

CII OPERATIONS CLAUSE FOR TIME CHARTER PARTIES 2022

Overview

New regulations on the carbon intensity of international shipping will come into force on 1 January 2023. The complex CII regulations are expected to significantly impact the future operation of ships. Shipowners and charterers must embrace new ways to co-operate, and new clauses for charter parties will be needed to help owners and charterers succeed.

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CII OPERATIONS CLAUSE FOR TIME CHARTER PARTIES 2022

Notwithstanding any other provision in this Charter Party, the Owners and the Charterers (the "Parties") agree as follows:

"Agreed CII" means the values in $\text{gCO}_2/(\text{dwt.nmile})^*$ set out in subclause (d).

"CII" means Carbon Intensity Indicator, as provided for in the MARPOL Carbon Intensity Regulations.

"CII Rating" means the Vessel's attained operational carbon intensity rating, expressed as a rating from A-E, in a calendar year, as calculated in accordance with the MARPOL Carbon Intensity Regulations.

"C/P Attained CII" means the CII value in $\text{gCO}_2/(\text{dwt.nmile})^*$ attained by the Vessel, applying any regulatory correction factors and voyage adjustments applicable to the Vessel and excluding fuel consumed and distance travelled during off-hire periods in excess of [] accumulated days (*if left blank, zero (0) days shall apply*), measured in the relevant calendar year from the start of the calendar year to date or, if the Charter Party begins during a calendar year, from date of the Vessel's delivery under the Charter Party to date.

"Delivery Attained CII" means the CII value in $\text{gCO}_2/(\text{dwt.nmile})^*$ attained by the Vessel for the calendar year to date as calculated at the time of delivery into the Charter Party.

"Effective Date" means 1 January 2023.

"MARPOL Carbon Intensity Regulations" means the regulations contained in Chapters 1, 2 and 4 of Revised MARPOL Annex VI which relate to "Regulations on the Carbon Intensity of International Shipping" and Resolution MEPC.328(76) implementing the CII and any associated guidelines and/or subsequent amendments, including the Ship Energy Efficiency Management Plan (SEEMP).

"Projected Attained CII" means the C/P Attained CII extrapolated over the remainder of the relevant calendar year (or the charter period should redelivery be sooner than the end of the calendar year) and used to demonstrate the trajectory of the Vessel's C/P Attained CII.

“Required CII” means, for each relevant calendar year of the charter period, the middle point of CII Rating level C equivalent to the required annual operational CII set out in Regulation 28.6 of the MARPOL Carbon Intensity Regulations or as otherwise specified in the Guidelines for the MARPOL Carbon Intensity Regulations.

**use gross tons (gt) instead of dwt, where applicable to the Vessel type.*

- a. The Parties acknowledge and accept that as from the Effective Date the Vessel is required to comply with the MARPOL Carbon Intensity Regulations and that this Clause shall govern the relationship between the Parties and their obligations relating to those regulations.
- b. During the Charter Party, the Parties shall cooperate and work together in good faith to:
 - (i) share any findings and best practices that they may identify on potential improvements to the Vessel’s energy efficiency; and
 - (ii) collect, share and report on a daily basis any relevant data that may assist the monitoring and assessment of the Vessel's compliance with the MARPOL Carbon Intensity Regulations and for planning prospective voyages.
- c. (i) As from the Effective Date or date of the commencement of the Charter Party, whichever is the later, the Charterers shall:
 - (1) operate and employ the Vessel (including the planning of voyages and supply and selection of fuel) in a manner which is consistent with the MARPOL Carbon Intensity Regulations and subclause (c)(i)(2), which may require alternative or adjusted voyage or employment orders, instructions or sailing directions to be issued to and performed by the Vessel from time to time during the charter period; and
 - (2) not permit the C/P Attained CII to exceed the Agreed CII by the end of each relevant calendar year or, if the charter period or period remaining under this Charter Party is less than a full calendar year, by the time of redelivery, but always subject to the provisions of subclause (g).
 - (ii) Any existing warranties as to despatch, speed and consumption or to maintain the Vessel's description provided for elsewhere in the Charter Party shall continue to apply to the Charter Party. In the event of any breach of such warranties, the Charterers shall be entitled to pursue a separate claim against the Owners, save that any such breach shall not be relied upon by the Charterers as a basis to avoid meeting their obligations under this Clause, including where subclause (g) has been validly invoked.
- d. (i) The Agreed CII by calendar year shall be as follows:

Year	Agreed CII values*	Corresponding to a predicted CII Rating
2023		
2024		
2025		
2026		

BIMCO recommends that Parties agree that the Agreed CII values should be the Required CII or better, consistent with the MARPOL Carbon Intensity Regulations.

- (ii) Where the Parties fail to agree in writing the Agreed CII for the relevant calendar year(s) of the charter period or otherwise fail to populate the above table with such values for the relevant calendar year(s), then the Parties expressly agree and acknowledge that the default Agreed CII for the Vessel shall, subject to subclause (d)(iii), be the Required CII.
- (iii) If the Charter Party extends beyond 31 December 2026 the Parties shall review and incorporate the Agreed CII in accordance with any new annual carbon intensity targets under the MARPOL Carbon Intensity Regulations as set by the IMO for the remaining calendar years under the Charter Party.

(iv) Upon delivery, the Owners shall provide the Charterers with the Delivery Attained CII together with details of the types and quantities of fuels consumed and distance travelled to date for the current calendar year. The data provided to the Charterers pursuant to this subclause shall, to the best of the Owners' knowledge, be accurate and complete.

- e. (i) The Charterers may at their discretion provide, in writing to the Master, orders or instructions to adjust the Vessel's speed or RPM (main engine Revolutions Per Minute) to meet a specified time of arrival, or closest thereto, at a particular destination or to proceed at a specified main engine fuel consumption, which shall constitute the Charterers' orders with which the Master shall comply, but subject always to:

(1) the Charterers complying with their obligations under this Clause; and

(2) the Master's obligations in respect of the safety of the Vessel, crew and cargo and the protection of the marine environment.

(ii) The Charterers shall not be entitled to request an adjustment of speed or consumption or RPM outside the existing safe operational limits of the Vessel or which shall result in the Vessel's engine(s) and/or equipment operating outside the manufacturers'/designers' recommendations as published from time to time.

- f. From the Effective Date, the Owners shall:

(i) exercise due diligence to ensure that the Vessel is operated in a manner which minimises fuel consumption, including but not limited to:

(1) maintaining the Vessel, its engines and hull, and any of its equipment relevant to the Vessel's energy efficiency, in accordance with the Charter Party and the MARPOL Carbon Intensity Regulations/SEEMP, subject to any express provisions elsewhere in the Charter Party that place maintenance obligations on the Charterers, and reporting any associated deficiencies to the Charterers;

(2) when passage planning, adjusting the Vessel's trim and operating the Vessel's main engine(s) and auxiliary engine(s);

(3) making optimal use of the Vessel's navigation equipment and any additional aids provided by the Charterers, such as weather routing, voyage optimisation and performance monitoring systems; and

(4) unless otherwise instructed by the Charterers, proceeding by the most fuel-efficient route, but the Master may deviate from the route if he has reasonable grounds to believe that such a route shall compromise the safe navigation of the Vessel or the safety of the Vessel, crew or operation of equipment.

(ii) monitor and calculate the actual consumption of the Vessel on a daily basis and provide the Charterers with details of the types and quantities of fuels consumed and distance travelled as required by the Charterers and any other relevant data the Charterers may reasonably request for the purpose of this Clause. This data shall be used to calculate the C/P Attained CII value which shall be compared against the Agreed CII for the relevant calendar year or charter period and shared with the Charterers. The Owners undertake that the data provided to the Charterers pursuant to this subclause shall, to the best of their knowledge, be accurate and complete; and

(iii) comply with the SEEMP, provided always that the Charterers adhere to their obligations under this Clause.

- g. If, at any time, based on the data shared in accordance with this Clause, the trajectory of the C/P Attained CII is deviating from the Agreed CII, the Owners shall give the Charterers advance warning of this. If, despite such warning, the C/P Attained CII continues to deviate from the Agreed CII and this indicates that there is a reasonable likelihood that the Charterers may fail to meet their obligations under subclause (c), then:

(i) The Owners shall request in writing and the Charterers shall provide to the Owners within two (2) working days of Owners' written request, a written plan detailing any proposed commercial operation of the Vessel for at least the next voyage.

(ii) If, upon assessment of a Charterers' written plan, the Owners can reasonably show that following this written plan will result in the Charterers failing to meet their obligations under subclause (c) and that, on the basis of the Projected Attained CII, the Agreed CII for the relevant calendar year (or for the charter period should redelivery be sooner than the end of the calendar year) would be exceeded, then the Owners shall communicate this in writing to the Charterers within two (2) working days of receipt of the Charterers' written plan. The Parties shall cooperate and work together in good faith to agree within two (2) working days thereafter an adjusted written plan for the next voyage or voyages which brings the C/P Attained CII in line with the Agreed CII. Any such adjusted written plan agreed between the Parties shall be deemed to constitute the Charterers' orders as if they had been given by the Charterers at the outset.

(iii) Until such time that the Parties agree an adjusted written plan (or where a written plan is not received from the Charterers as per subclause (g)(i)), the Owners shall, where they have validly exercised their rights under this subclause (g), be entitled:

(1) not to follow a Charterers' order and/or a written plan and/or an adjusted written plan (which has not been agreed), without being in breach of any of the Owners' obligations under the Charter Party, and with the Vessel remaining on hire throughout, and instead

(2) to reduce the Vessel's speed or, where a speed reduction is anticipated by the Owners to be insufficient, to require the Charterers to provide all requisite instructions, orders and sailing directions to the Vessel which bring the C/P Attained CII in line with the Agreed CII for the relevant calendar year (or the charter period should redelivery be sooner than the end of the calendar year).

h. Compliance with any Charterers' orders, a Charterers' written plan or an adjusted written plan validly issued and agreed in accordance with subclause (g) shall not:

(i) be deemed a breach by the Owners of any of the Owners' obligations under this Charter Party, but shall be considered due fulfilment of this Charter Party; and/or

(ii) in any way lessen the Charterers' responsibility to comply with their obligations under this Clause.

i. *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 the 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 breach of the Owners' obligation to proceed with due despatch or are to be held to be a deviation or the imposition of more onerous liabilities upon the Owners than those assumed by the Owners pursuant to this Clause.

j. The Owners shall be entitled to claim from the Charterers any losses, damages, liabilities, claims, fines, costs, expenses, actions, proceedings, suits or demands suffered by the Vessel and/or the Owners which have been caused by any breach by the Charterers of their obligations under this Clause.

* Subclause (i) not applicable in the liner trade.

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07 July 2022

BIMCO has published a climate change glossary to clarify and harmonise definitions and terminology to ensure that the discussions around climate change and potential solutions for the shipping industry are based on a mutual understanding of what the commonly used terms mean.

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BIMCO publishes EEXI Transition Clause ahead of IMO efficiency regulation

07 December 2021

New regulation from the International Maritime Organization (IMO), which will require existing ships to reduce carbon emissions, is due to enter into force in just under one year. As compliance will benefit to a large extent from co-operation between shipowners and charterers, BIMCO has developed a new clause to address the changes.

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16 July 2021

BIMCO has published a new charter party clause to help tackle potential abuse by sanctions busters of the Automatic Identification System (AIS) which is mandatory for all ships to use under regulations for the Safety of Life at Sea (SOLAS).

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