



## Delivery

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**Delivery (and redelivery) under a time charter party is a critical time for both shipowners and charterers, who come under important obligations at these times.**

**Given those obligations, disputes can and do frequently arise. It is not possible to consider all issues which might arise, and the answer to any particular dispute is likely to be contract- and fact-dependent, on which further advice should be obtained.**

This guide deals with delivery and Guide 6 with redelivery. Both guides provide an overview of some of the topics which usually cause disputes.

To keep matters simple, we will consider the industry standard NYPE 1946 form and assume that the charter party is for a period rather than a trip. In practice, the standard form is often substantially amended with additional terms agreed in a fixture recap and/or rider clauses, but working from the standard form provides a useful starting point.

Similar considerations will arise in respect of a time charter trip, but given their nature, the obligations may also significantly differ. For example, depending on the trade, the vessel may be obliged to have specific documents on board at the commencement of the charter.

A valid delivery of a vessel under a charter party is critical. Delivery is the time from which a charterer obtains the service of the vessel for the specified duration of the charter party and from which the owner begins to earn hire.

### Location and time

*“Vessel to be placed at the disposal of the Charterers, at ... in such dock or at such wharf or place (where she may lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6), as the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 5. ...” (Lines 18–21)*

These lines provide a template for delivery. However, owners and charterers may agree on a specified time, a single location or a range – at either party's election – for delivery of the vessel. Examples include DLOSP (Dropping Last Outward Sea Pilot), passing a particular point or within a defined range, or in direct continuation of a previous charter.

What is clear is that it is a condition precedent to valid delivery that the vessel be at the agreed location. Charterers are under no obligation to take over the service of the vessel until it arrives at that location.



The tender of the vessel at an incorrect location does not permit charterers to terminate the charter party at that time, but the delay which may arise may give charterers a right to cancel if the cancelling date is not met. Generally, unless expressly agreed otherwise, charterers cannot cancel before the cancelling date, even if it is obvious before then that the vessel will not meet that date.

## Condition of the vessel

*“ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service ...”* (Line 22)

The condition of the vessel is generally thought to be a condition precedent to delivery. If the vessel is tendered when it is not in the required condition, the charterer may either:

- a. reject the vessel, in which case the owner remains under an obligation to remedy the condition of the vessel, but if they cannot do so before the cancelling date, it may be that the charterer is entitled to cancel the charter party;

**“ ... it is a condition precedent to valid delivery that the vessel be at the agreed location. Charterers are under no obligation to take over the service of the vessel until it arrives at that location.**

- b. accept the vessel when it is not in the required condition: this would constitute a breach by the owner and entitle the charterer to claim damages, provided they did not waive their right to do so during the acceptance; or
- c. terminate the charter party, provided the condition of the vessel is such that the charterer is deprived of substantially the whole benefit of the charter party.

At the time of delivery, the vessel must meet three general requirements. It must be:

1. fit,
2. seaworthy, and
3. ready.

### Fit

The vessel is required to be properly equipped and documented<sup>1</sup> for the charter-party service. In other words, it must be fit both physically and legally. The vessel cannot be fit for service if it is unseaworthy, but a seaworthy vessel can still be unfit. Generally, the precise fitness requirements will depend on the charter-party terms and the service required.

**“ ... it must be fit both physically and legally.**

For example, in *The Madeleine*,<sup>2</sup> the absence of a deratisation certificate on delivery, which would have permitted the vessel to sail for a port outside Indian waters, rendered the vessel unfit.

<sup>1</sup> See, for example, *The Derby* [1985] 2 Lloyd's Rep. 325 (C.A.).

<sup>2</sup> [1967] 2 Lloyd's Rep. 224.

However, under a time charter with a wide trading range, the vessel is not generally required to have all certificates or permissions on board for every port to which the vessel may call (unless there is an express term requiring specific documentation).

## Seaworthy

The now “classic” test of seaworthiness is:

*“The ship must have that degree of fitness which an ordinary careful owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it. Would a prudent owner have required that it should be made good before sending his ship to sea, had he known of it?”<sup>3</sup>*

There are generally two requirements: (a) that the vessel, its crew and equipment are ready in all respects to encounter and withstand the ordinary perils of the voyage, and (b) that the vessel is suitable to carry the agreed cargo.

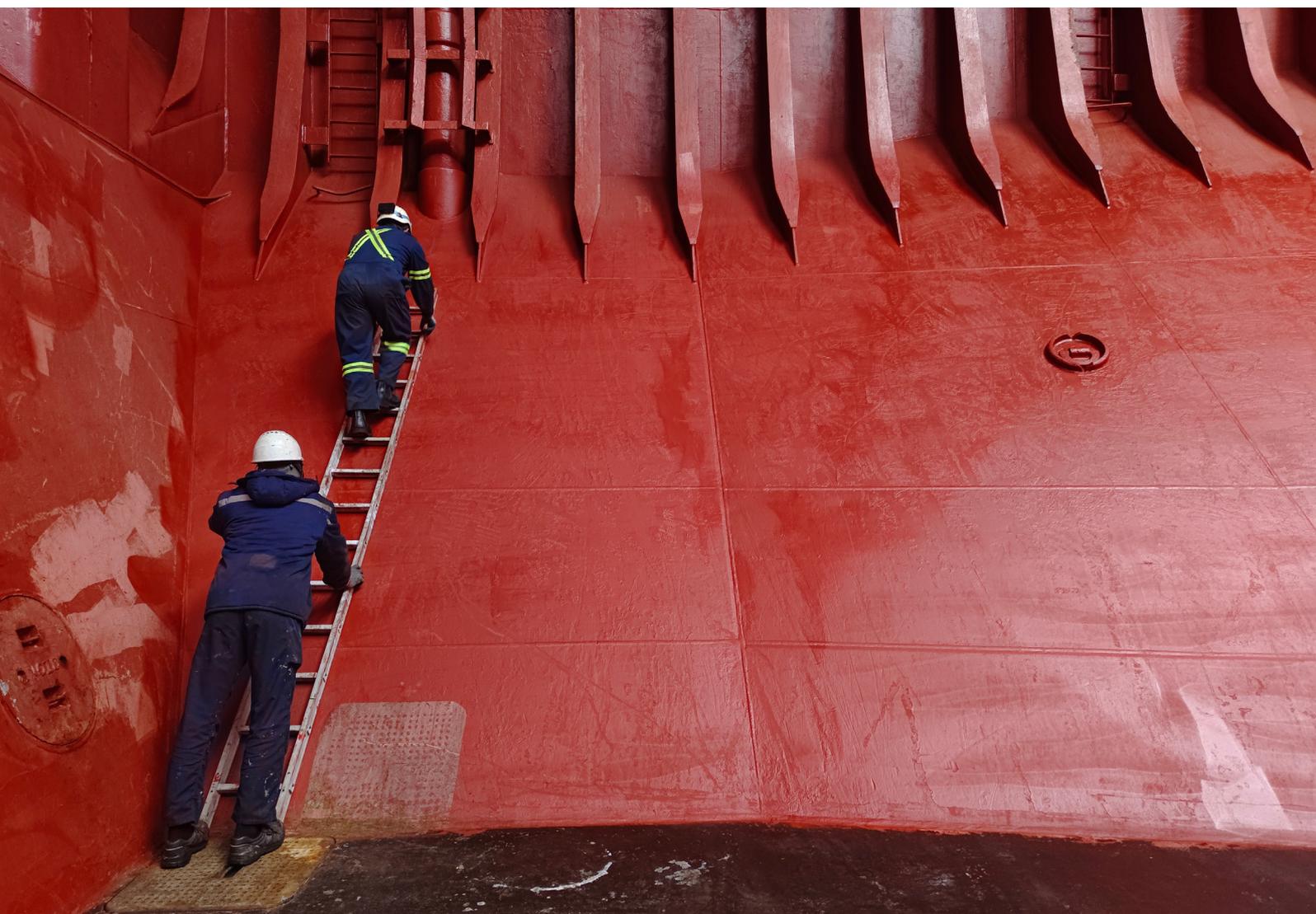
In the absence of an express provision, owners are impliedly obliged to deliver a seaworthy vessel. If the Hague or Hague-Visby Rules are not incorporated, owners’ obligations are absolute. If they are incorporated, owners’ obligations are “reduced” to exercising due diligence before and at the beginning of the voyage (including on delivery).

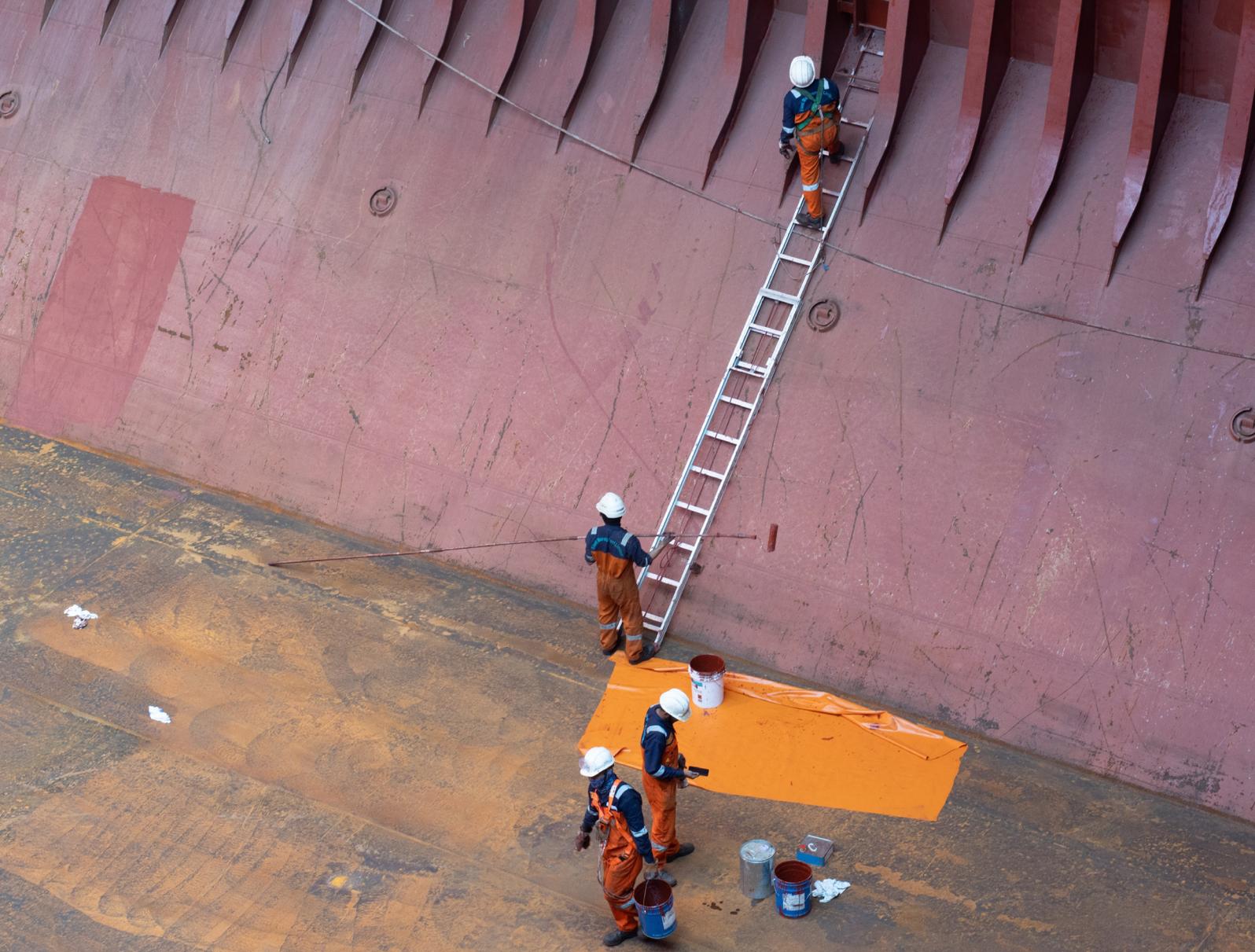
However, owners are not liable for losses caused by unseaworthiness unless the unseaworthiness was caused by a want of due diligence on owners’ part (Article IV Rule 1).

**“ In the absence of an express provision, owners are impliedly obliged to deliver a seaworthy vessel.**

Although the due-diligence obligation may assist owners in the case of alleged breach, a charterer may still be permitted to refuse delivery because it is generally thought that an owner can only serve a notice of readiness if the absolute obligation under lines 21–24 has been met (regardless of whether the Hague or Hague-Visby Rules have been incorporated), and that a charterer retains the right to cancel in those circumstances.

<sup>3</sup> See Lord Justice Scrutton’s judgment in *FC. Bradley v Federal Steam* (1926) 24 Lloyd’s Law Rep. 446.





So, what does the exercise of due diligence mean?

Owners must:

- a. carry out inspections, repairs and preparations which a skilled or prudent owner would reasonably carry out; and
- b. perform any work with reasonable care, skill and competence.

Owners will often engage contractors to perform any work required on the vessel. Owners do not fulfil their duty by simply engaging competent contractors – the work itself must be properly performed.<sup>4</sup>

Owners are not liable for work undertaken before the vessel comes into their orbit, but they are liable if a defect was reasonably discoverable when the vessel came into it.

## Ready

Under the NYPE form, on delivery, the vessel must be “ready to receive cargo” (line 22) and be “ready to obey the charterer’s orders whenever they are given”<sup>5</sup>. The vessel is not required to have completed all preliminaries (for example, having grabs attached and ready for use if it is a geared vessel) but must be in a position to be ready as soon as the orders are given.

Line 22 is often further modified by express provision for holds to be prepared to the satisfaction of a surveyor. Such a provision is additional to line 22 rather than a replacement, meaning that delivery is often effected under the clause but with time not to count until the passing of the holds.

Readiness and fitness should be considered commercially. Issues which are unlikely to have a significant practical or commercial impact on the service of the charter are unlikely to mean that the vessel is unfit.<sup>6</sup> However, if an issue will delay the start of cargo operations, the vessel is not ready or fit.

<sup>4</sup> See *The Muncaster Castle* [1961] 1 Lloyd’s Rep. 57.

<sup>5</sup> See *The Tres Flores* [1973] 2 Lloyd’s Rep. 247, a voyage charter case.

<sup>6</sup> See *The Arianna* [1987] 2 Lloyd’s Rep. 376, in which the vessel should have been able to run six tank-cleaning machines simultaneously. It could only run four simultaneously, but that was likely to be sufficient for the trading pattern of the vessel with only minor delay suffered. The defect did not affect the safety of the vessel or the integrity of its cargo.

## Notice and cancellation

*“That if required by Charterers, time not to commence before ... and should vessel not have given written notice of readiness on or before ... but not later than 4 p.m. Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of vessel’s readiness.”* (Clause 14)

The giving of notice and the precise requirements will depend on the terms of the charter party, but, for example:

- a. If the charter party requires a laycan to be narrowed, this is typically a condition precedent to delivery of the vessel.<sup>7</sup>
- b. If advance notice of delivery is required to be given, it is not typically a condition precedent to delivery,<sup>8</sup> but in the event that the vessel was delivered without the required notice(s) being given and charterers sustain a loss, that loss may be recoverable as damages.

If notice is required under the charter party, such notice must be given reasonably and on honest grounds.

Although the NYPE form does not, some charter parties require the vessel to be delivered or NOR (Notice of Readiness) to be tendered within a part of a day: for example, 0900–1700 Monday to Friday and 0900–1200 on Saturday. Particular attention should be paid to these types of clauses, especially if the cancellation clause is tied to the delivery or giving of notice within prescribed hours.<sup>9</sup> This is to avoid a potential consequence that the vessel might arrive within the laycan but tender notice outside of the permitted hours so that a valid delivery cannot take place and charterers may cancel when the time arises.

**“ ... owners are under an implied obligation to provide a date that is honest and based on reasonable grounds, and to exercise reasonable diligence to deliver the vessel by that date.**

Under clause 14 of the NYPE form, in the event that the ship is not ready for delivery by the cancelling date, charterers have the option to cancel the charter party. As a result, owners are under an implied obligation to provide a date that is honest and based on reasonable grounds, and to exercise reasonable diligence to deliver the vessel by that date. If that implied obligation is breached, depending on the exact terms of the charter party, charterers may also be entitled to claim damages.

If charterers elect not to cancel the charter party, owners remain bound to deliver the vessel with reasonable dispatch.

<sup>7</sup> See *The Niizuru* [1996] 2 Lloyd’s Rep. 66.

<sup>8</sup> The NYPE 1946 does not provide for advance notice of delivery to be given. The NYPE 1993 form does at clause 2.

<sup>9</sup> See *The Alpha Harmony* [2020] 1 Lloyd’s Rep. 409.

## Payment of hire and bunkers

*“That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than ... tons and not more than ... tons and to be re-delivered with not less than ... tons and not more than ... tons”* (Clause 3)

*“That the Charterers shall pay for the use and hire of the said Vessel at the rate of ... per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at ... unless otherwise mutually agreed. Charterers are to give Owners not less than ... days notice of vessel’s expected date of re-delivery, and probable port.”* (Clause 4)

It is obvious that, under clause 4, it is a valid delivery of the vessel that triggers the time from which hire will be earned by owners and must be paid by charterers, subject to the other terms of the charter party.

Under clause 3, charterers are required to purchase the fuel on board from owners with a corresponding obligation on owners to purchase the fuel back from charterers on redelivery (see Guide 6).

If a price is agreed in the charter, that is the price that must be paid. If no price is agreed, the price is usually taken to be the market price at the place of delivery.

If a quantity which is to be delivered is provided, an excess or shortage compared to that agreed quantity must be paid for in full with charterers having a right to damages in the event that the breach causes a loss. For example, if there is a shortage of fuel and the market price for bunkers at the place of delivery is higher than the price agreed in the charter party, or if there is an excess of fuel and the market price for bunkers at the place of delivery is lower than the price agreed in the charter party, charterers may claim damages.

If owners deliver the vessel without sufficient bunkers on board, it may make the vessel unseaworthy. Although unlikely to justify termination on its own, if the charter party requires delivery of a seaworthy vessel, the right to cancel might arise before owners are able to tender the vessel for delivery with sufficient bunkers on board.

**This note is intended for general guidance only and should not be considered as legal advice. For specific advice, please contact The Swedish Club.**