



## ADVISORY NOTE

### **General Average and New Jason Clauses in WINDTIME, SUPPLYTIME 2017 and ASVTIME.**

The purpose of this Advisory Note is to inform users of BIMCO's WINDTIME, SUPPLYTIME 2017 and ASVTIME contracts that they need to decide either to exclude or include General Average and New Jason Clauses into their charter parties if the operating vessel is carrying cargo, property and/or equipment belonging to charterers or members of the "Charterers' Group" as defined in PART II. The reason why users need to make such decision is that the absence of these clauses in the above charter parties does not exclude the entitlement to claim general average.

Contrary to SUPPLYTIME 2005, the WINDTIME, SUPPLYTIME 2017 and ASVTIME charter parties do not contain a General Average and New Jason Clause (cf. SUPPLYTIME 2005 Clause 26). When WINDTIME, which is modelled on SUPPLYTIME 2005, was developed cargo specific clauses from SUPPLYTIME 2005 that were not considered relevant to transfer vessel operations, such as the General Average and New Jason Clause, were removed altogether. When developing SUPPLYTIME 2017, the approach taken in WINDTIME was maintained, i.e. not to have a General Average and New Jason Clause. The same is the case when, in 2021, BIMCO published ASVTIME modelled primarily on SUPPLYTIME 2017.

The principles of general average, and the entitlement to make claims under those principles against other parties to a maritime adventure, are firmly embedded in the law of all maritime countries, whether as a matter of common law, civil law or statute. The absence of a General Average Clause in a contract, therefore, does not mean that general average principles may not be relied upon by one of the parties involved in a casualty as a basis for making a claim in respect of their general average expenditure and/or losses, under whatever jurisdiction they may argue to be applicable. However, any such claim is likely to be made more complex and contentious in the absence of a General Average Clause in the charter party, which specifies who must adjust the general average allowances and according to which York-Antwerp Rules.

If parties elect to specifically exclude any contribution to their general average sacrifices/expenditure arising during the course of a charter party, the following clause should be inserted in the charter party:

#### "General Average

It has been expressly agreed between the Parties that claims on the basis of general average shall not be made by or between the Parties to this Charter Party, including those listed in the "Charterers" and "Owners" groups, or their insurers. Any sacrifices or expenditure of a general average nature shall be treated as falling under the provisions of the Knock for Knock clause."

Parties should contact their insurers to seek advice on the implications of their insurances of expressly excluding the right to claim contributions to general average sacrifices/expenditure including to ascertain whether any additional cover is needed.

If parties elect to include general average in the WINDTIME, SUPPLYTIME 2017 or ASVTIME contracts of carriage then they should include the BIMCO General Average Clause which states that general average shall be adjusted, stated and settled according to the York-Antwerp Rules 2016. For contracts with a US nexus, parties should also include the BIMCO New Jason Clause which requires the cargo owner to contribute to general average in case of events whether due to owners group negligence or not, for which the carrier is not responsible.

The [General Average Clause](#) and [New Jason Clause](#) are available via SmartCon and on the BIMCO website.

If parties include one or both of these clauses, they should add an exception in the Knock for Knock paragraph of the Liabilities and Indemnities Clause of the respective contract, similar to the exception for Clause 26 (General Average and New Jason Clause) in Clause 14 (Liabilities and Indemnities) of SUPPLYTIME 2005 (see subclause 14(b)(i) and (ii)). In WINDTIME, the exception should be made in subclause 16(a)(i) and (ii); in SUPPLYTIME 2017, the reference should be made in subclause 14(a)(i) and (ii); and in ASVTIME, the reference should be made in subclause 16(a)(i) and (ii).

Background information about general average is available in the CMI Guidelines relating to General Average which are part of the [CMI GA Guidelines and Security Forms Handbook](#) available on the CMI website.