



Defence Guides

Hold cleaning in a nutshell (time charters)

1. On delivery:

In the absence of any specific clause, line 22 NYPE requires that the ship be “ready to receive cargo with clean-swept holds” i.e. she is ready to commence loading without delay.

Can charterers reject the ship if the holds are not clean?

If the ship is not in the required condition, charterers are entitled to refuse delivery/reject her, and the charter period will not start. If owners are not able to rectify the condition of the ship before the cancelling date, charterers may become entitled to cancel the charter.

What if, despite the holds not being in satisfactory condition, charterers accept the vessel?

Where charterers accept delivery of the ship and the ship’s holds are not in the required condition, owners may be liable in damages, subject to any Clause Paramount or other defence for owners that is incorporated into the charter party. (Charterers should however be careful not to waive their rights.)

Where charterers accept delivery of the ship in circumstances where owners’ failure to deliver the ship in accordance with the contract means that charterers are deprived of substantially the whole benefit of the charter, charterers may still have the right to terminate the charter party, although the burden would be on charterers to show that the defects in/condition of the holds prevented charterers from carrying out the trade required of the vessel and that charterers had not waived their right to terminate the charter party. (If the defects in/condition of the holds only leads to delay and/or additional expenses, this is unlikely to

entitle charterers to cancel the charter party. Rather, charterers would be restricted to their claim in damages against owners for such delay and/or additional expenses (subject to any Clause Paramount or other defence for owners that is incorporated into the charter party).

Can charterers claim damages if they have missed their shipment laycan?

If charterers can establish a breach by owners which causes the vessel to miss a laycan due to hold rejection, damages for loss of the sub-charter are in principle recoverable (subject to any Clause Paramount or other defence for owners that is incorporated into the charter party). There may be arguments about causation (i.e. was this the only reason the laycan was missed?) and remoteness (i.e. was it reasonably foreseeable that such a breach would lead to such damages?). However, on balance, owners would be presumed to know that (assuming there is a liberty to sub-let in the charter party) disponent owners would be sub-chartering with terms as to the condition of the holds on delivery, subject to arguments about remoteness, i.e. whether owners undertook any liability for such losses.

2. Intermediate hold cleaning:

Owners have an obligation to maintain the ship which continues throughout the charter period. Unless otherwise agreed (for example, where the cargo loaded has not been one that is permitted under the charter party but the owners have agreed to carry it at charterers’ expense/risk and the carriage has resulted in additional hold cleaning being necessary), owners must also pay for all expenses of intermediate hold cleaning. In the

absence of an intermediate hold cleaning clause, owners are responsible for exercising due diligence to clean the ship with reasonable care, skill and speed. Three separate provisions arise in the charter in this regard:

- The maintenance clause (e.g. lines 21-24 and clause 1 of NYPE 1946);
- Owners’ obligation to render all customary assistance with the ship’s crew (clause 8 NYPE);
- Implied term that the crew should perform their services with due diligence

The question as to the level of cleaning that the crew can reasonably be expected to achieve is a question of fact.

Cleaning the holds includes removal of loose rust scale and loose paint, always given time and calm weather. The crew are not regarded as skilled cleaning operatives and, therefore, there is a limit on what cleaning can reasonably be effected whilst at sea.

Cleaning holds & customary assistance does not include:

- Removal of hard adhering rust and large loose rust patches
- Chipping rust
- Scaling operations requiring sophisticated tools (pneumatic hammers, high pressure water jets, grit blasting equipment)

When extraordinary cleaning is necessary due to charterers’ choice of cargo (unless this cargo is one that has been agreed that owners will carry, i.e. at owners’ risk and expense), owners’ reasonable costs should be recoverable from charterers under an implied indemnity.



3. Common issues with charter party clauses:

Very often, charter parties will contain rider clauses which will request the ship's holds to be delivered up to a particular standard and/or that it will be charterers' responsibility to ensure that the holds are cleaned at charterers' risk and cost after having carried a particular cargo.

If a ship is to be delivered with holds clean to a high standard, e.g. grain standard or "hospital clean", but the holds do not comply with this standard of cleanliness, it is not relevant whether the failed holds are still in a suitable condition for the particular cargo to be loaded; charterers will still be entitled to reject the holds and insist that these are cleaned to the agreed standard before charterers accept delivery of the vessel. However, if charterers do not reject the holds on delivery or reserve their rights, charterers will be deemed to have waived their rights to claim damages when holds are failed on another shipment under the charter party.

Courts will look at the wording of clauses and give them their literal meaning. The words "clean dry, free from loose rust flakes/scales and residues of previous cargo" will not mean that the holds can be rejected if "traces" of previous cargo are found, although there are conflicting arbitration decisions on this issue.

Upon redelivery, charter parties will often include a provision that charterers are to return the ship in the same condition as it was delivered in. Charterers will also have to option of paying a lump sum In Lieu Of Hold Cleaning (ILOHC). This clause is only intended to cover for the cleaning of the holds when debris and residue is left inside. It does not extend to large amounts of cargo being left in the holds that have been rejected by receivers. In this situation, charterers will have to indemnify owners for the extraordinary costs of cleaning.

4. Facts to consider when dealing with a claim:

- The vessel's age
- The configuration of the vessel's holds (height and accessibility)
- Regarding intermediate hold cleaning: was the amount of time and were the weather and sea conditions reasonably sufficient to enable the holds to be cleaned by the crew? What were the previous cargoes and the amount of cleaning required? In particular, were dirty cargoes such as petcoke or coal previously carried?
- The standard of cleaning required in the charter party (e.g. "grain clean")
- What were the reason(s) why the hold(s) failed the inspection (removal of soft non-adhering rust is the duty of the crew, removal of hard adhering rust...cannot be done by the crew)

This article was written by Julien Rabeux in the Club's Hong Kong office with additional input from Holman Fenwick Willan (London).

This note is for general guidance only and should not be relied upon as legal advice. Should you require specific advice on a particular situation please contact the Club.