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## New BIMCO Charterparty clause for solid bulk cargoes that may liquefy

We refer to the Gard Alert "[IMSBC Code - Charterparty clause for solid bulk cargoes that may liquefy](#)" published in September 2011.

In the period following publication of the above Gard Alert, BIMCO and the International Group of P&I Clubs worked together and developed a new industry charterparty clause for solid bulk cargoes that may liquefy. A key feature of the clause is that it requires charterers to provide owners with written evidence from the shippers that the moisture content of the cargo does not exceed the Transportable Moisture Limit (TML). The clause also allows the owners to take their own test samples of the cargo prior to loading and for the master to be able to refuse to accept the cargo (or to sail if already loaded).

Gard recommends that ship owners incorporate this clause into time charterparties that allow for the carriage of solid bulk cargoes that may liquefy and in voyage charterparties fixed for such cargoes. The new clause is quoted below and replaces the clause previously recommended by Gard.

### **Solid Bulk Cargoes that Can Liquefy Clause for Charter Parties**

**(a)** The Charterers shall ensure that all solid bulk cargoes to be carried under this Charter Party are presented for carriage and loaded always in compliance with applicable international regulations, including the International Maritime Solid Bulk Cargoes (IMSBC) Code 2009 (as may be amended from time to time and including any recommendations approved and agreed by the IMO).

**(b)** If the cargo is a solid bulk cargo that may liquefy, the Charterers shall prior to the commencement of loading provide the ship's Master, or his representative, with all information and documentation in accordance with the IMSBC Code, including but not limited to a certificate of the Transportable Moisture Limit (TML), and a certificate or declaration of the moisture content, both signed by the shipper.

**(c)** The Owners shall have the right to take samples of cargo prior to loading and, at Charterers' request, samples to be taken jointly, testing of such cargo samples shall be conducted jointly between Charterers and Owners by an independent laboratory that is to be nominated by Owners. Sampling and testing shall be at the Charterers' risk, cost, expense and time. The Master or Owners' representative shall at all times be permitted unrestricted and unimpeded access to cargo for sampling and testing purposes.

If the Master, in his sole discretion using reasonable judgement, considers there is a risk arising out of or in connection with the cargo (including but not limited to the risk of liquefaction) which could jeopardise the safety of the crew, the Vessel or the cargo on the voyage, he shall have the right to refuse to accept the cargo or, if already loaded, refuse to sail from the loading port or place. The Master shall have the right to require the Charterers to make safe the cargo prior to loading or, if already loaded, to offload the cargo and replace it with a cargo acceptable to the Master, all at the Charterers' risk, cost, expense and time. The exercise by the Master of the aforesaid rights shall not be a breach of this Charter Party.

**(d)** Notwithstanding anything else contained in this Charter Party, all loss, damage, delay, expenses, costs and liabilities whatsoever arising out of or related to complying with, or resulting from failure to comply with, such regulations or with Charterers' obligations hereunder shall be for the Charterers' account. The Charterers shall indemnify the Owners against any and all claims whatsoever against the Owners arising out of the Owners complying with the Charterers' instructions to load the agreed cargo.

**(e)** This Clause shall be without prejudice to the Charterers' obligations under this Charter Party to provide a safe cargo. In relation to loading, anything done or not done by the Master or the Owners in compliance with this Clause shall not amount to a waiver of any rights of the Owners.

For more information about the new clause please go to [www.bimco.org](http://www.bimco.org).

For a collection of Gard's previously published information on the topic of cargo liquefaction, please go to the "[Cargo Liquefaction Spotlight](#)" found under Preventing Losses on our website.

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