.
  - iii. El arbitraje se desarrolla en Londres, salvo que todas las partes acuerden otro lugar y se abonen los gastos del árbitro.
  - iv. Posibilidad de apelar el Laudo en un plazo de 21 días con otro árbitro único.
  - v. En caso de que la garantía solicitada sea menor a 2 millones USD, se recomienda el Fixed Cost Arbitration Procedure (en algunos casos también puede ser en casos cuya cuantía sea mayor) donde el procedimiento es solo con documentación
  - vi. Las reglas de arbitraje contienen normas vinculantes sobre la conducta procesal e incluso sustantiva que deben tener los árbitros

\* Se adjunta como PDF la Lloyd’s Salvage Arbitration Clauses 2020

## LOF 2020

- (I) Arbitration and the LSA Clauses: The Contractors' remuneration and/or special compensation shall be determined by arbitration in London in the manner prescribed by Lloyd's Salvage Arbitration Clauses ("the LSAC") in force at the date of this agreement. The provisions of the said LSAC are deemed to be incorporated in this agreement and form an integral part hereof. Any other difference arising out of this agreement or the operations hereunder shall be referred to arbitration in the same way.
- (J) Governing law: This agreement and any arbitration hereunder shall be governed by English law.

**CONTRATOS DE CONSTRUCCIÓN NAVAL**  
**SHIPBUILDING CONTRACTS**

## NEWBILDCON 2007 - BIMCO

- Salvo que se indique otra cosa, en la Parte I:
  - Lugar de arbitraje es Londres.
  - Arbitration Act 1996, o modificaciones posteriores.
  - Reglas del LMAA.
  - Por defecto 3 árbitros.
  - Las partes pueden acordar solo nombrar un árbitro.
  - Si la suma no excede de 100,000 USD - LMAA Small Claims Procedure.
  - Las partes también pueden someterse a mediación.

## NEWBILDCON 2007 - BIMCO

- (c) Arbitration and Mediation Clause

Unless Sub-Clause (a) or (b) applies and unless Box 23(b) states a place other than London, any dispute arising out of or in connection with this Contract 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 fourteen (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 the fourteen (14) days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (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\$100,000 (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.

- (d) Unless Sub-Clauses (a), (b) or (c) apply, any dispute arising out of or in connection with this Contract shall be referred to arbitration at the place stated in Box 23(b), subject to the procedures applicable there.

SHIPBUILDING CONTRACT 2000- NSF –  
Norwegian Shipowners Association

- Ley aplicable y lugar de arbitraje – Noruega
- 3 árbitros (al menos 1 de ellos debe ser abogado colegiado en Noruega)
- Las partes tienen un plazo de 14 días para decidir los árbitros
- Pasado el plazo de 14 días:
  - i. Cada parte nombra uno
  - ii. Los dos árbitros nombrados elegirán al tercero
- Si una parte no nombra, la corte de apelación del distrito donde el constructor tenga su sede nombrará el arbitro(s) a petición de cualquiera de las partes.

## SHIPBUILDING CONTRACT 2000

- Governing Law

The parties hereto agree that the validity and interpretation of the Contract and of each Article and part thereof shall be governed by the laws of the Kingdom of Norway.

- Arbitration

Any dispute between the parties concerning the Contract shall be settled with final and binding effect for both parties by Arbitration in ....., Norway. The parties will jointly appoint three arbitrators of which at least one shall be a lawyer admitted to practice in Norway. If the parties fail to agree on the choice of arbitrators within 14 days from presentation by either party of a written demand for arbitration, each party shall appoint one arbitrator, and the two so appointed shall appoint a third arbitrator who shall act as the chairman of the arbitration panel. If a party fails to appoint an arbitrator within 14 days after he has been requested to do so by the other party, the Chief Justice of the Appeal Court in the district where the Builder has its venue shall at the request of either party appoint the arbitrator(s).

**CONTRATOS DE VENTA**  
**Contracts for the sale of vessels**

## SALESFORM 2012 – Norwegian Shipbrokers Association’s Memorandum of Agreement for sale and purchase of ships

### ❑ Opciones

#### Opción 1

- Ley inglesa, Arbitraje en Londres bajo el Arbitration Act 1996, o modificaciones posteriores.
- Reglas del LMAA.
- Por defecto 3 árbitros.
- Si la suma no excede de 100,000 USD - LMAA Small Claims Procedure.

#### Opción 2

- Ley de EEUU y la ley sustantiva la del Estado de Nueva York.
- Por defecto 3 árbitros y el lugar de arbitraje es Nueva York.
- Reglas de la Society of Maritime Arbitrators, Inc.
- Si la suma no excede de 100,000 USD - SMA Rules for Shortened Arbitration Procedure.

#### Opción 3

- Ley aplicable y lugar de arbitraje acordado por las partes.

- Las tres opciones anteriores son alternativas, por lo que se debe tachar las que no sean aplicables.
- Si no se tachan – la Opción 1 por defecto.

## SALESFORM 2012

- **Law and Arbitration**

16.a. This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement 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 the 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.

In cases where neither the claim nor any counterclaim exceeds the sum of USD100,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

16.b. This Agreement 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 Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any counterclaim exceeds the sum of USD100,000 the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc.

16.c. This Agreement shall be governed by and construed in accordance with the laws of (state the place) and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at (state place), subject to the procedures applicable there.

\*16.a, 16.b and 16.c are alternatives; delete whichever is not applicable. In the absence of deletions, alternative 16.a. shall apply.

**FLETAMENTO POR VIAJE**  
**Voyage Charter Party**

## GENCON 1994 - BIMCO

### ❑ Opciones

#### Opción 1

- Ley inglesa, Arbitraje en Londres bajo el Arbitration Act 1950 y 1979, o modificaciones posteriores.
- Salvo que las partes acuerden nombrar un solo árbitro, serán 3 árbitros.
- Si la suma no excede de lo indicado por las partes en la Parte I- LMAA Small Claims Procedure.

#### Opción 2

- Ley de EEUU
- Por defecto 3 árbitros y el lugar de arbitraje es Nueva York.
- Reglas de la Society of Maritime Arbitrators, Inc.
- Si la suma no excede de lo indicado por las partes en la Parte I - SMA Rules for Shortened Arbitration Procedure.

#### Opción 3

- Ley aplicable y lugar de arbitraje acordado por las partes.

- Las tres opciones anteriores son alternativas, por lo que se debe indicar una en la Parte I del contrato.
- Si ninguna opción de las anteriores se indica – la Opción 1 por defecto.

## GENCON 1994 - BIMCO

- **Law and Arbitration**

19. a. This Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator, the decision of the three-man tribunal thus constituted or any two of them, shall be final. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final. For disputes where the total amount claimed by either party does not exceed the amount stated in Box 25\*\* the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association

19.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 should any dispute arise out of this Charter Party, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for purpose of enforcing any award, this agreement may be made a rule of the Court. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. For disputes where the total amount claimed by either party does not exceed the amount stated in Box 25\*\* the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc

19.c. Any dispute arising out of this Charter Party shall be referred to arbitration at the place indicated in Box 25, subject to the procedures applicable there. The laws of the place indicated in Box 25 shall govern this Charter Party.

19.d. If Box 25 in Part I is not filled in, sub-clause (a) of this Clause shall apply.

\* (a), (b) and (c) are alternatives; indicate alternative agreed in Box 25.

\*\* Where no figure is supplied in Box 25 in Part I, this provision only shall be void but the other provisions of this Clause shall have full force and remain in effect.

**FLETAMENTO POR TIEMPO**  
**Time Charter Party**

## NYPE 2015 - BIMCO

### ☐ Opciones

#### Opción 1

- Ley de EEUU
- Por defecto 3 árbitros, en Nueva York
- SMA Rules
- Si la suma no excede de 100,000 USD - SMA Rules for Shortened Arbitration Procedure

#### Opción 2

- Ley inglesa, Arbitraje en Londres bajo el Arbitration Act 1996, o modificaciones posteriores
- Reglas del LMAA
- Por defecto 3 árbitros, aunque las partes pueden acordar nombrar un solo árbitro
- Si la suma no excede de 100,000 USD - LMAA Small Claims Procedure

#### Opción 3

- Ley de Singapur o Ley inglesa
- Arbitraje en Singapur bajo el Singapore International Arbitration Act
- Reglas del Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA)
- Por defecto 3 árbitros, aunque las partes pueden acordar nombrar un solo árbitro
- Si la suma no excede de 150,000 USD - SCMA Small Claims Procedure

#### Opción 4

- Ley aplicable y lugar de arbitraje acordado por las partes

- Las opciones anteriores son alternativas, por lo que se debe indicar la acordada. Si ninguna opción de las anteriores se indica – la Opción 1 por defecto
- En la opción3, la ley de Singapur y la ley inglesa son alternativas; por defecto se aplicará la ley inglesa.

## NYPE 2015 - BIMCO

### • Law and Arbitration

54. a. **New York.** This Charter Party shall be governed by United States maritime law. 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, and the third by the two so chosen. The award of the arbitrators or any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. (SMA) current at the time this Charter Party was entered into.

In cases where neither the claim nor any counter claim exceeds the sum of US\$ 100,000 (or such other sum as the parties may agree), the arbitration shall be conducted before a sole arbitrator in accordance with the Shortened Arbitration Procedure of the SMA current at the time this Charter Party was entered into. ([www.smany.org](http://www.smany.org)).

54.b. **London.** 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 fourteen (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 the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (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\$ 100,000 (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. ([www.lmaa.org.uk](http://www.lmaa.org.uk))

54.c. **Singapore.** This Charter Party shall be governed by and construed in accordance with Singapore\*\*/English\*\* law.

Any dispute arising out of or in connection with this Charter Party, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and 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 Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration proceedings are commenced.

The reference to arbitration of disputes under this clause 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 and give notice that it has done so within fourteen (14) calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not give notice that it has done so within the fourteen (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\$ 150,000 (or such other sum as the parties may agree) the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced. ([www.scma.org.sg](http://www.scma.org.sg))

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

\*Sub-clauses (a), (b), (c) and (d) are alternatives; indicate alternative agreed. If alternative (d) agreed also state the place of arbitration. If no alternative agreed and clearly indicated then Sub-clause (a) shall apply by default.

\*\*Singapore and English law are alternatives; if Sub-clause (c) agreed also indicate choice of Singapore or English law. If neither or both are indicated, then English law shall apply by default.

**FLETAMENTO A CASCO DESNUDO**  
**Bareboat Charter**

## BARECON 2017 - BIMCO

### ❑ BIMCO Dispute Resolution Clause 2017 (4 opciones)

#### Opción 1

- Ley inglesa, Arbitraje en Londres bajo el Arbitration Act 1996, o modificaciones posteriores.
- Reglas del LMAA.
- Por defecto 3 árbitros, aunque las partes pueden acordar nombrar un solo árbitro.
- Si la suma no excede de 100,000 USD - LMAA Small Claims Procedure.
- Si la suma excede los 100,000 USD y hasta los 400,000 USD - LMAA Intermediate Claims Procedure.

#### Opción 2

- Ley EEUU y si no es un contrato marítimo, las del Estado de NY.
- Por defecto 3 árbitros.
- SMA Rules.
- Si la suma no excede de 100,000 USD - SMA Rules for Shortened Arbitration Procedure.

#### Opción 3

- Ley de Singapur o Ley inglesa.
- Arbitraje en Singapur bajo el Singapore International Arbitration Act.
- Reglas del Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA).
- Por defecto 3 árbitros, aunque las partes pueden acordar nombrar un solo árbitro.
- Si la suma no excede de 150,000 USD - SCMA Small Claims Procedure.

#### Opción 4

- Ley aplicable y lugar de arbitraje acordado por las partes.

- Las partes acordar acudir a mediación.
- Las tres opciones anteriores son alternativas, por lo que se debe indicar una en la Parte I del contrato.
- Si ninguna opción de las anteriores se indica – la Opción 1 por defecto.

## BARECON 2017 - BIMCO

- **BIMCO Dispute Resolution Clause 2017**

(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 fourteen (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 the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (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 the 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 USD 100,000 (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.

In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of USD 400,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced.

(b) This Charter Party shall be governed by U.S. maritime law or, if this Charter Party is not a maritime contract under U.S. law, by the laws of the State of New York. Any dispute arising out of or in connection with this Charter Party shall be referred to three (3) persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen. The decision of the arbitrators or any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the SMA Rules current as of the date of this Charter Party.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the SMA Rules for Shortened Arbitration Procedure current as of the date of this Charter Party.

(c) This Charter Party shall be governed by and construed in accordance with Singapore\*\*/English\*\*law.

Any dispute arising out of or in connection with this Charter Party, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The reference to arbitration of disputes under this Clause 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 and give notice that it has done so within fourteen (14) calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not give notice that it has done so within the fourteen (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 USD 150,000 (or such other sum as the parties may agree) the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

\*\*Delete whichever does not apply. If neither or both are deleted, then English law shall apply by default.

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

(e) [Mediation]

Sub-clauses (a), (b), (c) and (d) are alternatives; indicate alternative agreed in Box 26.

If Box 26 in PART I is not filled in, sub-clause (a) shall apply. Subclause (e) shall apply in all cases.

# CONTRATOS DE REMOLQUE Y OFF SHORE

## TOWCON 2008 – BIMCO International Ocean Towage Agreement

### ❑ Opciones

#### Opción 1

- Ley inglesa, Arbitraje en Londres bajo el Arbitration Act 1996, o modificaciones posteriores.
- Reglas del LMAA.
- Por defecto 3 árbitros, aunque las partes pueden acordar nombrar un solo árbitro.
- Si la suma no excede de 50,000 USD - LMAA Small Claims Procedure.

#### Opción 2

- Ley EEUU
- Por defecto 3 árbitros y el lugar de arbitraje es Nueva York.
- Reglas de la Society of Maritime Arbitrators, Inc.
- Si la suma no excede de 50,000 USD - SMA Rules for Shortened Arbitration Procedure.

#### Opción 3

- Ley aplicable y lugar de arbitraje acordado por las partes.

- Las partes acordar acudir a mediación.
- Las tres opciones anteriores son alternativas, por lo que se debe indicar una en la Parte I del contrato.
- Si ninguna opción de las anteriores se indica – la Opción 1 por defecto.

## TOWCON 2008 - BIMCO

- **BIMCO Dispute Resolution Clause**

33.a. This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement 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 the 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 USD50,000 (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.

33.b. This Agreement 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 Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. In cases where neither the claim nor any counterclaim exceeds the sum of USD50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc., current at the time when the arbitration proceedings are commenced.

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

33.d. [Mediation]

33.e. If Box 40 is not appropriately filled in, sub-clause (a) of this Clause shall apply. Sub-clause (d) shall apply in all cases.

Note: sub-clauses (a), (b) and (c) are alternatives; indicate alternative agreed in Box 40.

## HEAVYCON 2007 – BIMCO Standard Heavy Lift Charter Party

### ❑ Opciones

#### Opción 1

- Ley inglesa, Arbitraje en Londres bajo el Arbitration Act 1996, o modificaciones posteriores.
- Reglas del LMAA.
- Por defecto 3 árbitros, aunque las partes pueden acordar nombrar un solo árbitro.
- Si la suma no excede de 50,000 USD - LMAA Small Claims Procedure.

#### Opción 2

- Ley EEUU
- Por defecto 3 árbitros y el lugar de arbitraje es Nueva York.
- Reglas de la Society of Maritime Arbitrators, Inc.
- Si la suma no excede de 50,000 USD - SMA Rules for Shortened Arbitration Procedure.

#### Opción 3

- Ley aplicable y lugar de arbitraje acordado por las partes.

- Las partes acordar acudir a mediación.
- Las tres opciones anteriores son alternativas, por lo que se debe indicar una en la Parte I del contrato.
- Si ninguna opción de las anteriores se indica – la Opción 1 por defecto.

## HEAVYCON 2007 - BIMCO

- **BIMCO Dispute Resolution Clause**

39.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 the 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 USD50,000 (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.

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

In cases where neither the claim nor any counterclaim exceeds the sum of USD50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc., current at the time when the arbitration proceedings are commenced.

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

If Box 29 is not appropriately filled in, sub-clause a of this Clause shall apply. Sub-clause (d) [mediation] shall apply in all cases.

\*Sub-clauses (a), (b) and (c) are alternatives; indicate alternative agreed in Box 29.

## CONCLUSIONES

1. FRENTE AL TRADICIONAL INMOBILISMO DEL DERECHO MARÍTIMO, ACTUALMENTE SE OBSERVAN GRANDES CAMBIOS EN CUANTO AL DISEÑO Y USO DE LAS CLÁUSULAS DE JURISDICCIÓN Y LEY APLICABLE EN LOS CONTRATOS MARÍTIMOS (DINAMISMO DE LA BIMCO EN MODIFICAR SUS FORMULARIOS).
2. PUJANZA DE LAS CORTES ASIÁTICAS (SINGAPUR, HONG KONG)
3. IMPORTANCIA DE LOS PROCEDIMIENTOS ABREVIADOS (SMAL CLAIMS-FAST PROCEDURES) Y ELEVACIÓN DE SUS CUANTÍAS
4. EXISTENCIA DE PLANTEAMIENTOS DIGNOS DE TENERLOS EN CUENTA: SALVAMENTOS LOF Y EL SISTEMA DE 1 ÁRBITRO DE PRIMERA INSTANCIA Y UN ÁRBITRO DE APELACIÓN

HAY CAMPO ABONADO, INCLUSO EN BIMCO, PARA TRATAR DE PROPONER CLÁUSULAS ALTERNATIVAS DE LEY Y JURISDICCIÓN

**MUCHAS GRACIAS**