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CONVERSIONCON - BIMCO's New Standard Form Conversion Contract

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Introduction

BIMCO has launched CONVERSIONCON, a standard form conversion contract for the conversion of ships.

Ship conversion typically occurs in two scenarios: when a shipowner expects future hire or freight rates will not justify incurring the capital costs of a newbuilding to service a particular opportunity and decides instead to convert an existing vessel; or where an existing vessel can be repurposed to a more profitable use. In recent years, energy related projects have been a frequent driver for conversions, for example in the oil and gas arena numerous conversions of vessels into FPSOs or FRSUs, and in the offshore renewable energy arena the conversion of various ships and drilling units to offshore support vessels, crane and installation vessels to be used on offshore renewable projects.

Vessels can undergo conversions ranging from small-scale modifications to full-scale conversions that completely change the Vessel's design and purpose. It is more akin to ship repair than ship construction (particularly as it relates to works to be undertaken to an existing vessel, the title of which already rests with the Owners) and as a result BIMCO had previously directed parties using the BIMCO suite of documents to utilise the REPAIRCON 2018¹ (BIMCO's standard contract for ship repairs) as the starting point for preparing a conversion contract, rather than use NEWBUILDCON (BIMCO's standard shipbuilding contract). As a result, a number of clauses contained in the CONVERSIONCON are very closely aligned to those of REPAIRCON 2018.

Structure and Layout

CONVERSIONCON comprises of Part I and Part II followed by Annexes A through to I (a summary of Part I, Part II and the Annexes is set out below).

Part I: traditional box form common in BIMCO standard contracts.

This includes provisions such as the Shipyard and place of delivery, Contract Price and Currency, Delivery Date and Redelivery Date, Warranty Period and Contractor's Liability including a cap on liquidated damages for late redelivery and special technical requirements. It also requires the parties to determine which party will be responsible for engaging (and the costs of) the Classification Society and other regulatory authorities (Box 6) and the arrangements to apply in respect of guarantees to be provided in favour of Owners and Contractors (Boxes 19 to 21).

¹ <https://www.bimco.org/contracts-and-clauses/bimco-contracts/repaircon-2018>

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Part II: detailed clauses.

This part begins with Definitions and Interpretations. It is then followed by six sections: Scope of Work, Financial, Performance of Conversion Works, Redelivery, Legal, Sundry. Notable clauses from these sections are explored below.

Key clauses in Part II

Delivery (Clause 3(a))

This clause is comparable to clause 5 of REPAIRCON 2018. In both standard form contracts the Delivery Date is the date that the Vessel must be delivered to the Contractors (clause 3(a)(i) in CONVERSIONCON and clause 5(a)(i) in REPAIRCON 2018). Owners are required to keep the Contractors informed of any changes to the Delivery Date, although CONVERSIONCON also requires notices of delivery to be provided prior to delivery in accordance with BOX 11. Both contracts also provides that the Vessel must be '*free of [...] any substances in the structure of the Vessel ... [which are] dangerous or harmful to health in the performance of the Conversion Works*' in (clause 3(a)(ii) in CONVERSIONCON and 5(a)(i) in REPAIRCON 2018).

Delayed Delivery and Termination (Clause 3(b))

This subclause sets out the consequences if Owners deliver the Vessel late (i.e. after the Delivery Date). If the date on which the Owners are able to deliver the Vessel is after the Delivery Date but before expiry of the Delayed Delivery Date Grace Period, the Contractor is obliged to accept delivery but with a corresponding extension to the Redelivery Date. If it is outside the Delayed Delivery Date Grace Period, but before the Termination Date (at which point the Contractor is entitled to terminate the contract subject to giving written notice in accordance with clause 38(b)), the Contractor is obliged to accept delivery but shall be entitled to request variations under clause 21.

Payment (Clause 6)

The payment of the Contract Price is by instalments (amounts and timings being set out in Box 15 of Part I). The first instalment payment is linked to the Owners' receipt of the guarantee in favour of the Owners and thereafter subsequent instalments are tied to calendar dates (without any linkage to the actual progress of the conversion works).

Title during the works (Clause 13)

CONVERSIONCON addresses the title to materials and equipment during the works and broadly reflects common practice i.e. the title to materials and equipment to be permanently removed from the Vessel after the conversion passes to the Contractors when they are removed from the Vessel (except propellers, tailshafts and heavy machinery); while title to materials and equipment intended for the conversion passes to the Owners when delivered to the shipyard, incorporated into or fixed to the Vessel, whichever occurs first.

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Consistent with REPAIRCON 2018, and also NEWBUILDCON, Contractors cannot create a lien over the Vessel as a consequence of their work (clause 13(c)(i)). The only lien Contractors can exercise is for outstanding payments (clause 13(c)(ii))

Design (Clause 15) Approval of Plans and Drawings (Clause 16) and Owners' Supplies (Clause 17)

By including arrangements to allocate responsibility for design, as well as setting out a process for plan and drawing approvals and detailing the arrangements to apply to Owners' Supplies, the CONVERSIONCON recognises significant matters that require careful consideration in respect to any conversion project (and which were at risk of not being addressed at all when parties sought to undertake conversion works on the basis of an amended REPAIRCON 2018).

Owners' Work (Clause 18)

Contractors cannot unreasonably withhold their consent to Owners undertaking their own works to the Vessel so long as such works do not interrupt the conversion and comply with the Contractors' safety, security and environmental rules.

Variations (Clause 21)

Both parties have the right to request variations. The Contractors' right to do so is limited to (i) 'minor' variations to the Specification and/or plans and while these can only be made after the Owners' written approval has been obtained, that approval cannot be unreasonably withheld or delayed; and (ii) certain express rights to request variations arising from delay in delivery of the Vessel or from matters associated with design and/or plan and drawing approvals. As to Owners' variations, these can extend to 'reasonable' variations in the Specification and/or the Plans and Drawings and Owners have the option to order the Contractors to proceed with the requested variation leaving the consequences of implementing such variation to be decided under the Dispute Resolution arrangement of the contract.

Dispute Resolution (Clause 40(c))

The law and arbitration clause provides for English law and London arbitration under the LMAA Rules unless the parties state otherwise.

Liability for Damage to or Loss of the Vessel and Conversion Works (Clause 35(c))

Liability and responsibility for damage or loss of the Vessel and conversion works rests broadly with the Contractors until the Vessel is delivered.

Insurances (Clause 37) and Annex H - (Insurances)

The CONVERSIONCON insurance provisions seek to address (and allocate responsibility for) a number of the insurance related matters that both Owners and Contractors will need to carefully consider in relation to the insurance arrangements that are to apply in respect of any conversion project.

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Suspension and Termination (Clause 38)

The Owners and Contractors have the right to suspend performance of their obligations under the Contracts in the event of the insolvency of the other. Additionally, the Contractors have the right to suspend performance of their obligations in the event of non-payment of instalments of the Contract Price. The Owners' express rights to terminate the CONVERSIONCON are linked to failure of the Contractors to provide the necessary guarantee in favour of the Owners, delays in redelivery and insolvency of the Contractors. The Contractors' express rights to terminate the CONVERSIONCON are linked to failure of the Owners to provide the necessary guarantee in favour of the Contractors, failure by the Owner to deliver the Vessel by certain dates, failure (subject to a remedy period) of the Owners to pay to Contractors any sums (when they are due and payable to Contractors under the Contract) and insolvency of the Owners.

The parties have further express termination rights in respect of sanctions (Clause 47) and anti-corruption (Clause 48) arrangements.

Annexes A through to I.

The titles of the annexes are as follows: Specification, Maker's List, Vessel Documentation, Owners' Guarantee, Contractors' Guarantee, Special Technical Requirements, Health, Safety, Security, Environment, Insurances, Protocol of Redelivery and Acceptance. The Specification remains a key document with other clauses in Part II prompting the parties to address issues such as the basic design, detailed design (clause 15), storage and handling of Owners' supplies (clause 17) and sea trials if required (clause 24) in the Specification.

Commentary

CONVERSIONCON, provides a framework which parties can use as a starting point for their conversion contract negotiations (and will certainly provide a more useful starting point than REPAIRCON 2018 or NEWBUILDCON). It is expected, however, that the vast majority of conversion projects will require revisions to be made to material terms of CONVERSIONCON to fit with the particular requirements of the project (including incorporation of appropriate rights and obligations to protect the interests of parties and reflect the potential risks to the parties that may arise from a conversion project).

The new standard contract can be viewed via BIMCO's website: <https://www.bimco.org/Contracts-and-clauses/BIMCO-Contracts/CONVERSIONCON>

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