

JUST IN TIME ARRIVAL CLAUSE FOR VOYAGE CHARTER PARTIES 2021

Overview

The Just in Time Arrival Clause 2021 is for use in voyage charter parties where owners and charterers have agreed to operate a just in time arrival scheme that permits charterers to ask owners to optimise the speed of the ship to arrive at a destination at an agreed time. The clause takes a generic approach so that it can also form part of different vessel and port management schemes around the world. It may also be used together with the BIMCO Port Call Data Exchange Clause 2021 which has been designed to encourage wider application and use of the IMO data model framework for the harmonised exchange of ship/port information.

CLAUSE

VOYAGE CHARTER

BIMCO Just in Time Arrival Clause for Voyage Charter Parties 2021

(a) The Owners and Charterers shall use their best endeavours to obtain and share information regarding the Vessel's arrival time, this shall include, but not be limited to, information from, or required by, any relevant third party. Any port specific requirements shall be met.

(b) Notwithstanding any other clause in this Charter Party, the Charterers shall be entitled to request the Owners in writing to adjust the Vessel's speed to meet a specified time of arrival, or closest thereto, at a particular destination. Such request shall always be subject to the Owners' consent which shall not be unreasonably withheld and, in the case of an approach voyage, also subject to agreeing an amended cancelling date. The Charterers shall not be entitled to request an adjustment of speed outside the normal safe operational limits of the Vessel.

(c) Extra time used on a sea voyage as a direct consequence of the Vessel adjusting speed pursuant to the Charterers' request shall be the difference between:

(i) the "estimated time of arrival" as provided by the Vessel prior to the Charterers' request to adjust the Vessel's speed to meet a specific time of arrival, or closest thereto, at a particular destination; and

(ii) the "actual time of arrival" at that particular destination, or closest thereto.

Such extra time shall be compensated by the Charterers to the Owners at USD ____ per day pro rata or as otherwise agreed by the parties which shall take into account the savings in fuel by the Owners and shall be payable by the Charterers to the Owners, prior to completion of final discharge.

(d) Where the Vessel proceeds at a speed adjusted in accordance with subclause (b), this shall constitute compliance with, and there shall be no breach of, any obligation as to despatch and shall not constitute a deviation.

(e) The Charterers shall ensure that the terms of the bills of lading, waybills or other documents evidencing contracts of carriage issued by or on behalf of the Owners provide that compliance by Owners with this Clause does not constitute a breach of the contract of carriage. The Charterers shall indemnify the Owners against all consequences and liabilities that may arise from bills of lading, waybills or other documents evidencing contracts of carriage being issued as presented to the extent that the terms of such bills of lading, waybills or other documents evidencing contracts of carriage impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this Clause.

BACKGROUND

To encourage wider adoption of just in time (JIT) arrival principles in the bulk sector, BIMCO has written a new clause for voyage charter parties. The clause creates a contractual framework to overcome the primary obstacle to just in time arrivals, which is the obligation on shipowners to proceed with due or utmost despatch and without deviation. This is a critical aspect of making JIT arrivals work as without removing this obstacle ships are unable to adjust their speed to arrive at a port at an optimal time to avoid delays without breaching their usual voyage charter obligations. BIMCO believes that the widespread adoption of JIT arrivals in the bulk sector will bring many benefits including reductions in fuel consumption, emissions and waiting times in ports and anchorages.

BIMCO is grateful to the following subcommittee members for sharing their expertise and assisting with the development of the Just in Time Clause.

- › Mr Raoul Baart, Anthony Veder Chartering
- › Mr Paul J. Brown, INEOS Trading and Shipping
- › Mr Steven Cockburn, North of England P&I Club

Explanatory Notes

Subclause (a) requires the parties to share information with each other regarding the ship's arrival time. This includes information, such as arrival times, to and from any relevant third party such as an agent, port or terminal. The words "any port specific requirements shall be met" are intended to apply to circumstances where the port or terminal requires the use of a specific data exchange format, such as the IMO Data Model Framework.

Subclause (b) gives the charterers the option to ask the owners to adjust the ship's speed to meet a certain arrival time or "closest thereto" (as the requested time might not always be within the ship's capabilities), at a particular destination. If the charterers' request to adjust speed might result in the ship not arriving within the cancelling date, a new cancelling date must be agreed. Otherwise, the charterers could cancel the charter party if the ship arrives after the cancelling date, even if the late arrival was due to the charterers' request.

Subclause (c) – among the benefits of using just in time arrivals schemes are reductions in emissions, fuel consumption, and time on demurrage. The Clause contains a very simple compensation mechanism that avoids references to fuel consumption and fuel prices. The reason for this non-prescriptive approach is that to arrive at an accurate figure the parties would have to make a calculation based on the ship's fuel consumption and the relevant bunker prices in the area of operation. This would in turn create discussions about fuel consumption and what price should apply (Platts, current market price or price actually paid, etc.). Consequently, it is not possible to create a generic bunker sharing mechanism in a standard clause that will work for all. Instead, this should be worked out between the parties on a case-by-case basis.

An example of how this has been done by two commercial parties operating in the LNG trade is as follows:

The parties agreed to bands for the bunker price and demurrage - the higher the bunker price (which translates into larger savings for owners due to lower fuel consumption), the higher the reduction of the demurrage rate. The reduction of the demurrage rate applies to the time saved, ie, if the charterers ask the ship to arrive 12 hours later than its original ETA, the reduced demurrage rate will apply for those 12 hours.

In practice this could work as follows:

Bunker Price per metric ton	Percentage reduction of demurrage rate
USD 300 – USD 600	20%
USD 600 – USD 700	40%

The actual bands and percentages of the demurrage rate will depend on the contractually agreed demurrage rate and the consumption curve of the vessel. Sample calculations can be used to establish bandings and percentages.

The parties should agree on a rate that reflects the bunker savings made by the owners. No default figure has been included because the amount should be negotiated between the parties. If the parties do not fill in an amount, then subclause (c) will not apply and there will be no compensation payable by charterers for the extra time used and the owners will keep any bunker savings.

To calculate the amount of extra time used on the voyage the parties should subtract the “estimated time of arrival” (when the request to adjust speed is made) from the “actual time of arrival”. The estimated arrival time will be the time the ship would have arrived if it had proceeded without adjusting speed, subject to prevailing weather conditions.

Subclause (d) overcomes one of the primary obstacles to implementing a just in time scheme. Owners are obliged under charter parties to proceed with due or utmost despatch and without deviation. This subclause protects the owners from being in breach of these obligations when adjusting the ship’s speed in response to a request from charterers.

Subclause (e) protects the owners from claims from bill of lading holders or other third parties. The charterers are required to ensure that all third-party documentation complies with the clause and to indemnify owners against any liabilities beyond those set out in the clause.

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