

## II. Charter Parties and their Types.

A **Charter Party** is not a person, but a contract under which two parties have agreed to effect a transportation by sea. This will necessarily involve the use or hire of a vessel. It comes from the Medieval Latin “Carta Partita” or French “Charte Partie”, a divided charter or contract. This is a reference to the fact that two copies were prepared, one for the charterer and one for the owner.

<https://www.handybulk.com/what-is-a-charter-party-carta-partita> - a reference

What is a Charter Party? Or Carta Partita?

International chartering started with the Phoenicians in Carthage, when merchants chartered vessels for Mediterranean and North European trading. In Ancient Rome there was a vessel chartering market of sorts dealing in Egyptian grain prices on arrival at Ostia (Rome’s seaport). In other words, chartering ships is not a new concept. The main difference compared to today is that, until the late 19th century, some masters (i.e. captains) of vessels often had complete authority to fix cargoes and maximize earnings for the owners in return for a profit-share agreement. Sometimes the masters owned the vessels (as they still do on some coasters and Rhine barges today). However, the master would conduct his own negotiations in person in whatever port his ship was moored, draw up a contract with a merchant and tore it in half (one half for the merchant, one for the master). This is the origin of the term ‘charterparty’ – an anglicized version of the Latin words ‘Carta Partita’, meaning a document (Carta), which has been divided or split (Partita). One of the halves was placed on board the ship and the other half was kept by the trader. When the ship arrived at her destination, the receiver of the cargo produced the shipper’s half of the document, thus proving that he was the rightful owner of the goods. The enormous growth of world trade in the 19th and 20th centuries led to faster steamships, followed historically by ships powered by fuel and diesel. Ships were on increasingly longer voyages away from their ‘home ports’ and the ships’ masters were no longer able to conduct their own negotiations. So the shipowners used shipbrokers to find the next cargoes and negotiate the contracts for their carriage.

*There is no need for a special pre-printed form but it is usually to fix on one of a number of standard forms of charter party. Each will usually have a number of printed clauses which will cover established and common requirements. These will frequently be common to various forms of charter party. There is no rule that states these printed clauses must be used. The parties are free to use whatever format and wording they desire and to omit, amend or add to such clauses. However, the wording of many usual clauses has been established for a long time and in most cases has been*

*considered in court cases and legal interpretations given to their meaning.*

~ By Nick Collins, in Chapt. 5 of “*The Essential Guide to Chartering and the Dry Freight Market*”, Clarkson research Studies, 2000.

1. 不需要一定要使用這些印刷好格式與條款的定型化(**printed form 或 pre-printed form**)租傭船契約，但成交租傭船業務的船東與傭船人雙方通常會從若干定型化租傭船契約中選取一定型化租傭船契約作為雙方的契約範本。
2. 為方便並節省時間，這些定型化租傭船契約，內含空格(blank spaces)與常用的合約條款(clauses)，經常被從事租傭船業務的人士使用。
3. 這樣的定型化租傭船契約通常都已包含一些表格與條款，這些條款都是已確立且常用的租傭船契約要件，各定型化的租傭船契約中也會採用。
4. 即使訂約的船東與傭船人雙方同意使用這些定型化的租傭船契約，雙方仍可對這些契約的條文修改(to amend)或刪除(to omit)或增加(to add)其他條款。
5. 這些定型化的租傭船契約內含的合約條款及用字遣辭(wording)，通常都是已流傳一段時間，被法院接受或引用，並賦予其法定解釋(legal interpretations)。

Printed forms of charter party and charterers' charter parties pro forma (租船人自己制定的標準格式租傭船契約範本、租船人自己制定的專用定型化契約範本或稱 **charterer's pro forma charter parties**):

- (1) Contracts are negotiated within a few days or even hours so that printed forms have been established.
  - (2) For understandable reasons, all parties involved in a negotiation concentrate initially on **the most commercially important elements** which are called “**main terms**”.
  - (3) Then those most commercially important elements agreed are entered into the blank spaces of the agreed charter party form.
  - (4) Most large charterers made their charter parties pro forma (pro forma charter parties) which were intended to be comprehensive with no need for extra clauses.
  - (5) Today, the contents of those charter parties may not be well fitted, and thus clarifications in the form of inserts in the main body of the charter party and by rider clauses which sometimes number more than fifty are needed.
1. 船東與傭船人雙方在協議租傭船業務時通常都在短時間內針對若干在商業上最重要的要素去協商這些在商業上最重要的要素(the most commercially important elements)就是租傭船業務的主要條件(main

terms)。

2. 雙方對這些在商業上最重要的要素都同意之後，就可以將這些同意的內容填入雙方同意的制式租傭船契約上的空格中。
3. 一些大型的租船人都會制定自己公司專用的標準格式租傭船契約範本或自己公司專用的定型化契約(**charterer's pro forma charter parties** 或稱 **charterer's charter parties pro forma**)，以用於該公司所有的租船業務中，這樣的合約內容都相當廣泛且，只要船東能接受，即不需再增加額外的條款。
4. 時至今日，如果租船人自己制定的標準格式租傭船契約範本或自己專用的定型化契約，在內容上已不合適，因此就需要在契約範本上用插補 (inserts)的方式去做說明或以增加附加條款(rider clauses 或稱 additional clauses)的方式去改造，這些附加條款的數量有時可能會超過 50 條以上。

The executed copy of a charter party:

When a charterer fixes "main terms" with an owner he has never fixed with before, he will not give them a blank charter party pro forma or a blank form of charter party. He will give them an executed copy of a charter party which incorporates all additions, deletions and amendments agreed by other owners in the recent past. This will form a very good basis for negotiation and, in some cases, will be accepted in full, sometimes with the qualification, 'with logical amendments'.

租船人或船東有時會提供已執行過的租傭船契約(**executed charter party**)給對方審查，以便使用於雙方所要訂定的租傭船業務上，但是即使雙方同意使用這個已執行過的租傭船契約，仍應依雙方談定的業務內容對這個已執行過的租傭船契約去作合乎邏輯的修改(with logical amendments)。

Please note the fact that these charter parties are negotiated and often produced under time pressure and, sometimes, too little attention is paid to the wording of those contracts and clauses within them and how applicable they are to the contract negotiated. Yet huge sums of money are at stake. "Every word means \$!" Be cautious!!

#### *EXAMPLE OF SOME CHARTER PARTY FORMS.*

Types of charters:

A. Time charters:

1. The charterer hires the vessel for a specified period of time within certain pre-arranged geographical limits.
2. The commercial control of the vessel lies with the charterer who directs the Master and crew but the management and maintenance of the vessel and the

appointment of Master, officers and crew remain with the owner.

3. The charterer is responsible for arranging and paying for bunkers and all port charges.
4. The remuneration, payable by the charterer, is called 'hire' and is usually paid every 15 days, 30 days, semi-monthly or monthly.
5. If the vessel is unable to trade for a period of time through some fault of the ship and/or owners or through an accident, the charterer does not pay for such 'off hire' period.
6. The main type of time charter parties in constant use: 'Time Charter Government Form 1946' issued by New York Produce Exchange, also known as 'NYPE 1946' ; 'NYPE 93' revised and issued by the Association of Shipbrokers and Agents (U.S.A.) Inc. ; 'NYPE 2015' published by BIMCO and jointly authored by ASBA, BIMCO and SMF ; 'BALTIME, 1939' REVISED 2001.

#### B. Bareboat (or demise) charters:

1. The charterer leases the vessel from the owner and takes full control and management of the vessel, appointing the Master and crew. The charterers provide stores and undertake repairs, insurance and dry docking.
2. The charterers may have to pay for bunkers and all port charges if they re-let the vessel in voyage charters.
3. Charter party forms: 'BARECON 89', 'BARECON 2017', and 'BARECON 2021'.

#### C. Voyage charters:

1. The charterer will charter part or the whole of the carrying capacity of the ship to carry a cargo loading at a named port or ports or at an agreed number of specified ports and discharge the cargo at a named port or ports or an agreed number of specified ports or a range of ports.
2. The responsibilities of management, maintenance, crewing, provisions, payment of bunker fuel, port charges, appointment of agents, remain with the owner.
3. The charterer is obliged to provide the agreed cargo and pay the freight usually on a per-ton, per-cubic-meter or on a lump sum basis. Unlike the time charter, payment is based on the actual cargo carried and thus the owner's risk is the duration being extended by weather or port delay and in some cases, increases in bunker cost.
4. Charter party forms: STB form is for tanker vessels. NORGRAIN form is for grain cargoes out of the North and South American. There're still other various forms of charter party for dry bulk cargoes such as GENCON, AMWELSH etc.

### Premature Termination, Cancellation and Frustration of the Charter Party

There are a number of ways that a charter party can be terminated:

1. It can be terminated by mutual consent: the parties can agree that they will terminate the contract.
2. It can be terminated or cancelled unilaterally if it is provided for in the charter party. E.g.:  
CLAUSE 80, PARAGRAPH 4 in the C/P fixed between XXIT, Taipei and Dxyyang, Seoul for MV Willi Sxxxxxx dated Sept, 16, 2004:  
*IF VESSEL IS PLACED OFF-HIRE MORE THAN 10 CONSECUTIVE DAYS, CHARTERERS HAVE THE RIGHT TO CANCEL THIS CHARTER.*
3. Another thing that can terminate or cancel a charter party is there's a war breaks out between the country of the charterer and the country of the owner, and so that they may no longer be possible for them to do business together and now because of the impossibility of performance, the charter party will be terminated.
4. The ship is no longer available:
  - a. the ship sinks;
  - b. the sale of ship; might terminate the C/P, but not necessarily.
  - c. the requisition of the ship;
  - d. the ship is physically not available.

If the charter party provides that the owner may substitute another vessel, then the way the law in the U.S. is that, the charter party provides substitution for another vessel, the substitution may be made at any time; the way the law in the U.K. is that, the owner can make the substitution up until the time that the contracted ship sinks; as long as the ship is existent, the owner can make the substitution, but once the contracted ship sinks, he can't make the substitution any more. Because there's no ship, so there's no contract.

#### 5. Breach of warranty?

Case: Aaby vs. States Marine Corp.

MV "Tento" – 1950 AMC947

*"In order to cancel the charter for breach of warranty, the breach must be so substantial as to defeat or frustrate the commercial purpose of the charter".*

Another case: MV "Golden Eagle"

Arbitrators: *"the commitment of default must be so fundamental as to destroy the essential object of the contract."*

Breach of condition: for breach of condition, the charter party can be terminated

automatically.

Condition: the ground rule between the owner and the charterer.

**Conditions, warranties & innominate terms** : (under Google)

<http://e-lawresources.co.uk/Conditions,-warranties-and-innominate-terms.php>

#### 6. Misrepresentation, Fraudulent Misrepresentation or Concealment.

A charter can be terminated for misrepresentation, fraudulent misrepresentation, or concealment.

船東在租傭船契約中，做出所謂”不實陳述(Misrepresentation)、詐欺性的不實陳述(Fraudulent misrepresentation)或隱瞞的事實(Concealment)” ，必須符合下列四項條件：

The first thing that is necessary in order to terminate a charter party for misrepresentation, fraudulent misrepresentation, or concealment is that there must be a “**false statement knowingly made**” or “**concealment of something that the owner has a duty to reveal**”. Those false statement knowingly made or concealment of something that would prevent the charter party from actually being carried out as being intended.

The second thing is that there must be “**material**”.

Material – Every circumstance is material which would influence the judgment of a prudent person on the rating the charter or on whether or not he would enter into the contract. (Modified from the British Marine Insurance Act, Section 18)

The third thing is there must be **reliance** thereon. The charterer relies on the information that the owner gives.

The fourth thing is to show the loss, either the charterer did suffer a loss or would suffer a loss.

- (1)船東故意在租傭船契約中做出錯誤的陳述或隱瞞某些船東有義務揭露的事實；
- (2)船東故意做出的錯誤陳述或隱瞞的事實，必須是重要的關鍵陳述或事實(material)；此一重要的關鍵陳述事實乃是指凡是會影響一個謹慎小心的人用來判斷是否訂立合約或用來評估這一租傭船契約的細節；
- (3)租船人對船東所做的錯誤陳述或所隱瞞的事實已產生信賴(reliance)；
- (4)租船人可以舉證出因對船東所做的錯誤陳述或所隱瞞的事實已產生信賴，而致受到或將承受到的損失。

#### 7. Commercial frustration of a charter party:

Frustration of Contract 合約受挫

係英美法用語，指在合約成立後，非由於當事人自身的過失，而是由於事

後發生的意外情況而使當事人在訂約時所謀求的商業目標未能達成。在這種情況下，對於未履行的合約義務，當事人得予免除。→(中華徵信所，國際貿易金融大辭典)

The U.S. Court of Appeal in the case of MV “Christos” AMC1717, 1966 by Transatlantic Financing Corp. vs. the U.S.:

*There are 4 requirements for commercial frustration to be established:*

- (1). The happening of an unexpected event.*
- (2). It's not anticipated or contemplated or provided for in the contract or by custom. They connect with each other, but they might not be necessarily go together.*
- (3). It renders the performance impossible or commercially impractical because of excessive or unreasonable cost.*
- (4). There must be the absence of contributing force. Neither party has contributed by his negligence to the circumstance that happens.*

[案例一]：“CHRISTOS” 1966AMC(American Maritime Cases)1717，乙案：

發生於中東以、阿戰爭期間，蘇伊士運河突遭關閉，該輪正往波斯灣裝貨的途中，運河關閉，因而該輪須改道南非之好望角，航程增加了3000海浬(10,000 N.miles→13,000 N.miles)，另外增加油耗成本44,000美元。

船東宣告因此一事件，免除履約之義務。

但美國上訴法院在本案中，列示4項此類 Commercial Frustration 得以主張的條件：

- (一) The happening of an unexpected event,  
發生了一意想不到的事件；
- (二) It's not anticipated or contemplated or provided for in the contract or by custom,  
這一意想不到的事件是合約沒有規定到或在習慣上沒有考慮到的情形；
- (三) It renders the performance impossible or commercially impractical because of excessive or unreasonable cost,  
這一意想不到的事件造成了過多的或不合理的成本，而使得合約不可能執行或執行合約在商業上不切實際；
- (四) There must be the absence of contributing force. Neither party has contributed by his negligence to the circumstance that happens.  
必須沒有來自於締結租傭船契約雙方的疏忽而促使該一意想不到的事件的發生；

法官對本案認定多3000海浬航程，與44,000美元費用仍不足以讓船東得以宣告 Commercial Frustration 而免除應履約之義務。

[案例二]：1972 AMC318, American Trading & Production Corp. v.s. Shell International Marine, Ltd. for MT “Washington Trader”

在本案中，船舶從美國德州啟運貨物前往印度，當船舶正抵直布羅陀以便進入地中海，再經蘇伊士運河前往印度卸油時，蘇伊士運河因戰爭而關閉，因而船舶必須轉向經由好望角前往波斯灣，造成船東額外發生約美金 13 萬 2 仟美元(US\$131,978.44)的費用，經比較費用增加了 33%，法院的法官仍認為此一成本增加的部分仍不足以讓船東得以宣告 Commercial Frustration 而免除履約之義務。

但要增加多少成本或費用，才足以令法官或仲裁人對船東宣告的 Commercial Frustration 認可呢？有律師曾提出要原始成本的 2~3 倍，在英國，則是一定要造成成本的巨幅增加(tremendous increase)才足以讓法官或仲裁人對 Commercial Frustration 的宣告認可，在有些案件中 150%的增幅仍不足以說服法官與仲裁人，此外在英國的類似案件，倘在時間上沒有增加，祇是費用增加的案件，亦無法主張租傭船契約無效(frustrate)。

在英國，這類的案子較難以成立，因為據某位來自英國的律師在一討論契約無效的研討會上表示，英國乃是一個貿易國家，貿易必須基於契約的確定性，而所有的遠期契約(Forward Contract)皆含有風險，因此在訂約時該契約所含之風險應已反應在費率上，以使契約的執行獲得確保，船東要再以成本增加而主張契約無效，在英國將很難成立。

[案例三]：the “Paros” SMA1025 (Society of Maritime Arbitration, Inc., New York)

船舶前往莫三比克的 Louenco Marques 裝貨，但因碰上港口罷工，有 18 艘船在港外等候靠泊，在 60 天內沒有任何可獲得靠泊裝貨的希望，且即使在 3 個月內也看不到有希望可以靠泊裝貨，因此船東主張該租傭船契約 Commercial Frustration，並將船舶駛離該裝貨港。在這種情況下，仲裁人的問題在於判斷①船東的舉措是否正確？②租船人是否有權要求損害賠償？在本文中，仲裁人咸認為 3 個月的時間延誤仍不足以使船東得以宣告契約無效，並且不足以免除船東應履約之義務，因此本案之租船人亦得以要求損害賠償。

[案例四]：MV “National Prxxxxxty” 國益輪

國益輪 V56.pdf at

<http://www.dstm.ntou.edu.tw/files/15-1023-14823,c3628-1.php?Lang=zh-tw>



Frustration of Contracts - 市場遽然鉅幅下跌

租船人是否得以市場遽然鉅幅下跌，已構成 Frustration of Contracts 為由，因而主張解除原已簽訂的論時傭船契約？請參考下例：

## 二、貴公司可否以現貨市場之租船運費已下跌至每日 US\$10,000 為由，主張解約或降租金？

依本所英國律師審閱貴公司所提文件，貴公司恐難援引市場租金遽跌這個理由，對貴公司為有利之主張：

1. 市場租金遽跌之情形是否構成情事變更？經查，英國法下並無與我國法情事變更相類似之法律概念。此外，無論 clean fixtures recap 或 Time Charter 條款均無 Material Adverse Effect (重大不利效力) 的條款，故無法依約主張本案有情事變更之情事。
2. 再者，英國法有 Frustration of Contract 的法律概念，依英國權威學者 Professor Treitel 之見解，frustration 的原則是，如果在契約成立後，發生使履行變成不可能或不合法時，與其他相類似之情形時，契約可以被撤銷 (Under the doctrine of frustration, a contract may be discharged if after its formation, events occur making its performance impossible or illegal, and in certain analogous situations.)。
3. 然本所英國律師認為 因為 Daytona 輪仍在，且仍可依預定用途使用，故恐難構成英國法下 Frustration of Contract 之事由，而能終止契約。相關案例摘要請參附件 1。
4. 至於市場租金遽跌是否構成不可抗力事由？本所英國律師認為 不可抗力係指實際上無法履行契約之情況，市場租金遽跌並不構成此種情況，更何況 Time Charter 條款所稱之不可抗力係指地震等事由。

8. 船東破產時，租船人是否可以主張解除合約？

**From:** H [mailto:HE [redacted] DP@[redacted].com]

**Sent:** Wednesday, August 08, 2012 6:31 PM

**To:** Alicia [redacted]

**Cc:** 'a'; [redacted] i

**Subject:** MV Star of A [redacted] bi - cp dd 9th June, 2009

Dear A [redacted] a

Thank you for your email and instructions to advise in relation to the apparently deteriorating financial condition of the disponent owners, [redacted] A and whether this may give rights to [redacted] C as Charterers to terminate the Charterparty.

**Unfortunately, as long as "the Charterparty continues being performed" by the Owners, or by a purchaser or successor in title from Owners, there is no right to terminate solely on the ground of insolvency or threatened insolvency of [redacted]. In a recent case (not, strictly, under a Charterparty) the English Court was reluctant to construe a company (T [redacted]) as being "insolvent" for the purposes of a futures contract transaction, just because of a "technical" deficit of short term assets vs. liabilities at one point in time. As a matter of principle under English law, if a company with financial difficulties happens to have one or more favourable long-term contracts (such as the case of the present C/P with I [redacted]), the company itself or its Liquidator will want to preserve that contract and will do all in its power to keep performing it, in order to preserve the "stream" of hire payments to the company or for the benefit of creditors.**

[redacted] e suggested  
[redacted] opeful that  
s [redacted] n order not to  
r [redacted]

Please let us know if we can be of any more assistance.

We will write separately regarding the [redacted] dispute.

Kind regards

H [redacted] op

H [redacted] an

Direct: [redacted]

Mobile: [redacted]

[\[redacted\]@\[redacted\].m](mailto:[redacted]@[redacted].m)

針對本公司與船東 [redacted] 間之租船合約(M.V.“Star of [redacted]”)是  
否因船東 [redacted] 破產即當然終止：

英國 [redacted] 律師事務所提出法律意見表示，雖船東 [redacted] 破產，但  
只要船東 [redacted] 其債權人或其他債權繼受人未因船東 [redacted] 破產而代  
船東 [redacted] 表示終止合約，且租商得繼續使用船隻而未受影響者，  
租商即不得僅因船東 [redacted] 破產而中止此合約。

又依英國法，如果有財務困難的公司有一個以上的有利長期合約  
(如目前 [redacted] 和船東 [redacted] 的合約)，公司本身或其清算人會想  
保留這份合約，並盡力執行它，以保持公司能繼續有(租金)收入以  
確保公司債權人利益。

另 [redacted] 當初與 [redacted] 間因合約有條款約定，合約當事人中任一方  
如有破產情事，本合約對雙方當事人、破產一方之破產管理人、  
清算人及財產託管人仍持續有效，並拘束相關當事人。

故基本上，我方尚難僅因船東 [redacted] 破產為由，而單方主張終止與  
船東 ETA [redacted] 合約。