

# BIMCO launches Standard Service Contract – SERVICECON

Liner trades are characterised by a small number of very large shippers with high shipment demands and the majority of small to medium sized companies whose transportation needs range from relatively modest cargo movements to significant numbers of containers.

Much of the trade is based on service contracts whereby, in return for a favourable freight rate, shippers undertake to transport a minimum number of (usually) containers over an agreed given period. Multi-national shippers have developed their own individual contractual arrangements but despite the number and global value of shipments, until now no standard contract has been available to meet the needs of other trade interests.

However, as a result of discussions over a two year period between carrier and shipper representatives, the BIMCO SERVICECON Standard Service Contract has been developed to provide a basis for volume carriage in liner trades.

BIMCO wishes to thank the following representatives of carriers and shippers for their assistance in the work: Frank Sandford MSC; Charlotte Peddie Maersk Line; Martin Clausen Maersk Line; Erwann Merrien Marfret Compagnie Maritime; Stephen Mills North of England P&I Club; Howard Finkel COSCO; Chris Welsh Global Shippers' Forum UK; Barry Wallace Marks and Spencer; Peter Gatti NIT League USA and Don Pisano Coffee Corps of America.

## General principles

SERVICECON is a framework agreement designed for worldwide trading. It can be used and amended as necessary to suit commercial parties' individual needs and circumstances. This flexibility to adjust the content should avoid the likelihood of conflict with competition legislation although in the event of any doubt, appropriate legal advice should be taken.

In practical terms, SERVICECON has been drafted as a starting point for carrier/shipper negotiations. The central feature is shippers' declared "Minimum Quantity

Commitment" (MQC) which will be the basis for determining the freight rate and providing carriers with the necessary information to reserve cargo space over the contractual period.

However, as shippers will not necessarily be able to predict the extent of their forward needs, figures often err on the side of caution when agreeing the minimum number. In reality, shipment demands often prove to be much higher than the initial estimate and this is addressed by allowing acceptance, at carriers' option, of cargo beyond shippers' declared MQC.

Shippers' failure to fulfil their minimum obligation will mean that cargo space set aside by the carrier is unused with resulting lost revenue. In such circumstances carriers are to be automatically compensated through agreed liquidated damages. The measurement of loss for carrier failure to lift the MQC is more complex and will depend on extra costs and expenses actually incurred by shippers (such as higher freight for carriage on another vessel). Shippers' proven damages are therefore the basis for determining carrier compensation for failure to carry an agreed MQC.

Individual shipments are subject to the contracting carrier's own bill of lading or seawaybill which is incorporated, by reference, into the SERVICECON contract.

## Detailed content

SERVICECON follows BIMCO's traditional style. Part I contains a box layout for variable information to be agreed and inserted by the parties. Part II contains the terms and conditions while three supporting annexes A, B and C respectively set out Federal Maritime Commission (FMC) provisions where US jurisdiction applies; ports and rates within the scope of the contract; and shipper details.

## Part I

Particular attention is drawn to Box 8 where the MQC figure must be entered. If it is left blank, the contract will be null and void.

## Part II

### Preamble

This notes that the contract is between the carrier and shipper, including the shipper's associated companies as listed in Annex C.

### Definitions

Terms used throughout SERVICECON are set out and their meaning explained.

### Clause 1 Scope of Contract and Rates

A cross reference is made to Annex B which contains details of the geographic scope of the parties' agreement, together with applicable freight rates.

### Clause 2 Carrier's Commitment

Sub-clause (a) sets out the carrier's central obligation to provide space to meet the shipper's MQC during the contractual period. Carriers may also, at their option (i.e. depending on available space and scheduling requirements), lift cargo in excess of the MQC.

Shipper access to the carrier's container tracking service is provided for at sub-clause (b).

Sub-clause (c) addresses standards of training for the carrier's personnel while sub-clause (d) states the requirement for carriers to maintain, and if necessary confirm, that appropriate cargo liability cover is in place.

### Clause 3 Shipper's Commitment

Sub-clause (a) sets out shipper's obligation to provide not less than the agreed MQC. Unless otherwise agreed, shipments are to be evenly distributed throughout the contractual period or the carrier advised where this cannot be achieved. Any changes in arrangements must be mutually agreed.

Sub-clause (b) requires the shipper to give the carrier the number of days' notice stated in Annex B prior to loading cargo. In the absence of an agreed and stated figure, the default position is 15 days' notice.

Sub-clause (c) provides that the agreed rates and cargo quantities are specific to the contract and cannot be used to claim any discount or as part of a cargo commitment under any other contractual arrangements with the carrier.

#### **Clause 4 Verification of Contract Carrying**

In order to qualify for the agreed freight rate and to fulfil the MQC, cargo must be moved during the Contract Period set out in Part I at Box 5 (Commencement Date) and Box 6 (Expiration Date or Period).

In accordance with sub-clause (a), the date when cargo is received by the carrier determines whether or not it is within the Contract Period. Administrative provisions for compliance with the contractual arrangements are set out at sub-clause (b). Sub-clause (c) contains a table comparing different container dimensions with the standard TEU for the purpose of calculating the agreed TEU-based MQC.

#### **Clause 5 Non-performance**

Sub-clause (a) provides that where cargo obligations are not fulfilled, the carrier's losses (i.e. reduced freight earnings due to unused space) are automatically compensated in accordance with the agreed rate of Liquidated Damages (as stated in Part I Box7) covering the difference between the MQC and number of containers actually shipped.

If the carrier fails to lift cargo tendered in accordance with the MQC, sub-clause (b) provides that the shipper's commitment may be reduced by that number and, in the event of repeated failures (constituting a material breach), the contract may be terminated in accordance with clause 9(b) (below).

As to damages, the position for determining shippers' losses is less easily measured than carriers' unused space and resulting reduced earnings. Cargo may be shipped on another vessel at the same, or lower, freight. Sub-clause (c) therefore provides that the

shipper's losses will be determined at the end of the Contract Period by reference to their proven damages up to the agreed freight rate per TEU.

#### **Clause 6 Force Majeure**

This sets out a list of illustrative political events and natural disasters beyond the parties' control and for which they are relieved from their performance obligations, other than in respect of payments. Changes in market conditions or other commercial issues are expressly excluded. Once the Force Majeure event has come to an end, the contract will resume with pro rata adjustment, where appropriate, to the shipper's MQC. Under certain circumstances set out in the clause, the contract may be terminated.

#### **Clause 7 Contracts of Carriage**

The carrier's standard bill of lading or waybill is incorporated by reference into SERVICECON. In the event of conflict between the two, SERVICECON prevails.

#### **Clause 8 Assignment**

Either party may assign the contract to any company within its Group (i.e. which it controls) but must obtain the counterparty's agreement for assignment outside its Group. The original contracting party always remains responsible for due performance.

#### **Clause 9 Termination**

The contract is subject to termination: Sub-clause (a) once the MQC has been reached when notice may (but does not have to) be, given by either party;

Sub-clause (b) in the event of a material breach or repeated non-material breaches where the party in breach fails to rectify the position within 30 days; and

Sub-clause (c) if one of the parties is subject to winding-up procedures, bankruptcy or receivership.

In accordance with sub-clause (d), termination is without prejudice to prior accrued rights.

#### **Clause 10 Dispute Resolution Clause**

All disputes under SERVICECON are to be determined in accordance with the dispute resolution provisions in the carrier's con-

tract of carriage (which is incorporated into SERVICECON by reference, see clause 7).

#### **Clause 11 Confidentiality**

Subject to limited exceptions or where required by law, pre-contractual discussions and the contract's contents must remain confidential until twelve months after the date of termination. Nevertheless, certain information, in anonymous format, may be disclosed for the purposes of statistical data.

#### **Clause 12 Entire Contract**

The contract is defined by its written provisions and all exchanges prior to the date of the agreement, stated and entered in Part I Box 2, are excluded. Any modifications must be agreed in writing.

#### **Clause 13 Notices**

This sets out the basis for giving and receiving notices under the contract.

#### **Annex A (FMC Requirements)**

This applies where shipments are subject to US jurisdiction. The shipper's status must be certified and certain documentation retained by the carrier or a designated agent.

#### **Annex B (Scope of Contract and Rates)**

Details are to be inserted of ports within the contractual geographic scope together with the number of days' notice to be given prior to loading and a copy of the schedule of agreed freight rates attached.

#### **Annex C (SHIPPER-associated companies)**

This is for shippers to list the names and addresses of their related companies to be covered by the contract.

#### **Availability**

The full text of the contract is printed in this Bulletin on pages 52-60. It can also be downloaded free of charge from the Chartering/Clauses section of the BIMCO website ([www.bimco.org](http://www.bimco.org)).

Users of the IDEA•2 contract editing system, which contains digital copies of all the widely used BIMCO standard contracts, can add the new Clause to their agreements by using the Clause Manager. (GH) ■■