

EXPLANATORY NOTES ON  
OPERATION CONTRACT  
(Code Name "ITAKU")

by

The Japan Shipping Exchange, Inc.

General Background

The Documentary Committee of the Japan Shipping Exchange, Inc. have long been carrying on the drafting and review works of the contract forms for maritime dealings, with the view to advancing the progress of maritime transactions and contributing to the prosperity of the maritime businesses. The maritime contract forms and the relating documents already formulated by the Documentary Committee are presently about forty in number, of the English and the Japanese texts.

As one of these achievements of the Documentary Committee, an English Form for the Operation Contract was drafted and published on April 25, 1977. This is to fill the requirement of the shipping market, where the Operation Contract has been, and is, in great use, as one way of utilizing a vessel, especially on the coastal and adjacent seas of Japan, in connection with the use of the contract forms of Bareboat, Time and Voyage Charter Party, etc., all in the English language texts.

The Operation Contract is a contract wherein the Owners entrust, at their own risk and for their account, the Operators with the operation of the vessel, and pay the Operators who are the trustee the remuneration for the operation of the vessel which shall be determined according to proportion to, pro rata, the earnings of the vessel accruing from her operating by the Operators.

One of the features of this Contract is that the Owners unconditionally entrust the Operators with arrangement for the operation of the vessel, and yet the Operators operate the vessel at the risk and for the account of the Owners resulting from such operation of the vessel.

It may be said, accordingly, that this Contract is frequently made and utilized in such cases where there exist close relationships, personal and/or capital-wise, between the Owners and the Operators. If not, there exist, in most cases, an entire mutual confidence between the two parties, when such Operation Contract is concluded.

When the shipping market is active and steady, the Owners rather than the Operators wish to conclude this Operation Contract. This is because the Owners can obtain much more earnings from the operation of the vessel, against the use of the vessel by the time charter. Conversely, when the market is dull, the Operators rather than the Owners hope to rely on this Contract as this involves a smaller risk of payment commitment on the part of the Operators, compared with a case of a time charter.

In drafting the present Form, a Sub-Committee was established to work under the Documentary Committee. The Sub-Committee particularly tried to provide clearly and concretely as possible, the terms and conditions for the rights and obligations of the Owners and the Operators.

The Sub-Committee at the same time tried its best efforts to formulate the contents of the Contract, so that there be left no room of doubt or ambiguity in conclusion and execution of the Contract.

This Contract Form is a realization of the long established maritime dealings in English language text. It is expected that this Contract

Form will become widely used, with general approval and acceptance in the international shipping circles, as one form of utilizing the vessels.

#### Title

The OPERATION CONTRACT is adopted for the English title of the present Contract Form, for simplicity and for availability as an approved and accepted contract form in the international shipping circle, although in the private contracts of this business has ever used such titles as Agreement for the Undertaking of Vessel Operation, Ship Operation Trust Agreement, Service Consignment Agreement, Voyage Management Agreement, Ship Operation on Commission etc., all English translations of the Japanese title of the Japanese Contract Form of UNKO ITAKU KEIYAKUSHO, drafted and established by the Japan Shipping Exchange, Inc. or the like. The word OPERATION will well suggest the character of the international shipping services between the parties and the shippers of the cargo. The sub-title UNKO ITAKU KEIYAKUSHO is added in order to show that this Contract Form carries the image already established in Japan as one of the specific practices in the shipping services of the Owners and the Operators of Japan.

#### Format

The Contract Form consists of Preamble, Part 1 and Part 2, comprising four pages of A-4 size paper. Each line is numbered.

Preamble and provisions of Part 1 are described in print and in blanks which are to be filled by typewriter wordings agreed upon by the parties of Contract, while the provisions of Part II are all shown in prints.

## Preamble

For the parties of the present Contract, the words the Owners and the Operators are used, in consideration of the characters of the contract for entrust and its acceptance of the vessel, and easier acceptance by the shipping business circle, although in the English contract ever in use such words as Trustor, Trustee or Consigner, Consignee are used.

Blank spaces are for entry to indicate the name and address of the Owner, whether the chartered owners and/or the disponent owners, the name of the vessel, the name and address of the Operators.

## Part 1

Particulars to be entered shall be decided in advance by and between the parties of the Contract and entries to be made accordingly.

The blank space following Item (n) Special provisions is prepared for entries of such provision or provisions additional to those already described in print, or of those wordings and/or sentences required through change of, or other than, those wordings already in print.

Following the above, both parties of the Contract are to sign at the rest of the blank space of the Item (n).

## Part II

### Article 1:

This is the general provision to explain the contents of the present Operation Contract.

Articles 2 and 3:

These Articles provide the contents equivalent to the contents expressed in the charter party by the wordings laydays/cancelling date.

Article 3 is provided to clarify the rights and obligations of the Operators, although there is an opinion saying that this provision is not necessary since Article 1 already provides that the operation of the vessel is to be carried on at the risk and for the account of the Owners.

Article 4:

The first half of Article 4, paragraph (1) provides the cause which leads the Operators to agree to carry on operation of the vessel on the present Operation Contract, the cause being only because the Operators are desirous of making a contract with the shippers and/or the owners of the cargo to carry the said cargo by sea, or in some cases, desirous of contracting a time charter party with prospective charterers.

The latter half of Article 4, paragraph (1) provides the substantial contents of the present Operation Contract, enumerating the arrangements normally required for operation of the vessel, the contents of which may be considered quite similar, especially regarding the use and utilization of the vessel, to the conducts of the charterers of a time charter party.

Article 4, paragraph (2) provided the actual range of the Owners' businesses for operation of the vessel; namely, to the effect that in ordinary cases, such businesses as arrangement of crew members, repair and maintenance of the vessel and insurance covering the vessel, etc., are to be arranged by the Owners at their own cost and expenses, but in any unlikely event of emergency such as where a substitute or substitutes

must be arranged for unpredicted personal accident of a crew member or members who become ill or bodily damaged, and/or emergency measures must be taken for or against unexpected accident on the vessel, the Operators may at their discretion, and on behalf of the Owners, the whole, or a part or parts of the Owners businesses described as above.

Article 4, Paragraph 3 stipulates the major obligations of the Operators entrusted with the vessel. These obligations include that the Operators are to treat the entrusted vessel as far as possible as if it were their own and that the Operators should not discriminate the entrusted vessel without fair reason concerning the terms and conditions of the contract, inter alia, regarding freight or charterage.

Article 5:

This Article provides that the Operators may issue, if required, B/L. Provision for claims brought against the Operators by B/L holders because of the Operators having issued B/L is stipulated in Article 13.

Article 6:

The Owners shall pay the remuneration for the operation of the vessel to the Operators, and the remuneration is to be calculated in a form of percentage basis as is stipulated in Part 1, paragraph (g) which reads that Remuneration for Operation (Cl.6) should be \_\_\_\_\_% on gross freight or hireage.

Here lies the unique character of the present Contract. Gross freight means an amount obtained by multiplying the loaded quantity of cargo by the freight rate and does not include the demurrage nor despatch money.

Article 7:

This Article provides all the cares that the Operators should pay, in arranging the vessel for operation, when the Owners entrust the Operators with the vessel.

Article 8:

This Article relates to businesses of inspection and drydocking of the Vessel. Inspection and drydocking of the vessel are originally to be arranged and performed by the Owners at their expenses. This Article provides the Owners' duty of advice regarding the above arrangements.

Article 9:

Article 9 provides in paragraph 1 the charges and expenses to be borne by the Owners and in paragraph 2, how to settle these charges and expenses borne by the Owners as well as the accounts due to them.

Article 10:

This provision is provided on the ground that there will be some cases in which the Operators are unable to recover the freight immediately because of the terms freight-to-collect, while the Operators sometimes have to advance no small amount of money such as expenses for fuel and port charges. With a view to preventing excessive monetary burden left on the shoulders of the Operators, this Article provides cash advance by the Owners in the form of a revolving fund. When the Operators have made use of moneys in the revolving fund advanced, then the freight received by the Operators shall be reimbursed into the revolving fund.

Article 11:

This provision is similar to the provision concerning the termination of charter in the time charter party.

Article 12:

The provision concerns responsibility of the Owners regarding seaworthiness of the vessel. The Owners shall not assume any responsibility for seaworthiness of the vessel, because the Owners are only entrust the Operators with operation of the vessel and not conclude any contract for carriage of goods by sea nor a charter party.

The Operator, on the other hand, assumes all responsibility of seaworthiness of the vessel, when the Operators make a contract of carriage of goods by sea or a voyage or time charter with the shippers of cargo, which leads to a result, should any loss or damage arise as the consequence of any defect or want of due diligence in seaworthiness of the vessel, such loss or damage shall be borne by the Operators. Yet the final responsibility in such a case is to be assumed by the Owners, since the vessel is operated at the risk and for the account of the Owners, as stipulated in Article 1.

The Article 12 provides to the above effect.

Article 13:

The liabilities of the Owners and the Operators depend in the main on whether which party did not or failed to exercise due diligence provided in Article 4, Paragraph 3, while the liabilities of the Operators against the other third parties including B/L holders are to be dealt under this Article. Whether the Operators are to be held responsible for the



claims and/or legal actions or not solely depends on whether or not the Operators exercised due diligence in operation of the vessel.

Article 14:

The Article 14 concerns pollution arising from use and disposal of oil and others, of which a number of regulations, rules, acts and laws have been enacted at home and abroad. The Article 14 is provided, taking such recent trend into consideration still sticking to the features of the present Contract in effect.

Article 15:

In view of the unique character and object of the present Contract, the provision is made regarding war and requisition.

Article 16:

The provision for the breach of the Contract is made.

Article 17:

The Article is provided in the wordings used in the arbitration clause in other Contract Forms in the English language drafted and formulated by the Exchange.

Article 18:

The Article 18 provides a brokerage in the dealing concluded.