# Agents and Brokers 1

### **Arbitration** 3

#### A. Agreement to Arbitrate 3

- 1. Form and Terms; Rules 3
- 2. Commencement of Arbitration Proceedings; Condition Precedent 3
- 3. Parties 4
- 4. Submission Agreement and Statement of Claims 5
- 5. Sovereign Immunity 6
- 6. Adding or Revising Claims and Theories of Recovery 6
- 7. Shortened Procedure 6
- 8. Scope of Arbitrable Issues, Public Policy, and Illegality 6
- 9. Letter of Undertaking 7
- 11. Related Court Proceedings, Arbitration and Bankruptcy 7
- 12. Termination of Arbitration Proceedings 9
- 13. Mediation, Conciliation and ADR 10

#### **B.** Arbitrators 10

- 1. Size of Panel 10
- 2. Bias 10
- 3. Qualifications 10
- 4. Attorney 10
- 6. Replacement of Arbitrator 10
- 7. Appointment of Arbitrator 10

#### C. Evidence 11

- 1. Custom 11
- 2. Burden of Proof and Prima Facie Case 11
- 3. Sufficiency, Weight, Credibility 20
- 4. Adverse Inference from Non-production 24
- 5. Admissibility 25
- 6. Presumption, Inference and Admission 26
- 7. Discovery and Subpoena 28
- 8. Necessity to Produce Specific Evidence 28
- 9. Timing 31
- 10. Adequate Assurance of Intention to Perform 31
- 11. Statute of Frauds 32
- 12. Privilege 32

#### **D. Hearings 32**

1. Adjournment 32

- 3. Consolidation 32
- 4. Situs 33
- 5. Need for Hearing 33
- 6. Prompt 33
- 7. Lack of Standing 33
- 8. Severance and Summary Award 34
- 9. Representation by Counsel 34
- 10. Auditors 34
- 11. Conclusion 34

#### E. Award 34

- 3. Arbitrators' Reasons for Award Differ From Each Other 34
- 4. Points Not Argued and Sua Sponte 34
- 5. Issues Not Ripe for Decision, Moot, or Not Reached 34
- 6. Precedents 34
- 7. Limited to Amount Claimed 34
- 8. Installments 35
- 9. Interim and Partial Award 35
- 10. Res Judicata 37
- 11. Interest 38
- 12. Attorney's Fees 39
- 13. Litigation Expenses and Bond Premiums 46
- 14. Translators', Interpreters' and Experts' Fees 46
- 15. Unequal Division of Costs; Arbitrators' Fees 46
- 16. Default, Failure to Prosecute, Voluntary Dismissal 47
- 17. Currency Conversion 51
- 18. Joint and Several Liability 51
- 19. Stipulation 51
- 20. Settlement, Release, Accord and Satisfaction 51
- 21. Recoupment, Offset and Counterclaim 52
- 22. Security, Countersecurity, and Escrow 54
- 23. Equitable Remedies, Reformation, Rescission, and Specific Performance 56
- 24. Unjust Enrichment, Quantum Meruit and Restitution 56
- 25. Indemnity and Vouching In 57
- 26. Correction of Award; Functus Officio 60
- 27. Declaration of Rights 60
- 28. Anticipatory Breach 60
- 29. Sealed Offer 60
- 30. Confidentiality Agreement 60

- 31. Motion to Decide Summarily 61
- 32. Stay of Proceedings 61
- 40. Appeal 61

### **Barratry and Casting Away 62**

### Carriage of Goods by Sea 62

### A. Documents of Carriage 62

- 1. Bill of Lading 62
- 2. Letters of Indemnity and Bank Guarantees 63
- 3. Mates Receipts 64
- 4. Multimodal / Intermodal 64

### **B.** Vessel Characteristics and Representations 64

- 1. Cargo Carrying Capacity and Full Reach of Vessel 64
- 2. Heat, Refrigeration, Pumps, Coatings, Configuration, Hatches, Inert Gas, Cargo Handling Gear and Fittings 65
- 3. Cleanliness of Holds and Tanks; Gas Freeing 67
- 4. Number of Vessels 70

### C. Cargo 70

- 1. Obligation to Supply 70
- 2. Characteristics of Cargo 71
- 3. Quantity of Cargo 75
- 4. Marks 77
- 5. Export and Import Licenses 77

# **D.** General Obligations of Carrier 77

- 1. Seaworthiness 77
- 2. Due Diligence 78
- 3. Care for Cargo 79
- 4. Issue Bills of Lading 81
- 5. Liability for Personal Acts Only 81
- 6. Identity of Carrier 81

### E. General Immunities of Carrier 81

- 1. Negligence in Navigation and Management of Ship 81
- 3. Perils of Sea 81
- 4. Act of God 82
- 8. Q Clause 82
- 9. Inherent Vice and Preloading Damage 82
- 10. Insufficiency of Packaging 82
- 11. Latent Defects 83

13. Dangerous Cargo 83

# F. General Carrier Liabilities 83

- 2. Deviation 83
- 6. Overloading 83

# G. Cargo Handling 83

- 1. Free In and Out 83
- 2. Overtime 84
- 3. Port Captain Supervision 84
- 4. Lightering, Topping Off, Transshipment and Ship-to-Ship Transfer 84
- 5. Stowage, Dunnage, Tallying, Blending, Weighing, Segregation, Sorting, Shifting Alongside, Dumping, Trimming, Nitrogen Blanket, and Coolant 84
- 6. Shore Demurrage, Storage and Equipment 86
- 7. Fumigation 86
- 8. Opening and Closing Hatches 86
- 9. Stevedoring 87
- 10. Containerization 88
- 11. Transferring Cargo Between Tanks 88
- 12. Crude Oil Washing, Sweepings, Tank Washings, Slops and Cleanup 88
- 13. Storage of Cargo Afloat 88
- 14. Delivery 89
- 15. Rejection of Delivery 89
- 16. Reloading 89
- 17. Prewash 89
- 21. Miscellaneous 89

# I. Cargo Damage and Loss 89

- 1. Before and During Loading 89
- 2. Receipt in Good Order and Condition 90
- 3. Shut Out 91
- 4. During Stowage 91
- 5. Shrinkage and Sweat 91
- 6. Under and Over Carriage 91
- 7. Shortage 91
- 8. During and After Discharge 93
- 9. Delay 93
- 10. Contamination, Infestation, Deterioration and Co-mingling 93
- 11. Low Heat or Inadequate Cooling; Overheating 96
- 12. Damage to Packaging and Containers 96
- 13. Deck Cargo 96

- 14. Notice of Loss or Damage 97
- 15. Apportionment and InterClub Agreement 97
- 16. Insufficient Ventilation 98
- 17. Himalaya Clause 98
- 18. Misdelivery 98
- 21. Extra Cargo Handling Expenses 99

### Charter 99

### A. Charter Agreement 99

- 1. Binding Agreement 99
- 2. Part Cargo and Booking Note 100
- 3. Incorporation of Terms by Reference 101
- 4. Contract of Affreightment, Consecutive Voyage, and Service Contract 102
- 5. Authority of Agent to Fix or Amend 105
- 6. Divisible 106
- 7. Bareboat 106
- 8. Fixture Recap 106
- 9. Subjects 106
- 10. Passenger Ship 106
- 11. Addendum and Informal Agreement to Vary Charter Terms 106

# B. Parties 107

- 1. Principal, Affiliate, Alter Ego 107
- 2. Brokers, Agents and Managers 108
- 3. Guarantors 109
- 4. Assignees, Subrogees, and Successors 109
- 5. Subcharterers and Head Owners 109
- 6. Third Party Beneficiaries 110
- 7. Conference Members 110

# C. Termination 110

- 1. Cancellation Option or Expiration of Charter 110
- 2. Termination by Withdrawal or Premature Redelivery 115
- 3. Frustration 117

### **D.** Vessel Representations 118

- 1. Location and Itinerary 118
- 2. Classification and Age 118
- 3. Certificates 118
- 4. Dimensions, Configuration and Machinery 120
- 5. Speed; Fuel and Water Consumption 123

- 7. Prior Voyages and Cargoes 126
- 8. Supplies 126
- 9. Seaworthiness 126
- 10. Full and Competent Crew 127

#### F. Period, Delivery and Redelivery 128

- 1. Term, Extension, Consecutive Voyages, and Time Charter Trip 128
- 2. Tendering for Delivery and Redelivery 129
- 3. Notice of Readiness, Arrival, Expected Readiness Date 131
- 4. Notice of ETA and Position 135
- 5. Guarantee of Arrival or Voyage Duration 136
- 6. Notice of Redelivery 136
- 7. Overlap and Underlap 136
- 8. Substitute Ship 137

#### G. Berths, Ports and Trading Limits 137

- 1. Safe Berth and Port; Excessive Draft; Airdraft 137
- 2. Multiple Berths and Ports 142
- 3. Permissible Trades 144
- 4. Local Regulations 144
- 5. Berthing Assistance 146
- 6. Change of Port or Berth 146
- 7. Vacating Berth 146
- 8. Location or Type of Berth 147

#### H. Laytime and Free Time 148

- 1. Free time 148
- 2. Waiting for Berth 148
- 3. Time Used 149
- 4. Running Days, Working Days and Holidays 149
- 5. Inclement Weather 149
- 6. Reversible and Average Laydays 150
- 7. Commencement and Conclusion of Laytime in Particular Situations 150
- 8. Rate of Loading and Discharging as Basis for Computing Laydays 152
- 9. Liner Terms 153
- 10. Statement of Facts 153

#### I. Demurrage, Despatch and Detention 153

- 2. Once on Demurrage, Always on Demurrage 153
- 3. Calculation of Demurrage/Despatch in Particular Situations 154
- 4. Despatch 156

- 5. Detention 157
- 6. When Payable, By Whom, To Whom and At What Rate 160

#### J. Offhire and Suspension of Laytime or Demurrage 161

- 1. Deballasting, Discharging Slops, Rigging Equipment, Bunkering, Watering, Opening and Closing Hatches, Fumigation, Disconnecting Hoses, Preparing for Sea, and Cleaning Cargo Holds/Tanks/Lines 161
- 2. Casualties and Repairs to Vessel, Drydocking, or Deficiency in Equipment and Stores 164
- 4. Cargo Damage or Deficiency 166
- 5. Survey 168
- 6. Unavailability of Cargo or Shore Labor 168
- 7. Breakdown or Unavailability of Shore, Lightering or Docking Equipment; Pier Congestion 169
- 8. Storm, Flood, Fog, Ice, Tide, Weather, Act of God, Night, and Delays Beyond Control of One Party 170
- 9. War and Civil Commotion 173
- 10. Interference By Courts, Customs and Other Government Authorities; Exercise of Maritime Lien 173
- 11. Medical Assistance, Quarantine and Pratique 176
- 12. Labor Dispute, Crew Deficiencies, Repatriation, and Breach of Orders 176
- 13. Rigging and Unrigging Equipment 177
- 14. Communications Delays 177
- 15. Deviation 177
- 16. De Minimis 177
- 17. Force Majeure and General Exceptions 177
- 18. Charterer's Continuing Obligations 178
- 19. Slow Loading or Discharge, Transshipment, Lightering, Stowage, Trimming, Overstowed Cargo, Relanding Cargo, Blending, Crude 0il Washing, Spillage, Cleanup, Handling of Other Cargo, and Prewash 178
- 20. Shifting and Warping 182
- 21. Delay for Documents, Disputes, Official Permission, Orders, Overdue Freight or Other Payments to Owner, and Security 183
- 22. Pollution 184
- 23. Pilots 184
- 24. Overtime 184
- 25. Loss of Place in Queue 184
- 26. Allowance to Owner for Maintenance, Repairs and Breakdowns 185

#### **K. Miscellaneous Clauses and Conditions 185**

1. Clause Paramount and Governing Law 185

- 2. Employment and Indemnity; Charterers' Control 186
- 3. Lien on Cargo and Freight; Cesser Clause 186
- 4. Shoreside Expenses, Agency Fees, Linehandling, Wharfage, Dockage, Barge and Container Demurrage, and Canal Fees 186
- 5. Bunkers, Water and Victuals 188
- 6. War Risks and Insurance 189
- 7. Taxes, Dues, Fines and Other Payments to Officials 189
- 8. Pilotage, Tugs, and Clearance, Shifting 190
- 9. Logs 191
- 10. Nomination of Vessels, Cargo or Port; Vessel Orders; Weather Routing; Substitute Voyage 191
- 11. Force Majeure; Liberties; Deviation; Port Rotation 193
- 12. Ballast 194
- 13. Vessel Repair, Upgrading, Maintenance and Stores 195
- 14. Escalation 196
- 15. Borrowed Servants, Crew Assistance and Interclub Agreement 196
- 16. Crew Repatriation 196
- 17. Overtime and Bonus 196
- 18. Duty to Prosecute Voyage and Slow Steaming 196
- 19. Drydock and Survey 197
- 20. Notice and Exercise of Option 197
- 21. Pollution 198
- 22. Supercargo 199
- 23. Change of Registry; Sale of Vessel; Option to Purchase; Right of First Refusal 199
- 24. Layup 199
- 25. Acting Beyond Scope of Employment and Breach of Orders 199
- 26. Commissions 200
- 27. Prohibition of Lien 200
- 28. ITF 200
- 29. Bottom Fouling 200
- 30. Stowaways 200
- 31. Assigning and Subchartering 200
- 32. Radio and Cable 200
- 33. Protest 200
- 34. Cargo Documents, Certificates, Vetting Approval and Other Documents 201
- 35. Demise Clause 201
- 36. Hardship Clause 201
- 37. Advances 201

38. Drug and Alcohol Clauses 201

- 39. Charterers Equipment 201
- 40. Miscellaneous 202
- 41. Cabotage 204
- 42. Merger 205

#### L. Charterers' Liability for Damage to Ship, Repairs, Maintenance and Cleaning on Redelivery 205

- 1. Damage, Repairs and Maintenance 205
- 2. Notice of Damage 207
- 3. Immediate and Deferred Repairs; Charter Hire During Repair 207
- 5. Unrepaired Damage 207
- 6. Cleanliness 207
- Choice of Law 207

#### Collision, Stranding, Sinking, Striking Underwater Object 209

**Conferences (Liner Trade) 210** 

**Conspiracy 210** 

**Construction of Documents 210** 

Custom 222

Damages 222

**B.** Consequential 222

#### C. Basis for Calculating 224

- 1. Estimates 224
- 2. Sale Price, Cover or Market 224
- 3. Lost Profits and Lost Income 226
- 4. Equitable 228
- 5. Liquidated 228
- 6. Punitive 229
- 7. New for Old and Depreciation 229
- 8. At Cost 229

#### D. Quantum 230

- E. Subsequent 234
- F. Mitigation 234
- G. Unrecoverable Penalties 237

H. Nominal; De Minimis; None 238

**Defamation 238** 

**Duress, Overreaching, Fraud and Misrepresentation 238** 

**Fire and Explosion 238** 

Freight 239
A. Quantum and Rate 239
B. When Payable, By Whom, To Whom and in What Manner 241
C. When Earned 242
D. Deadfreight 243
E. Deductions 244
F. Ballast Bonus and Other Bonuses 246
G. Services and Time Included 246
H. Banking Charges 246
General Average and Particular Charges 246
Guarantee, Escrow and Other Security 246
Ice 247
Impossibility 247
Insurance 247
Joint Venture 248
Limitation of Liability 248
Maritime Lien, Arrest and Attachment 248
Personal Injury 249
Piercing Corporate Veil 249
Pollution 250
Proximate Cause 250
Sale of Goods and Services 251
Salvage, Retrieval and Wreck Removal 254
Self Help 259
Ship Sale, Construction and Repair Contracts 259
Ship Management 262
Survey and Surveyors 263
Time Bar 265
Towage 269
Waiver and Estoppel 269