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BIMCO Cargo Fumigation Clause for Charter Parties

Background

No international framework in the form of a convention or other international regulation is yet in place to address the safe use of fumigants on board ships. The International Maritime Organisation (IMO) has developed substantial guidance in the form of non-binding recommendations¹ to assist the shipping industry but, nonetheless, accidents caused by the use of such fumigants are still frequent.

Fire and explosion caused by fumigants or fumigant remains and residues are not uncommon and, despite recommendations to the contrary, ships' crew often handle such materials without being properly trained. The drafting of a clause to address cargo fumigation was therefore proposed by BIMCO members, who expressed concern over the number of accidents occurring as a consequence of unsafe fumigation operations. In addition, market clauses often lacked provision for fumigation operations that continued while the ship was in transit and for removal of fumigants at the discharging port, effectively leaving any operational decisions to the master without sufficient qualification.

We are grateful to the following sub-committee members for their work in the development process:

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Summary of main features

One all-encompassing clause has been developed for the use in both voyage and time charter parties. It is aimed at cargo fumigation in the dry bulk sector comprising mostly bagged or free-flowing agricultural cargoes.

When using this clause, the parties are obliged to follow the safety standards set out in the IMO

¹ Recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo holds, MSC.1/Circ.1264 of 27 May 2008 (hereafter referred to as IMO Recommendations). These recommendations are a supplement to the International Maritime Solid Bulk Cargoes (IMSBC) Code.

Recommendations, including removal of fumigants and remains by competent entities and properly trained personnel only. By incorporating the IMO Recommendations as a binding standard, the parties secure a mutually agreed level of safety and detailed procedures for carrying out fumigation operations on board the ship.

Under the clause, fumigation can be carried out in port, after loading or prior to discharging, or while the vessel is in transit. The latter is by large the most commonly used fumigation method because it lowers the risk of re-infestation of the cargo and significantly reduces the time spent in port.

As a main rule, cargo fumigation should always be permitted if performed in accordance with the IMO Recommendations. However, being ultimately responsible for the safety of the vessel and the crew, the master has a right to intervene if safety is compromised. Therefore, if the master has objections regarding the safety of any fumigation operation, the master would always have discretion to suspend such operations and demand rectification.

In order to comply with mandatory fumigation requirements of importing countries, charterers trading in agricultural cargoes often need to know already when fixing a ship whether fumigation of cargo in the ship's holds will be permitted or not. For this reason, preliminary approval of fumigation is a fundamental principle of this clause and if owners do not want to allow fumigation, or if the vessel for some reason is not suitable for fumigation, then they should not accept this clause.

Time losses are dealt with exclusively in sub-clause (e), in two variations, and all other provisions should preferably be back-to-back within the same chain of time and voyage charter parties.

Responsibility for fumigation due to residual infestation² has been left for the parties to agree on a case-by-case basis. Such infestation is often dealt with in the underlying charter party and the responsible party would differ depending on the type of charter party - voyage or time charter party.

It should be noted that this clause covers cargo fumigation only and that responsibility for other fumigation, such as fumigation of empty cargo holds, should be agreed in a separate clause if relevant.

Detailed provisions

Sub-clause (a) provides charterers with an option to fumigate cargo after being loaded into the ship's holds. As opposed to a "right" that can be exercised at any time, the "option" in sub-clause (a) needs to be declared by the charterers to the owners. The clause is triggered by the charterers' declaration to fumigate cargo on board the ship, and the purpose of the declaration is to encourage involvement and cooperation between the parties and to promote early planning in terms of safety precautions and the type of fumigation required. To ensure that appropriate precautions are taken, it is specified that fumigation operations should always be performed in accordance with the IMO Recommendations.

The safety standards set out in the IMO Recommendations should always be adhered to and would take precedence over local regulations, except where such regulations apply a stricter regime.

² When insects, including eggs and larvae, or mite pests remain in the cargo holds and attack subsequent cargoes that are carried.

The ship's master always has an overriding discretion to make decisions on safety-related matters. Therefore, should the master deem the fumigation operation unsafe, it may be suspended until the concern has been properly addressed. It should be noted that this discretion applies to the suspension of fumigation until the particular safety issue has been resolved, but the charterers' request to fumigate cannot be rejected altogether. On the rare occasion that rectification is not possible, other solutions should be sought. Cancellation of the fumigation operations should only be the last resort.

It is recommended that owners verify flag state regulations regarding fumigation on board the vessel, if any, prior to incorporating this clause into a charter party. It should also be kept in mind that fumigation methods and types of fumigation vary and the vessel may not be suitable for all of them. There is no such thing as "fumigation-readiness" and a ship's suitability for fumigation is not verified by classification societies or any other authority.

Sub-clause (b) sets out the basic division of responsibilities and costs. It reflects current practice where charterers are responsible for fumigation operations and will cover any related costs and expenses.

Second part of sub-clause (b) is an indemnity provision that protects the owners when faced with claims that should rightfully be borne by the charterers. The indemnity is very wide and covers cargoes, owners' direct and consequential losses, third party claims and other losses or costs arising out of or resulting from cargo fumigation.

In-transit fumigation procedures might not allow ventilation for safety reasons and as a result, owners could become subject to claims by third party cargo interests on the basis of breach of their duty to properly care for the cargo. Such claims should be covered by this indemnity.

Despite the clear allocation of responsibility in sub-clause (b), three items have been emphasised: gas detection equipment, respiratory protective equipment and crew training. It is stated in the IMO Recommendations that the ship should carry gas detection and respiratory protective equipment and, in the case of in-transit fumigation, at least two members of the crew should have received appropriate training to be able to handle fumigants, detect fumigants in the air, and provide first aid and medical treatment throughout the journey. Although the IMO Recommendations do not allocate responsibility for these items, they have been misunderstood to mean that it would be an owners' responsibility to provide this equipment and arrange crew training for in-transit fumigation. To avoid potential conflict over who should bear these costs, sub-clause (b) therefore clarifies that such equipment and training is for the charterers' account.

Sub-clause (c) is designed specifically for fumigation operations performed while the ship is in port. It allocates responsibility for onshore accommodation, transportation, victualing and other expenses in circumstances where the ship's crew is required to disembark the vessel while fumigation is carried out. Costs will be for charterers' account, provided that the expenditure is reasonable.

In terms of fumigation operations in port, the IMO Recommendations require that ships' crew are landed and remain ashore until the ship has been certified "gas-free". Local regulations may diverge from this standard and to prevent any conflict between the parties on this point, sub-clause (c) emphasises that disembarkation of crew should take place when required by the IMO Recommendations.

Sub-clause (d) addresses removal and disposal of fumigant remains, residues and fumigation equipment. Charterers are responsible for disposal of such materials, but very often the actual removal and disposal would be delegated to a specialised service, for instance a fumigation company. Once the vessel has been certified "gas-free", discharge is allowed to commence and any surface remains, residues and equipment is removed from the vessel's holds to the deck

where it is gathered for removal from the vessel. Only after all materials are gathered on deck will it be picked up by hired service and disposed of ashore. Fumigant remains and equipment could cause fire or explosion, and many accidents have occurred because such remains have been left lying around on deck while the vessel have been waiting for an available berth. From a safety point of view it is therefore crucial that remains, residues and fumigation equipment are removed from the vessel as quickly as possible, and disposed of in a safe and timely manner by competent people.

The main purpose of this provision is to flag the above-mentioned safety issues to the parties and thereby encourage adherence to the IMO Recommendations in order to avoid accidents. Sub-clause (d) is one of the key provisions of this clause and the recommendations regarding qualified handling of fumigants and fumigant remains are not limited to removal and disposal, but should be applied to all fumigation-related activities.

The materials listed in sub-clause (d) would expectedly fall within the definition of cargo residues that are harmful to the marine environment, also known as HME, and any storage, removal or disposal of these materials should therefore be in accordance with the revised MARPOL Annex V. The wording of this provision is consistent with other BIMCO clauses, like the [HME Cargo Residues Disposal Clause for Voyage Charter Parties](#) and the [Hold Cleaning-Residue Disposal Clause for Time Charter Parties 2013](#).

Sub-clause (e) deals with time losses resulting from fumigation of cargo in ships' holds. It reflects current practice where all time lost due to such fumigation would be for charterers' account. Since the clause applies to both time and voyage charter parties, the time loss aspect has been split into two separate provisions, (e)(i) and (e)(ii).

Paragraph (e)(i) describes the time charter approach, reflecting common practice that the vessel should remain on hire during fumigation operations.

The formula for calculating time lost to the owners in a voyage charter scenario is set out in paragraph (e)(ii), stipulating that all time lost to the owners outside laytime and demurrage should be treated as detention and compensated by the charterers at the demurrage rate stated in the charter party. Time used for fumigation purposes taking place during loading or discharging operations is not specifically addressed in the clause, because it is assumed that such time would not be lost to the owners but would count as laytime or time on demurrage. Unused laytime, if any, should be deducted from the detention, thereby reducing any earned despatch money accordingly.

Existing market clauses often stipulate that all time lost as a result of fumigation should count as laytime or time on demurrage, while omitting information on how such time should be computed with regard to delays arising outside of loading and discharging operations. As a result, conflicts frequently occur over commencement of laytime, validity of notices, and application of laytime exceptions in cases where laytime has not yet commenced or has already ceased. Tying such time to the concept of laytime could therefore lead to overly complex laytime computations and unnecessary conflict over the validity of contractual notices. Consequently, a simpler solution for calculation of time losses in voyage charter parties would be to distinguish fumigation taking place during loading and discharging operations from fumigation operations performed at other times. Such distinction would also simplify the overall laytime computation and ensure that calculation of time lost to the owners due to fumigation would become easier.

In view of the above, the BIMCO clause introduces the concept of detention for fumigation-related time losses arising outside of loading and discharging operations, rather than including such time in the laytime calculation. This means that there would only be one laytime calculation, which would be within clearly defined periods and notices and with the agreed number of exceptions applying. Time lost outside of laytime would be computed separately, as detention. Detention

always applies without exception, hence it is not subject to laytime exceptions (or exceptions to demurrage).

It should be noted that it is only time lost to the owners *prior to commencement and after cessation of laytime or time on demurrage* that is calculated as detention. Time used for fumigation purposes during loading or discharging operations will count as laytime or time on demurrage, whichever applies.

It is the intention that the two calculations should appear on the same spreadsheet, i.e. a laytime calculation for loading and/or discharging operations and a separate detention calculation counting time lost to the owners as a result of fumigation.

A number of practical examples of laytime and detention calculations can be found at the end of this note.

Sub-clause (f) – Fumigation of cargo is customary in certain dry bulk trades and would be undertaken for a number of reasons not necessarily linked to the condition of the cargo, for instance by requirement of local laws at the discharging port. The purpose of this provision is to counter any assumption that because the cargo has been fumigated it might not be in a good order and condition. It has therefore been emphasised that fumigation should not in itself constitute any admission to the condition of the cargo.

In addition, sub-clause (f) reflects the general practice that bills of lading should not be claused based on the mere fact that the cargo has been fumigated. It is important to note that sub-clause (f) does not prevent the master from clausing bills of lading if the cargo is not in a good order and condition, for instance if the cargo is visibly infested.

Sub-clause (g) is a standard provision that has been included to prevent conflict with other provisions in the same charter party, for instance if time had been lost due to an incident that would normally trigger the charter party off-hire clause, but in the particular case the incident had been caused by fumigation operations. Under such circumstances, it should be clear that responsibility should be allocated in accordance with the fumigation clause, rather than any other clause in the underlying charter party.

Availability

The full text of the **Cargo Fumigation Clause for Charter Parties** is set out below. It is also available to download free of charge from the Chartering/Clauses section of BIMCO's website at www.bimco.org and to users of BIMCO's online charter party editing system, IDEA2, via the Clause Manager.

BIMCO Cargo Fumigation Clause for Charter Parties

- a) The Charterers shall have the option to fumigate the cargo in the Vessel's holds in port and/or at anchorage and/or in transit. Such fumigation shall be performed always in accordance with IMO Recommendations on the Safe Use of Pesticides in Ships applicable to the Fumigation of Cargo Holds, MSC.1/Circ.1264 (IMO Recommendations) and any subsequent revisions.
- b) Fumigation shall be at the Charterers' risk and responsibility. Any costs and expenses incurred in connection with or as a result of such fumigation, including but not limited to gas detection equipment, respiratory protective equipment and crew training, shall be for the Charterers' account. The Charterers shall indemnify the Owners for any liabilities, losses or costs arising out of or resulting from cargo fumigation.
- c) If local authorities or IMO Recommendations require the crew to be accommodated ashore as a result of fumigation ordered by the Charterers, all costs and expenses reasonably incurred in connection thereto including, but not limited to, transportation, accommodation and victualling shall be for Charterers' account.
- d) At the discharging port or place all fumigant remains, residues and fumigation equipment shall be removed from the vessel as soon as possible and disposed by the Charterers or their servants at Charterers' risk, responsibility, cost and expense in accordance with MARPOL Annex V or any other applicable rules relating to the disposal of such materials.
- e)
 - *i) All time lost to the Owners in connection with or as a result of fumigation performed in accordance with sub-clause (a) shall be for Charterers' account and the vessel shall not be off-hire.
 - *ii) All time lost to the Owners in connection with or as a result of fumigation performed in accordance with sub-clause (a) prior to commencement of laytime and/or after cessation of laytime or time on demurrage shall be considered as detention and shall be compensated by Charterers at the demurrage rate stipulated in the Charter Party. Any unused laytime shall be deducted from such detention, in which case any despatch payable shall be reduced accordingly.

**Sub-clauses i) and ii) shall apply to time charter parties and voyage charter parties, respectively.*
- f) The exercise by the Charterers of the option to fumigate the cargo under this Clause shall not be construed as evidence as to the condition of the cargo at the time of shipment, and the Master or the Owners are not to clause bills of lading by reason of fumigation only.
- g) In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail to the extent of such conflict, but no further.

Guidance on laytime and detention and example calculations for sub-clause (e)(ii) of the BIMCO Cargo Fumigation Clause for Charter Parties

Scenario 1: Fumigation performed prior to commencement of laytime at loading port

It is custom that fumigation procedures do not prevent the vessel from tendering a valid notice of readiness (NOR) at the loading port. Laytime would therefore commence as agreed in the underlying charter party, and no time would be lost to the owners because of such procedures.

Waiting time to tender a valid NOR (say outside working hours Monday-Friday 8am-5pm) or during agreed notice time (say laytime commencement at 8am the next working day) would not count as detention.

Scenario 2: Loss of time after completion of loading or discharging respectively

Laytime stops at the completion of loading/discharging operations. Accordingly, all time lost to the owners after loading/discharging is completed, and until the moment when the fumigation-related operations preventing the vessel from sailing cease to exist, shall count as detention. As agreed in sub-clause (e)(ii) such time shall be for charterers' account.

If laytime expired prior to completion of loading/discharging and the vessel is already on demurrage, time until completion of loading/discharging shall be counted as demurrage, and all time lost thereafter and until the moment when the fumigation-related operations preventing the vessel from sailing cease to exist, shall be counted as detention.

If laytime did *not* expire prior to completion of loading/discharging, all time lost thereafter and until the moment when the fumigation-related operations preventing the vessel from sailing cease to exist shall be counted as detention, and any unused laytime shall be deducted from such detention.

Loss of time after completion of loading could be caused by some of the following events: Application of surface fumigants after completion of loading; waiting for gas-tightness testing of hatches; waiting for issuing and execution of final fumigation certificates, which could take a few hours depending on the procedures applicable at the port of loading.

Loss of time after completion of discharging could be caused by some of the following events: Waiting for removal from the vessel of fumigation equipment, for instance hoses and air fans, and fumigant remains, which could take a few hours depending on the arrangements made by the charterers or cargo receivers.

Scenario 3: Consequential loss of time due to damage to the vessel

If physical damage to the vessel has been caused in connection with or as a result of fumigation, for instance hatch or hold damage, loss of time would expectedly occur for necessary repairs and deviation. All time lost to the owners in such a case would count as detention.

Scenario 4: Fumigation on arrival at discharging port

Port charter party

It is custom that fumigation procedures would not prevent the vessel from tendering a valid NOR and would not affect commencement of laytime and calculation of the same.

Notwithstanding cargo fumigation, the owners would therefore be entitled to tender a valid NOR, and laytime would start to count as agreed in the underlying charter party. Waiting time until commencement of laytime would not count as detention because laytime commencement procedures, such as waiting time to tender NOR (say outside working hours) and agreed notice time (say laytime commencement at 8am the next working day), do not constitute fumigation-related loss of time to the owners.

Berth charter party

When arriving at the discharging port the vessel might be prevented from entering and tendering a valid NOR, unless it has been specifically agreed in the charter party that a valid NOR could be tendered regardless of the vessel being berthed or not (WIBON or similar provision).

If fumigation operations are carried out during a time when the vessel is prevented from tendering a valid NOR, all time lost to the owners shall be counted as detention until the moment when the operations preventing the vessel from entering and tendering NOR cease to exist.

Once the vessel is allowed to tender a valid NOR, time will no longer count as detention.

Waiting time to tender a valid NOR (say outside working hours Monday-Friday 8am-5pm) or during agreed notice time (say laytime commencement at 8am the next working day) would not count as detention.

Scenario 5: Loss of time prior to commencement of discharging while waiting for gas-free certificate

Before discharging a fumigated cargo, a gas-free certificate needs to be obtained to ensure that the cargo holds are safe for entry. Lack of such a certificate would prevent the vessel from tendering a valid NOR in the case of port and berth charter parties alike and the waiting time, including any time used for ventilation of the cargo prior to certification, would be regarded as loss of time to the owners. Accordingly, all time lost to the owners from the vessel's arrival at the discharging port and until the moment when the gas-free certificate has been issued shall be counted as detention.

Once the gas-free certificate has been issued and the vessel is allowed to tender a valid NOR, time will no longer count as detention.

Waiting time until commencement of laytime should not count as detention because laytime commencement procedures, such as waiting time to tender NOR (say outside working hours) and agreed notice time (say laytime commencement at 8am the next working day), do not constitute fumigation-related loss of time to the owners.

Example 1 – Loss of time after completion of loading

This example is transferable to discharging.

A cargo of 50,000 tonnes was loaded on a bulk carrier.

10,000 tonnes would be loaded on average on a weather working day, Friday 5pm-Monday 8am, SSHEX unless used.

(Saturdays, Sundays and Holidays Excluded, Unless Used - meaning that time would not count from Friday 5pm to Monday 8am, unless such time had actually been used for loading/discharging operations).

Notice of readiness (NOR) could be served Monday to Friday from 8am to 5pm and Saturday from 8am and until noon. Laytime would commence at 8am the next working day after a valid NOR had been served.

The statement of facts are as follows:

Valid NOR was tendered Monday 3pm

Laytime and loading commenced simultaneously Tuesday 8am

Loading was completed Saturday noon

Fumigation operations continued 12 hours after completion of loading

No rain or other bad weather was experienced

Calculation:

5 days were allowed for loading (laytime)

4 days and 4 hours were used, i.e. 20 hours saved (despatch)

12 hours used for fumigation (detention), despatch therefore reduced from 20 hours to 8 hours

Nett time saved was 8 hours

Charterers earn 8 hours' despatch, payable by the owners to the charterers

Alternative example:

If fumigation operations had continued for 24 hours after completion of loading, the nett time lost would have been 4 hours. In such a case, the charterers would pay 4 hours' detention to the owners. As per sub-clause (e)(ii) detention would be compensated at the demurrage rate stipulated in the charter party.

Example 2 – Loss of time prior to commencement of discharging

In the below examples, fumigation has not been performed at the loading port or during transit. Fumigation is only carried out at the discharging port.

A cargo of 30,000 tonnes was discharged from a bulk carrier. 7,500 tonnes would be discharged on average on a weather working day, Friday 5pm-Monday 8am SSHEX unless used.

NOR could be served Monday to Friday from 8am to 5pm and Saturday from 9am and until noon WWWW (Wibon – Whether In Berth Or Not, Wccon – Whether Customs Cleared Or Not, Wifpon – Whether In Free Pratique Or Not, Wipon – Whether In Port Or Not).

Laytime would commence at 8am the next working day after a valid NOR had been served.

Statement of facts:

Vessel arrived Wednesday 5:30pm

Cargo fumigation is ordered on arrival and the operations, including planning, lasts 72 hours

Gas-free certificate is issued Saturday 5:30pm

No bad weather or rain

Vessel was berthed Saturday 7pm

Discharging commenced Saturday 10pm and was completed Wednesday 11pm

No rain or other bad weather

Calculation:

Valid NOR was tendered Thursday 8am

Laytime commenced Friday 8am

Laytime stopped Wednesday 11pm

4 days were allowed for discharging (laytime)

4 days and 10 hours were used (*time does not count from Friday 5pm to Saturday 10pm*)

Nett time used was 10 hours

Charterers pay 10 hours demurrage

Note: When a valid NOR can be tendered, laytime will commence as agreed and time used for fumigation purposes during such time will count as laytime. It is only time lost to the owners prior to commencement of laytime and after cessation of laytime or time on demurrage that is calculated as detention.

Alternative example 1:

Statement of facts:

Vessel arrived Friday 5:30pm

Cargo fumigation is ordered on arrival and the operations, including planning, lasts 72 hours

Gas-free certificate is issued Monday 5:30pm

No bad weather or rain

Vessel was berthed Monday 7pm

Discharging commenced Monday 10pm and was completed Friday 11pm

No rain or other bad weather

Calculation:

Valid NOR was tendered Saturday 9am

Laytime commenced Monday 8am

Laytime stopped Friday 11pm

4 days were allowed for discharging (laytime)

4 days and 15 hours were used (*time counts from commencement of laytime*)
Nett time used was 15 hours
Charterers pay 15 hours demurrage

Alternative example 2:

Statement of facts:

Vessel arrived Monday 5:30pm
Cargo fumigation is ordered on arrival and the operations, including planning, lasts 72 hours
Gas-free certificate is issued Thursday 5:30pm
No bad weather or rain
Vessel was berthed Thursday 7pm
Discharging commenced Thursday 10pm and was completed Monday 11pm
No rain or other bad weather

Calculation:

Valid NOR was tendered Tuesday 8am
Laytime commenced Wednesday 8am
Laytime stopped Monday 11pm
4 days were allowed for discharging (laytime)
5 days and 15 hours were used for discharging (*"unless used" = actual time used shall count as laytime*)
Nett time used was 1 day and 15 hours
Charterers pay 1 day and 15 hours demurrage

Example 3 – Loss of time prior to commencement of discharging and after completion of discharging:

In the below examples, fumigation was undertaken at the loading port or during transit, but the vessel encountered delay in tendering a valid NOR due to lack of gas-free certificate.ss

A cargo of 30,000 tonnes was discharged from a bulk carrier. 7,500 tonnes were discharged on average on a weather working day, Friday 5pm-Monday 8am SSHEX even if used.

NOR could be served Monday to Friday from 8am to 5pm and Saturday from 8am and until noon WWWW (Wibon – Whether In Berth Or Not, Wccon – Whether Customs Cleared Or Not, Wifpon – Whether In Free Pratique Or Not, Wipon – Whether In Port Or Not).

Laytime would commence at 8am the next working day after a valid NOR had been served.

Statement of facts:

Vessel arrived Wednesday 5:30pm, lack of gas-free certificate

Gas-free certificate issued Friday 5:30pm

Detention 2 days from arrival at discharging port until obtaining gas-free certificate

Discharging commenced Friday 10pm and was completed Tuesday 11pm

No rain or other bad weather

After completion of discharging the vessel was delayed until Wednesday 8am due to removal of fumigation equipment (9 hours detention)

Calculation:

Valid NOR was tendered Saturday 8am

Laytime commenced Monday 8am

Laytime stopped Tuesday 11pm

4 days were allowed for discharging (laytime)

1 day and 15 hours were used, 2 days and 9 hours despatch was earned

2 days detention prior to discharging + 9 hours detention after completion of discharging (2 days 9 hours)

Detention less despatch = 0

No despatch or detention payable (*time does not count from Friday 5pm and until Monday 8am*)

If commencement of laytime had been qualified by "unless sooner commenced" and SSHEX by "unless used", time would have counted already from the time of discharging and during excepted periods. The result would then have been that the charterers should pay 1 hour demurrage plus 2 days and 9 hours detention.

Alternative example 1:

Statement of facts:

Vessel arrived Friday 5:30pm, lack of gas-free certificate

Gas-free certificate issued Monday 8:30am

Detention 2 days 15 hours from arrival at discharging port until obtaining gas-free certificate

Discharging commenced Monday 10am and was completed Thursday noon

No rain or other bad weather

After completion of discharging the vessel was delayed until Thursday 4pm due to removal of fumigation equipment (4 hours detention)

Calculation:

Valid NOR was tendered Monday 8:30am

Laytime commenced Tuesday 8am

Laytime stopped Thursday noon

4 days were allowed for discharging (laytime)

2 days and 4 hours were used, 1 day and 20 hours despatch was earned

2 days 15 hours detention prior to discharging + 4 hours detention after completion of discharging (2 days 19 hours)

Detention less despatch = 23 hours detention payable by charterers (*time used before commencement of laytime does not count*)

If commencement of laytime had been qualified by "unless sooner commenced", time would have counted already from the time of discharging and the result would have been that the charterers should pay 1 day and 21 hours' detention (2 days and 19 hours detention less 22 hours' despatch).

Alternative example 2:

Statement of facts:

Vessel arrived Monday 5:30pm, lack of gas-free certificate

Gas-free certificate issued Wednesday 5:30pm

Detention 2 days, from arrival at discharging port until obtaining gas-free certificate

Discharging commenced Wednesday 10pm and was completed Sunday midnight

No rain or other bad weather

After completion of discharging the vessel was delayed until Monday 8am due to removal of fumigation equipment (8 hours detention)

Calculation:

Valid NOR was tendered Thursday 8am

Laytime commenced Friday 8am

Laytime stopped Friday 5pm

4 days were allowed for discharging (laytime)

9 hours were used, 3 days and 15 hours despatch was earned

2 days detention prior to discharging + 8 hours detention after completion of discharging (2 days 8 hours)

Despatch less detention = 1 day 7 hours

Charterers earn 1 day and 7 hours' despatch (*time used before commencement of laytime and from Friday 5pm to Sunday midnight does not count*)

If commencement of laytime had been qualified by "unless sooner commenced" and SSHEX by "unless used", time would have counted already from the time of discharging and during excepted periods. The result would then have been that the charterers should pay 2 hours demurrage plus 2 days and 8 hours' detention.

For an explanation of the phrases "unless sooner commenced" and "unless used" see the [BIMCO Laytime Definitions for Charter Parties 2013](#).