

# BIMCO Force Majeure Clause 2022

*NOTE: This is a model clause and the parties should adapt it to fit the nature of their agreement. It should not be included in any agreement without careful consideration. Caution is urged when including the clause in a period time charter party with a broad trading area. We strongly recommend that the parties read the explanatory notes before incorporating this clause.*

(a) **Definitions** - “Force Majeure” means the occurrence of an event or circumstance as defined in (b) below (“Force Majeure Event”) that prevents a party from performing one or more of its contractual obligations (“the Affected Party”), provided that such party proves:

(i) the existence of a Force Majeure Event;

(ii) that such Force Majeure Event is beyond its reasonable control;

(iii) that the Force Majeure Event could not reasonably have been foreseen at the time of the conclusion of the contract; and

(iv) that the effects of the Force Majeure Event could not reasonably have been avoided or overcome by the Affected Party.

(b) **Force Majeure Events** – For the purpose of this Clause the following shall be Force Majeure Events:

(i) actual, threatened or reported war, act of war, civil war or hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines;

(ii) act of piracy and/or violent robbery and/or capture/seizure; act of terrorists; act of hostility or malicious damage;

(iii) blockade, generally imposed trade restriction, embargo;

(iv) act of government or public authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation;

(v) plague, epidemic, pandemic;

(vi) act of God, natural disaster or extreme natural event such as earthquake, landslide, flood, or extraordinary weather condition;

(vii) explosion; fire; destruction of equipment; destruction of port facilities; obstruction of waterways; cyber security incident; break-down of transport, communication, information system or power supply; in each case unless caused by negligence of the Affected Party;

(viii) ionising radiation or contamination by radioactivity, chemical or biological contamination;

(ix) general labour disturbance such as boycott, strike and lock-out, occupation of factories and premises; in each case unless limited to the employees of the Affected Party or a third party engaged by it; or

(x) any other similar event or circumstance unless caused by negligence of the Affected Party.

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(c) **Notices and Mitigation** – The Affected Party shall:

(i) give written notice of the Force Majeure without delay to the other party identifying the relevant Force Majeure Event and its anticipated effect on the performance of one or more of its contractual obligations;

(ii) exercise reasonable endeavours to minimise the effect of the Force Majeure Event upon its performance of the contract and provide any relevant information and documentation to the other party in relation to the Force Majeure and the measures taken; and

(iii) notify the other party as soon as the Force Majeure Event ceases to prevent performance of its contractual obligations.

(d) **Cooperation** – The parties shall cooperate to minimise the effects of the Force Majeure on performance of the contract and shall discuss in good faith alternative ways in which the contract can be performed and/or the effect of the Force Majeure can be minimised.

(e) **Non-liability for breach** – Neither party shall be considered in breach of contract nor liable in damages for delay in or for non-performance of one or more of its contractual obligations to the extent caused by the Force Majeure from the time a valid notice under subclause (c)(i) was given.

(f) **Continuing payment obligations** – Nothing in this Clause shall impact on either party's payment obligations under the contract unless those payment obligations are directly affected by the Force Majeure.

(g) **Termination** – Where a valid notice has been given in accordance with subclause (c)(i) above and the Force Majeure has the effect of:

(i) rendering the performance of the contract impossible, illegal or radically different from what was intended at the time of the conclusion of the contract; or

(ii) substantially affecting the performance of the contract as a whole and the duration of the Force Majeure exceeds [ .....] days from the time notice was given (if this space is left blank then this subclause (g)(ii) shall not apply).

either party has the right to terminate the contract by written notification within a reasonable period to the other party.

Where a party terminates under this subclause (g) both parties shall be discharged from future obligations only and neither may claim damages for the other's future non-performance. The parties must perform all obligations not affected by Force Majeure up to the date of the termination with any sums paid in advance and not earned or due being refunded, save where the contract or applicable law provides otherwise. Nothing in this Clause shall impact on any separate rights of termination under this contract or at law.