



# 2020 MARINE FUEL SULPHUR CONTENT CLAUSE FOR TIME CHARTER PARTIES

- CLAUSE
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- 2020 SULPHUR CAP
- BUNKERS

## BIMCO 2020 Marine Fuel Sulphur Content Clause for Time Charter Parties

(a) For the purpose of this Clause, "Sulphur Content Requirements" means any sulphur content and related requirements as stipulated in MARPOL Annex VI (as amended from time to time) and/or by any other applicable lawful authority.

(b) The Charterers shall supply fuels to permit the Vessel, at all times, to comply with any applicable Sulphur Content Requirements. All such fuels shall meet the specifications and grades set out in this Charter Party.

The Charterers also warrant that any bunker suppliers, bunker craft operators and bunker surveyors used by the Charterers shall comply with the Sulphur Content Requirements.

The Charterers shall indemnify, protect, defend and hold harmless the Owners from any and against all losses, damages, liabilities, delays, deviations, claims, fines, costs, expenses, actions, proceedings, suits, demands arising out of the Charterers' failure to comply with this subclause (b), and the Vessel shall remain on hire throughout.

(c) The Owners warrant that the Vessel shall comply with the Sulphur Content Requirements.

Subject to the Charterers having supplied the Vessel with fuels in accordance with subclause (b), the Charterers shall not otherwise be liable for any losses, damages, liabilities, delays, deviations, claims, fines, costs, expenses, actions, proceedings, suits, demands arising out of the Owners' failure to comply with this subclause (c).

## BACKGROUND

### 2020 Bunker Clauses for Time Charter Parties

BIMCO has produced two clauses for time charter parties to address key contractual issues relating to the switch to fuel with a maximum sulphur content of 0.50% as of 1 January 2020. The two clauses are the 2020 Marine Fuel Sulphur Content Clause, which replaces the BIMCO Fuel Sulphur Content Clause 2005, and the 2020 Fuel Transition Clause, which deals with switching between fuel with a maximum sulphur content of 3.50% and fuel with a maximum sulphur content of 0.50% by 1 January 2020. Both clauses should be incorporated into time charter parties.

### Sulphur Content Compliance

The 2020 Marine Fuel Sulphur Content Clause replaces the BIMCO Fuel Sulphur Content Clause 2005 and can be incorporated into time charter parties as of now. The new clause is designed to work together with existing time charter bunker clauses which already cover issues relating to the specifications, grades and quality/suitability of the fuel provided by time charterers. BIMCO publishes numerous bunker-related clauses in its [Suite of Standard Bunker Clauses for Time Charter Parties](#).

By making the 2020 Marine Fuel Sulphur Content Clause an addition to existing time charter bunker clauses we have been able to keep the clause short and simple. It is written as a straightforward compliance provision with the sulphur content requirements of MARPOL Annex VI. The sulphur content requirements include the present limit of 3.50% as well as the 0.50% that will apply after 1 January 2020 – and it also includes the maximum sulphur content for ECAs. This is why the clause can be incorporated into time charters now and will remain valid after the new IMO 2020 regime comes into force in 2020. Issues relating to the specifications, grades and quality/suitability of the fuel provided by time charterers are dealt with by existing bunker clauses in time charters, so these should not need to be amended in relation to sulphur content alone.

The BIMCO Suite of Bunker Clauses provides a comprehensive contractual "package" covering essential aspects of bunkering such as quality, liability, operations, sampling, and fuel testing. BIMCO has reviewed its suite of bunker clauses and concluded that, when used together with 2020 Marine Fuel Sulphur Content Clause, it can continue to be incorporated into time charter parties post-2020, without the need for amendment.

### Switching to low sulphur fuels

The 2020 Fuel Transition Clause is not part of the Suite of Bunker Clauses as it deals with the one-off event of switching between fuel with a maximum sulphur content of 3.50% and fuel with a maximum sulphur content of 0.50%. The switchover is a process that will need to be started before the coming into force date of 1 January 2020 and so requires the owners and charterers to cooperate to ensure a smooth transition. The clause is designed to provide a fair allocation of responsibilities and liabilities

between the owners and charterers in managing remaining stocks of fuel that will become non-compliant under MARPOL on 1 January 2020. This may involve agreeing to reserve tank space as and when it becomes free so that it can be made fit to receive compliant fuel.

The clause has been specifically designed for time charter parties that will span 1 January 2020. We would also recommend incorporating the clause into time charter parties with redelivery very close to 1 January 2020 where delays or extensions might result in the ship redelivering after the coming into force date.

## Drafting team

The 2020 Bunker Clauses have been developed by a team comprised of owners, charterers, bunker suppliers, P&I clubs and legal experts. BIMCO is grateful to the following individuals for assisting us with this important project:

- › Peter Eckhardt, F. Laeisz, Hamburg (Chairman)
- › Daniel Chu, Navig8, London
- › Nicola Ioannou, Oceanfleet Shipping, Athens
- › Ann Shazell, Cargill Ocean Transportation, Geneva
- › Rob Crees, World Fuel Services, London
- › Michele White, INTERTANKO, London
- › Tiejha Smyth, North of England P&I Club, Newcastle
- › Paul Dean and Alessio Sbraga, HFW, London

The BIMCO secretariat was represented by Lars Robert Pedersen, Deputy Secretary General; Grant Hunter, Head of Contracts and Clauses; and Mads Wachter Kjærgaard, Assistant Manager, Contracts & Clauses.

## Explanatory Notes

The following explanatory notes are intended to provide some background to the thinking behind the 2020 Marine Fuel Sulphur Content Clause and the 2020 Fuel Transition Clause for Time Charter Parties. If you have any questions about the clauses that we haven't answered in the explanatory notes, please contact us at [contracts@bimco.org](mailto:contracts@bimco.org) and we will be happy to help.

### 2020 Marine Fuel Sulphur Content Clause

This clause deals with the basic obligation to comply with the sulphur content requirements of MARPOL Annex VI. It deals only with compliance with sulphur content – other issues relating the specifications, grades, quality and suitability of the fuels supplied should be dealt with by existing bunker clauses in time charters. This avoids unnecessary duplication and potential conflicts between provisions. This clause can be incorporated into time charter parties as of now.

The 2020 Marine Fuel Sulphur Content Clause replaces the previous sulphur content clause contained in [BIMCO's Suite of Standard Bunker Clauses for Time Charter Parties](#), the Bunker Fuel Sulphur Content Clause for Time Charter Parties 2005. The new clause also deals with the sulphur content requirements of ECAs, so you do not need to include both versions in your time charter parties.

#### Subclause (a) – Sulphur Content Requirements

The sulphur content requirements are essentially the maximum sulphur contents and applicable dates stated in MARPOL Annex VI (including ECAs). The phrase “and related requirements” refers to any additional documentary requirements such as the Bunker Delivery Note.

The phrase “and/or by any other applicable lawful authority” means any additional regulation that may be applied by authorities as a supplement to MARPOL Annex VI and which must be complied with.

#### Subclause (b)

The first paragraph of this subclause contains an express requirement for the fuel provided by the time charterers to meet the “specifications and grades” which are commonly set out elsewhere in a time charter party. The purpose of the clause is to deal with sulphur content compliance, not to address fuel quality. This approach avoids the potential for conflicting wording between the sulphur content clause and existing clauses dealing with bunkers.

The second paragraph of the subclause obliges the charterers to make sure that their suppliers etc. also comply with applicable regulation relating to sulphur content. Essentially, this provision emphasises that charterers need to exercise care in selecting bunker suppliers and related services that are also MARPOL compliant where applicable.

The remainder of this subclause provides an important indemnity to protect the owners who have, effectively, entrusted charterers to stem fuel of the required sulphur content, yet still remain responsible for the repercussions of non-compliance with MARPOL which – together with associated losses – may be significant. For the avoidance of doubt, if the charterers are in breach of their obligations, the ship is to remain on hire. The charterers cannot benefit from their own breach.

#### Subclause (c)

The owners' warranty that the ship will comply with the sulphur content requirements of MARPOL Annex VI means that the ship is able to consume fuels that meet such requirements. So this does not need to be separately stated.

There is no reciprocal indemnity for charterers. Provided the charterers have complied with their obligation to supply fuel that complies with MARPOL sulphur content requirements, they will not be liable for the owners' failure to comply with MARPOL. We have deliberately not simply mirrored the owners' indemnity in subclause (b) because such wording could, potentially, afford the charterers' claims a special status and/or elevate their protection under the general scheme of the charter party, over and above what they would have normally. Whereas, adequate protection is already given to the charterers by virtue of the owners' warranty and an exclusion of liability at subclause (c), and, in any event, they would be entitled to pursue potential claims for damages for breach of contract against the owners in the normal way.

## 2020 Fuel Transition Clause for Time Charter Parties

The transition to 0.50% sulphur content fuels on 1 January 2020 is essentially a one-off event. We have written the 2020 Fuel Transition Clause as a “single-use” clause for time charters spanning the transition period. It is not part of the suite of standard bunker clauses but should be used together with the other bunker clauses, including the 2020 Marine Fuel Sulphur Content Clause, for ships delivering into a time charter before 1 January 2020 and redelivering after that date. We recommend that you also incorporate the 2020 Fuel Transition Clause into time charters with an expected redelivery date immediately before 1 January 2020 where there may be a risk of late redelivery or where the clause would form a useful part of owners’ implementation plan (as recommended by the IMO).

Preparing a ship for compliance with the MARPOL Annex VI sulphur content requirements as from 1 January 2020 requires time and careful planning. The 2020 Fuel Transition Clause sets out what tasks need to be achieved and when. Because some of these tasks need to be completed ahead of the coming into force date, owners and charterers need to cooperate to ensure a smooth implementation. The clause allocates responsibilities to each of the parties. As there is no “one size fits all” solution that can cover all different ship types and conditions, the clause avoids being too prescriptive about the extent of cleaning required to permit bunker tanks to be used for 0.50% sulphur content fuels.

### Subclause (a) - Definitions

Subclause (a) contains six definitions of terms that are used consistently throughout the clause.

The definition of “Non-Compliant Fuel” has been given a special meaning for the purposes of the clause. This is because fuel with a sulphur content greater than 0.50% only becomes “non-compliant” on 1 January 2020. However, the clause needs to deal with the use or removal of such fuel before the coming into force date – at which point in time it is still compliant fuel as far as MARPOL Annex VI is concerned. The reference to non-compliant Fuel is used only in the context of use or removal of fuel with a sulphur content greater than 0.50%.

The definition of “Compliant Fuel” on the other hand refers to the requirements of MARPOL as of 1 January 2020.

The definition of “Sulphur Content Requirements” is identical to the one used in the 2020 Marine Fuels Sulphur Content Clause. It’s essentially the maximum sulphur contents and applicable dates stated in MARPOL Annex VI (including ECAs). The phrase “and related requirements” refers to any additional documentary requirements such as the Bunker Delivery Note.

The phrase “and/or by any other applicable lawful authority” means any additional regulation that may be applied by authorities as a supplement to MARPOL Annex VI and which must be complied with.

### Subclause (b) - Requirements

Subclause (b) sets out the minimum requirements that owners and charterers need to achieve for the ship to be in compliance. It’s essential that the owners have a ship that has compliant fuel on board even before 1 January 2020 so that it can reach a bunkering port after the coming into force date to take on additional stocks of fuel. This aspect should be considered by owners for ships redelivering immediately before 1 January 2020.

Although having non-compliant fuel on board the ship for use is not banned until 1 March 2020, the clause treats the carriage ban date as an absolute deadline while encouraging the parties to remove fuel with a sulphur content greater than 0.50% by 1 January 2020, if possible.

At the very heart of this clause is the need for the owners and charterers to cooperate. Although it is not a strict obligation on the parties, it requires them to use reasonable endeavours. The preferred option is to burn any fuel with a sulphur content above 0.50%. If time does not permit all the fuel to be burned, then any remaining fuel should be offloaded by the coming into force date.

### Subclause (c) - Responsibility of the Parties

This subclause sets out the obligations of the owners and charterers. The balanced approach obliges the charterers to pay to offload and dispose of any remaining non-compliant fuel they have been unable to burn, and an obligation on the owners to ensure the ship is fit to receive compliant fuel. The wording “... fit to receive Compliant Fuel, taking into account the type of Compliant Fuel that will be loaded...” reflects that depending on factual circumstances such as the ship’s age, the type of fuel it has been using, the types of bunker tanks and especially the type of fuel that is to be loaded, different procedures could be required to prepare bunker tanks. In some cases, a thorough cleaning of tanks might be needed, but in other case the tanks might be prepared using additives. This issue should be addressed on a case by case basis, so the clause intentionally avoids being too prescriptive.

### Subclause (d) - Disposal of Non-Compliant Fuel

The charterers are responsible for the disposal of non-compliant fuel and this must be done in accordance with local regulations. This subclause has been added to help avoid owners facing fines or trade restrictions imposed on the ship due to the improper disposal of the non-compliant fuel.

### Subclause (e) - Segregation

Empty tanks in the context of this clause assumes that there will normally be unpumpable residuals.

## Issues not addressed in the 2020 Clauses

The 2020 Marine Fuel Sulphur Content Clause and the 2020 Fuel Transition Clause are not intended for use by vessel fitted with and operating exhaust gas cleaning systems (i.e. scrubbers).

Careful consideration should be given to bunker delivery/redelivery clauses in terms of the types of fuel on board and the prices to be paid – particularly for time charters spanning 1 January 2020 up until the carriage ban date on 1 March 2020.

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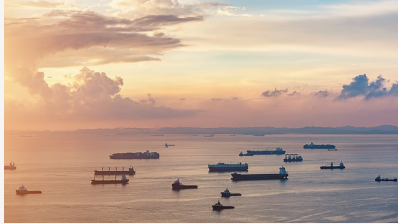
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