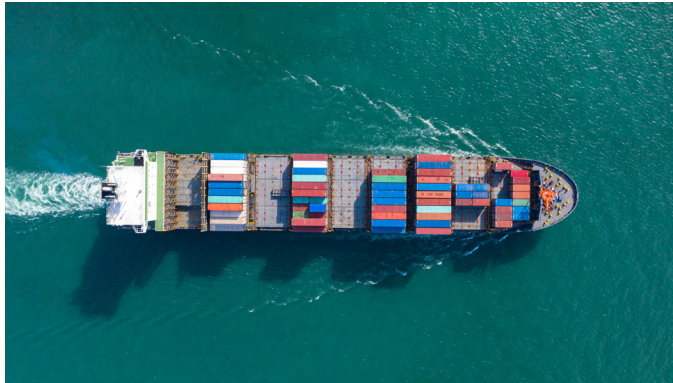


# Charterers' Liability Insurance



## Why do Charterers need cover?

Any maritime transit is subject to unforeseen risks which expose the Charterer to liabilities which may reach or exceed the value of the chartered vessel or the goods shipped. A Charterer is unlikely to be able to charter a vessel on terms under which they could resist or exonerate themselves from liability.

The Shipowner has insured his ship with a Protection & Indemnity (P&I) insurer and a cargo owner has hopefully insured his goods with a cargo insurer. Both these insurers will seek recovery for any claims and the Charterer is inevitably a party in the contractual chain who they will look to in order to recover their losses.

The Charterer has a dual contractual position having a contract with both the Shipowner (Time or Voyage Charter Party) and a contract with the cargo owners under which they become responsible for the operation of the vessel as a disponent-owner (Voyage Charter Party, Booking Note, Contract of Affreightment or direct Bill of Lading booking). Sometimes the contractual chain can be further complicated with back-to-back and sub-charters involving even more parties.

Even if a Charterer may feel they can resist such contract liabilities it is still appropriate to have insurance cover, as this would also provide costs for defending liability claims for which you may be held to be liable for even if you are ultimately found not to be liable.

## What liabilities do Charterers have?

Charterers' liabilities are the contractual and legal liabilities of the Charterer of a ship.

The Charterer is exposed to various risks. They often appoint their own agents and stevedores or hire superintendents to monitor the loading and unloading of cargoes. The Charterer may appear on the Bills of Lading or may even have signed the Bills of Lading in his own name.

Under any Charter Party the Charterer is ultimately liable for damages to the chartered vessel. These damages could be caused by stevedores, by an unsafe port or berth, by the cargo, or by the wrong fuel supplied to the vessel.

Apart from the major risks, being held liable for cargo and held liable for damages to the vessel, the Charterer may also be held liable for other claims, such as collision, personal injury, pollution, salvage, fines, stowaways, etc.

**For further information, please contact Hazel Downes  
Freight & Marine Manager.  
E: [hazel.downes@macbeths.co.uk](mailto:hazel.downes@macbeths.co.uk)**



T: +44 (0) 1628 532613  
E: [marine@macbeths.co.uk](mailto:marine@macbeths.co.uk)

[www.macbeths.co.uk](http://www.macbeths.co.uk)

# Charterers' Liability Insurance



## Types of Charterers and their Liabilities

### 1. Companies operating a liner service

These companies offer to their customers regular sailings, which are scheduled on a fixed time table in advance. It is likely that vessels would be chartered on time charter basis for longer periods. Local agents, who are appointed by the company operating the liner service, generally book the cargoes. Usually the bookings are concluded on the shipping line's Bills of Lading conditions and on a Liner Booking Note, which results in a contractual relationship between the liner company and the cargo owner.

#### THEIR LIABILITIES:

The liner company issue their own Bills of Lading, under which the liner company is becoming the Carrier and assume certain liabilities for the safe carriage of the goods. The cargo claims will be sent to the liner company, even if the claims are resulting from navigation errors or seaworthiness of the ship. As time charterer the liner company will be directing the ship to ports and will be liable for the damages to the vessel. The liner company also appoints stevedores for loading and discharging. Even if the stevedores would be liable for damages to the vessel, it is the time charterer's direct liability under the charter party with the Ship owner. Under a time charter party the Charterer has to buy the fuel for the vessel's engines. If the fuel supplied to the vessel is causing damages to the engines the time charterer will not be able to escape from liability.



For further information, please contact Hazel Downes  
Freight & Marine Manager.  
E: [hazel.downes@macbeths.co.uk](mailto:hazel.downes@macbeths.co.uk)

### 2. Companies transporting their own goods

These companies may be commodity traders or manufacturers, who need to deliver their own goods to various customers, or companies who are buying goods overseas, which need to be transported. It is common that companies in this category are primarily concerned about covering their risks for loss of or damage to their goods under a marine cargo insurance, however, as they also become the Charterer of a ship they take on board various additional liabilities.

#### THEIR LIABILITIES:

The main area of liability exposure is damage to the chartered vessel caused by stevedores during loading and discharging, or by the cargo carried, or by unsafe port or berth. In many Charter Parties the Charterer is also liable for a variety of loss of or damage to the cargo. This means the Charterer may be liable for loss of or damage to his own cargo, even if this risk is already be covered under a cargo insurance. At the time the loss or damage becomes apparent the Consignee is taking delivery against presentation of the Bill of Lading. If there is a loss or damage to cargo and a claim paid to the consignee the Cargo Insurers take over the rights of subrogation and can recover their loss from the Ship Owner under the Bill of Lading, which in turn can be recovered under the terms of the Charter Party from the Charterer who was the party who had arranged the insurance in the first place. The solution to this issue is to request a waiver of recourse clause when arranging the marine cargo insurance, which means that the marine cargo insurance company will stop their recovery should the assured (shipper) be held liable. With a waiver of recourse clause in place it is possible to exclude liabilities to cargo section under the Charterers' Liability Insurance, which can reduce the premium. This works for CIF sales or FOB purchases where the seller (shipper) not the buyer (consignee) is the Charterer of the vessel and where the required waiver of recourse clause can be agreed upon. However, under a CFR sale the buyer (consignee) will take out the marine cargo insurance, whereas the seller (shipper) is still chartering the vessel. In such cases it will be necessary to include in the Charterers Liability Insurance a contingent coverage for cargo liabilities.



T: +44 (0) 1628 532613  
E: [marine@macbeths.co.uk](mailto:marine@macbeths.co.uk)

[www.macbeths.co.uk](http://www.macbeths.co.uk)

# Charterers' Liability Insurance



## 3. Companies operating as freight contractor, freight agent or ship operator

This type of contractor/operator offers transport or logistics expertise. They neither own the vessel or the cargo, but bring the two parties together. In most cases there are two shipping contracts, in which this type of contractor/operator appears as a principal. With the cargo owner they contract under a Booking Note or Charter Party. The freight operator will appear in this contract as Disponent-Owner. Ships will be chartered on a Time Charter or on a Voyage Charter. In these Charter Parties the freight operator will appear as the Charterer.

### THEIR LIABILITIES:

This type of contractor/operator is exposed to a variety of liabilities, which can be covered under a Charterers' Liability Insurance. The operator not only has liabilities towards the Ship owner in the head Charter Party, but also as Disponent-Owner towards the sub-Charterer. In most cases these liabilities are not back-to-back.

## 4. Companies offering integrated services

For this category it is difficult to comment in general terms as you would need to consider the activities being undertaken but this could include NVOCC operators. The Charterers' Liability Insurance should be tailored to comprehensively cover the liabilities of this type of Charterer.



For further information, please contact Hazel Downes  
Freight & Marine Manager.  
E: [hazel.downes@macbeths.co.uk](mailto:hazel.downes@macbeths.co.uk)

## Types of Charter Parties

### Time Charter Party

The main characteristics of a Time Charter Party are as follows:

- the Ship owner takes care for a seaworthy ship with valid classification and employs the Captain and the Crew, enabling the ship to safely sail between the ports as ordered by the Charterer.
- the Charterer takes care for the loading, stowage, lashing/securing and discharge of the cargoes and gives the Captain orders and instructions as to the cargoes to be shipped to and from various ports.
- the Charterer orders and pays for the vessel's bunkers.

For the carriage of dry cargoes the BALTIME and the NYPE (New York Produce Exchange) form of Charter Party are commonly used.

### Voyage Charter Party

There are many forms but the one most commonly used for dry cargo is the Gencon Charter Party. The principle in all such forms is that the type of cargoes and the ports between which the cargoes are being carried are known beforehand. On Liner Terms the Ship owner takes care for loading, stowage and discharge, whereas on FIOS terms (Free In Out Stowed) the Charterer takes care for it. In both cases it is not the Charterer who gives instructions to the Captain, but always the Ship owner therefore the liabilities for a Voyage Charterer are slightly less than for a Time Charterer.

### Booking Note

A Booking Note is a contract between the cargo owner and a shipping company (Carrier) for the carriage by sea of certain goods. The form used in most cases is the "CONLINEBOOKING" Liner Booking Note. The special nature of this contract is that the terms and conditions of the Booking Note are superseded by the Bills of Lading conditions at the time of actual shipment of the goods.



T: +44 (0) 1628 532613  
E: [marine@macbeths.co.uk](mailto:marine@macbeths.co.uk)

[www.macbeths.co.uk](http://www.macbeths.co.uk)



# Charterers' Liability Insurance



## Bills of Lading

Whereas the Charter Party is a contract negotiated between the parties, the Bill of Lading is a document based on the clauses of the Bill of Lading and compulsory law, such as the Hague-Visby Rules. It comes into force on completion of loading and is binding between various parties who may not have contracted with each other.

### Types of Bills of Lading

1. Congen Bill of Lading – used in combination with Charter Parties
2. Conline Bill of Lading – used in liner trade
3. Through Bill of Lading – used in trades with on-carriage to final destination
4. Combined Transport Bill of Lading – used in trades with different means of transport (ship/ship/rail/road)

The Bill of Lading has three essential functions:

- 1) evidence for receipt of the goods on board at a certain date/place and in a certain condition;
- 2) evidence of the contract of carriage between the carrier and the Bill of Lading holder.
- 3) a document of title to the goods shipped. The holder of the Bill of Lading is entitled to the delivery of the cargo. The Bill of Lading is a negotiable document, it can be transferred to other parties during the voyage.

### Parties to the Bill of Lading

When goods are sold there is a seller and a buyer, who become the shipper and the consignee in the Bill of Lading. It is also possible that the goods are sold one or more times during the voyage, which means that the Bill of Lading is changing hands.

On the other side of this is the carrier. Primarily this is the shipowner, but if other names appear on the face of the Bill of Lading or if the Bill of Lading is signed on behalf of the Charterer, those other parties will be the carrier.

One of the issues with Bill of Lading law is that every case will be considered on the prevailing circumstances and many countries have different laws about the interpretation of the Bill of Lading.

### A Word of Caution

Check if the Charterers' Liability Insurance contains a warranty which may require that the Bills of Lading need to be issued and signed by or by authority on behalf of the Master.

The common reason for this warranty is simply to unravel the complexity of the Bill of Lading, and more importantly the liabilities resulting from it. It must therefore be clear from the beginning which liabilities an Insurers is being asked to cover before they will accept such risk. The Charterer of a vessel may control the loading, stowage and discharging of the cargo, make stowage plans, instruct the Master, appoint superintendents and agents etc, however, the responsibility for navigation, safety, compliance with ISM and ISPS and seaworthiness will remain with the Master and the Shipowner. Those responsibilities cannot be delegated to the Charterer. Just for this reason the Charterer should never voluntarily choose to become the carrier under the Bill of Lading.



**For further information, please contact Hazel Downes  
Freight & Marine Manager.**

**E: [hazel.downes@macbeths.co.uk](mailto:hazel.downes@macbeths.co.uk)**



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E: [marine@macbeths.co.uk](mailto:marine@macbeths.co.uk)

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# Charterers' Liability Insurance



## Insurances for Charterers

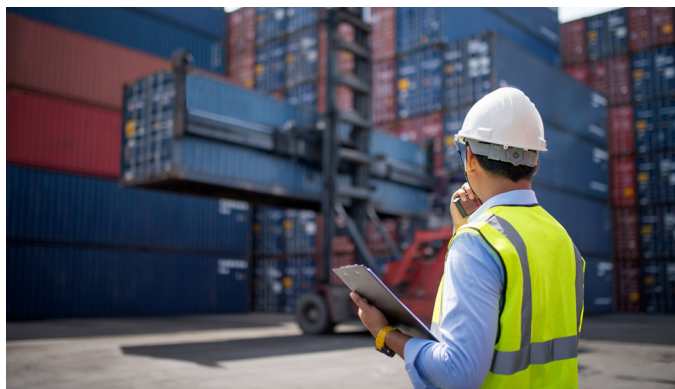
1. CHARTERERS' LIABILITY INSURANCE
2. MARINE DEFENCE INSURANCE
3. CARGO OWNERS' LEGAL LIABILITY INSURANCE
4. OPTIONAL EXTENSION INSURANCES

### 1. CHARTERERS' LIABILITY INSURANCE

Charterers' liabilities are the contractual and legal liabilities of the Charterer of a ship. Ship and cargo are together during the voyage, but the parties to be identified in the string of contracts are not. Certain liabilities are inherent to chartering and cannot be avoided.

Cover is provided for the following types of risk:

- damage to the vessel
- death and personal injury
- damage to property of third parties
- damage to cargo
- collision
- wreck removal
- quarantine costs
- pollution
- general average
- costs of formal investigations
- sue and labour costs
- fines



For further information, please contact Hazel Downes  
Freight & Marine Manager.  
E: [hazel.downes@macbeths.co.uk](mailto:hazel.downes@macbeths.co.uk)

The main risks are liability to loss of or damage to cargo, liability to damage to the vessel and costs, which are explained as follows:

### Liability to Cargo

Depending on the type of Charter Party and amendments the Charterer may be held liable for loss of or damage to cargo arising from:

- bad stowage
- handling damages (stevedores)
- shortages (pilferage, tally, etc)
- non-delivery (non-arrival, wrong port, etc)

### Liability for Damages to the Vessel

The principle rule is that the Charterer of a ship can be liable for damages to the vessel caused during the contracted voyage or period. Also, when in certain Charter Parties it is stipulated that stevedore damages have to be settled between the Owners and the Stevedores the Charterers are ultimately liable. The type of liabilities for which the Charterers can be held liable are:

- stevedore damages
- damage to the ship by the cargo carried
- damage to the ship by defective fuel oil
- unsafe port/berth

If the chartered ship must be repaired and the Charterer is liable for the damages to the ship the time lost by the repairs are also covered.

### Costs

All costs, which have to be made to defend a legal liability claim are covered under the Charterers' Liability insurance. The costs that are regularly incurred are survey expenses and lawyer fees. Even if the Charterer is not liable, but a party is pursuing a claim, the costs for such unwarranted liability claims are also covered.



T: +44 (0) 1628 532613  
E: [marine@macbeths.co.uk](mailto:marine@macbeths.co.uk)

[www.macbeths.co.uk](http://www.macbeths.co.uk)

# Charterers' Liability Insurance



## Common Restrictions and Exclusions

The most important restrictions and exclusions of a Charterers' Liability Insurance are:

1. It is not allowed to waive any rights of legal limitation sums, which will apply in any legislation or convention.
2. Cover for loss or damage to cargo is subject to Hague/Hague-Visby Rules. Any rights or immunities may not be waived. In countries where the Hamburg Rules apply compulsory cover will be extended accordingly.
3. P&I insurance will give subsidiary cover, which means that any other policy, which will cover certain liabilities, will prevail.
4. Loss or damage to own or leased containers or other own or leased equipment is not covered.
5. Loss of freight, hire or bunkers is not covered.
6. Loss of time as a result of cancellation of a vessel is not covered.
7. Financial losses resulting from bad debtors are not covered.
8. Insolvency or fraudulent acts of agents are not covered.
9. On carriage of goods the following occurrences are excluded from cover:
  - a) issuance of "ad valorem" Bills of lading
  - b) carriage of jewelries and banknotes, unless agreed in writing with the insurer
  - c) deviation of the contracted voyage
  - d) delivery of goods without original Bill of lading
  - e) issuance of ante- or post-dated Bills of lading
  - f) issuance of Bills of Lading with intentionally wrong description
  - g) carriage of goods on deck

For the items under a, b, c and g additional insurance can be obtained.

## Letters of Indemnity

Letters of Indemnity are sometimes negotiated to find solutions for irregularities (clean Bills of Lading, change of destination, delivery of cargo without original Bill of Lading). It should however be noted that the above restrictions and exclusions remain fully in force, even if a letter of indemnity is negotiated.

## 2. MARINE DEFENCE INSURANCE

This type of insurance covers the legal costs and expenses, which a Charterer is bound to make due to a dispute under the Charter Party or as a result of a dispute with any party related to the carriage of the goods for which a vessel was chartered.

The reasonable legal costs and expenses are covered in respect of claims and disputes in connection with risks such as:

- hire or off-hire, freight, deadfreight, detention, laytime, demurrage, despatch or any other claim or dispute under the Charter Party, Bill of Lading or another contract of carriage in respect of the Insured Vessel;
- supplies to the Insured Vessel;
- charges, disbursements and accounts received from agents, stevedores, customs, brokers, harbour authorities or other servants of the Assured;
- loading, stowing, trimming, discharging, lighterage of cargo on, or from the Insured Vessel;
- loss of, damage to or detention of the Insured Vessel;
- general or particular average contributions or charges;
- salvage or towage services rendered to the Insured Vessel;
- representation of the Assured at official investigations or other inquiries in relation to the Insured Vessel;
- actions by, or against passengers intended to be or being or having been carried on the Insured Vessel, provided the carriage of passengers was approved by the Company;
- actions by, or against crew members, or their personal representatives or dependants and stowaways;
- actions by, or on behalf of a State or any public body against the Assured or the Insured Vessel;
- amounts due from, or to insurers, other than the Company.



# Charterers' Liability Insurance



## 3. CARGO OWNERS LEGAL LIABILITY INSURANCE

In addition to the Charterers' Liability, cover for Cargo Owners Legal Liability insurance can be provided. This will mainly be of interest to traders of certain cargo (such as oils, chemicals and gas) which may cause pollution and would provide cover to the charterer in his capacity as owner of the cargo (as opposed to or in addition to his capacity as charterer of the vessel) for pollution claims.

## 4. ADDITIONAL INSURANCES

In addition to the above there are other additional insurances available such as:

### Bunker Insurance

A Time charterer is buying the vessel's fuel. This value can be insured against total loss following an incident with the chartered vessel. This will also cover the contributory value in case of a General Average.

### Freight Insurance

When the freight to be earned for the voyage becomes only payable on or after delivery of the goods in the discharging port, the freight value is at risk during the voyage. If the cargo is lost during the voyage the Charterer will not receive the freight. This risk can be covered with a freight insurance.

### Detention Insurance

This insurance is to cover the net loss of the Charterer if he is unable to use the vessel following damage to the vessel for which the Charterer is legally liable under the Charter party. This insurance will indemnify the Charterer for loss of earnings and/or additional expenses and/or damage and/or loss of vessel(s) resulting from detainment and/or confiscation and/or arrest and/or restraint and/or seizure and/or expropriation or any other form of detention or loss of free use and disposal of vessel(s) by any government or port or customs authority and/or any authorized bodies and/or claimants on the vessel in which the assured has no interest, including but not limited to the discovery of or the suspicion of the presence on board of illegal narcotics or drugs or by reason of any other infringement of customs or other regulations.

Loss or earnings as declared at time of attachment, and additional expenses (to be proved at time of loss) to include but not to be limited to costs of transshipment, crewing (including repatriation and substitution expenses), bunkers, demurrage, warehousing, substitute chartering, depreciation, cargo liabilities, legal expenses and cost of providing security to obtain the release of a vessel but excluding any fines or penalties absolutely.

## Shipowners' Liability Insurance

Notwithstanding the name Charterers also benefit from this. A Charterers' Liability Insurance is covering a regular sequence of events all in conformity with underlying contracts. The standard rule is that cargo must be shipped as stated on the Bills of Lading. If the Charterer commits

a breach of contract, which is subject to an exclusion as stated above under "Common Restrictions and Exclusions" it is possible to arrange cover under a Shipowners' Liability Insurance but the breach or deviation must be reported prior to commencement of the voyage, so that the cover can be arranged.

Examples of a deviation or breach of contract are

- Transshipment without being mentioned in the Bill of Lading
- Cargo shipped on deck whereas under deck Bill of Lading B/L is issued
- The Bill of Lading is ante-dated or post-dated
- Actual port or ports is not in conformity with the port or ports in Bill of Lading
- Intermediate storage cargo before delivery as per Bill of Lading
- Geographical deviations, which are not mentioned in the Bill of Lading

## Charterers' War Risks

This insurance is to cover the legal liability and expenses as Charterers in respect of War Risks.

**For further information, please contact Hazel Downes  
Freight & Marine Manager.**

**E: [hazel.downes@macbeths.co.uk](mailto:hazel.downes@macbeths.co.uk)**



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E: [marine@macbeths.co.uk](mailto:marine@macbeths.co.uk)

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