



LOIs for commingling or blending cargo on board

Shipowners carrying oil in bulk may sometimes be asked to commingle or blend cargoes. The following article examines some of the risks involved in this practice and suggests a wording for an indemnity in case an owner decides to run this risk for commercial reasons. Any liability arising from this practice is outside the scope of the P&I cover.

Published 05 August 2003

The information provided in this article is intended for general information only. While every effort has been made to ensure the accuracy of the information at the time of publication, no warranty or representation is made regarding its completeness or timeliness. The content in this article does not constitute professional advice, and any reliance on such information is strictly at your own risk. Gard AS, including its affiliated companies, agents and employees, shall not be held liable for any loss, expense, or damage of any kind whatsoever arising from reliance on the information provided, irrespective of whether it is sourced from Gard AS, its shareholders, correspondents, or other contributors.

Commingling or blending cargo on board

Commingling or blending is mostly associated with oil cargoes in bulk. Cargo interests may wish to blend cargoes loaded on different dates, at different places, or with different specifications.

Shipboard commingling or blending of cargo is not done without risk. The commingling or blending may affect the specification of the cargo already loaded and the carrier may be held liable under any bill of lading already issued for such cargo. The same liability may arise under the bill of lading to be issued for the second parcel of the cargo to be loaded. While a remark can be inserted in the bill of lading for this parcel drawing attention to the commingling/blending, should the cargo be loaded in apparent good order and condition there will be no basis for clausuling which casts doubt on its apparent order and condition. There may also be complications with regard to dates and places of shipment stated in the bills of lading. If dates and places are different, a single bill of lading should not be issued.

Most blending is performed in shore tanks and the greatest degree of accuracy is achieved when entire shipments are pre-mixed in shore tanks prior to transfer. However, within the industry, on board blending is apparently a recognised means by which the cargo may be prepared to specification (if nothing goes wrong) in the vessel's tanks, normally by volumetrically blending individual components.

On board blending offers certain conveniences to suppliers, particularly to oil traders that may have limited (or no) terminal facilities. Shipboard blending allows traders to meet certain issues in their business, including: – Limited storage space – Freedom to choose suppliers – Limited inventory – Considerable physical distance between product components

Compared to other methods of blending, i.e., batch blending in a storage tank or in-line metered blend components, on board blending is a complex alternative. Some of the negative aspects of this type of blending are: – Greater number of variables and unknowns – Errors are more difficult to fix – Physical mixing is limited

Letters of indemnity

The starting point is that the charterer or shipper has no right to require commingling or blending, unless this has already been agreed in the charterparty. On the contrary, the law specifically requires the carrier to segregate parcels loaded at different times, even if they are of the same grade. As one will appreciate, shipboard commingling or blending is clearly outside the normal scope of the carrier's obligations under the Hague/Hague-Visby Rules and as such it will most likely affect the P&I cover for any liability which may arise as a consequence.

A carrier who, for commercial reasons, wishes to comply with a request from a charterer to commingle or blend on board, should require a suitable LOI offering best possible security in terms of any liability that may be incurred and also in respect of costs and expenses incurred including loss of time. After all, additional costs or liabilities due to blending should be for the charterer's account.

Further, it is extremely important that the charterer's orders regarding blending of cargo are in writing, including the name of the charterer's authorised signatory. The orders must be clear, so it can be shown later exactly what the charterer required. Last and perhaps most important, owners should always seek confirmation in writing from charterers/shippers that the receivers/consignees, who are buying the cargo, know about and agree to the proposed blending.

Wording

Gard appreciates that some of its members would like to have a suitable LOI wording easily available when needed. Members may wish to use the following as a basis from which to work. It should, however, be emphasised that the decision whether to accept any LOI and if so, the form and wording of such LOI, is solely a commercial decision for members to take. Any liability falling on a member by reason of their complying with a request to commingle or blend the cargo will not be covered by the Club by reason of Rule 34 of the Association's Statutes and Rules.

LETTER OF INDEMNITY FOR BLENDING/COMMINGLING CARGOES ON BOARD AND SUBSTITUTING BILLS OF LADING

To: [insert name of shipowners] The Owners of the [insert name of ship] [insert address]

[insert date]

Dear Sirs,

Ship: [insert name of ship] Voyage: [insert details] Charterparty dated [insert date] between [insert name of parties] Bills of Lading [insert identification numbers, dates and places of issue]

The above vessel has loaded the following cargo(es):

a) at [place]...on [date]...,...m/t of [type of cargo]... b) at [place]...on [date]...,...m/t of [type of cargo]...

and bills of lading have been issued as follows:

Bills of lading [insert identification numbers, dates and places of issue]

Further to the above, the vessel is to load/ has loaded [delete as appropriate] the following cargo(es):

c) at...on...,...m/t of... d) at...on...,...m/t of...

and bills of lading were to be/have been [delete as appropriate] issued accordingly. Bills of lading [insert identification numbers, date and place of issue]

We, [insert name of requesting party], Charterers of the above vessel under the above charterparty, now wish the cargo(es) referred to in (...[a, b, c or d]) and (...[a, b, c or d]) above to be blended/commingled on board the vessel and hereby request you order the vessel to perform the said blending/commingling of the cargo(es).

We also request you to substitute the original bills of lading for the cargo(es) referred to in (...[a, b, c or d]) and (...[a, b, c or d]) above with new bills of lading for cargo(es) referred to in (...[a, b, c or d]) and (...[a, b, c or d]). The new bills of lading are to be issued in the same form and content as the substituted bills, except as follows:

(i) [insert details of changes, e.g., to issue date, shipper, consignee, etc.]

(ii) they will contain in description of the cargo the following statement: "...m/t of... blended/commingled on board from ...m/t of...loaded at...on... and...m/t of ...loaded at...on..."

(iii) they will contain the following exclusion of carrier's liability: "the carrier shall not be liable for any loss or damage to the cargo whatsoever and howsoever arising from the blending/commingling, whether or not arising from negligence on the part of the carrier, their servants or agents"

In consideration of your complying with our above request, we hereby agree as follows:

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature and howsoever arising, including but not limited to any liability in connection with change of quantity, quality or pumpability and/or any damage to the vessel including tanks, pumps and lines, and which you may sustain by reason of blending/commingling cargo(es) on board and/or by issuing bills of lading in accordance with our request.

2. To accept full responsibility and risk for the success or otherwise of the blending/commingling operation and the consequences of any failure of whatsoever nature and howsoever arising from the operation, whether or not arising from your, your servants' or your agents' negligence.

3. To pay you on demand the amount of any loss, damage or expense of whatsoever nature and howsoever arising which you, your servants or agents may incur or be faced with incurring by reason of blending/commingling cargo(es) on board and/or by issuing bills of lading in accordance with our request.

4. To treat all time used during or arising from blending/commingling cargo(es) on board and/or by issuing bills of lading as time on hire/laytime or time on demurrage [delete as appropriate].

5. To provide to your satisfaction, and as a pre-requisite to the commencement of any blending/commingling operation, the following:

(a) A letter of indemnity in these terms, with authorised signatures.

(b) Surrender of all of the original bills of lading for the cargo(es) referred to in (...[a, b, c or d]) and (...[a, b, c or d]) together with written confirmation from the holders/transferees of those bills of lading that they have lawful title to the cargo(es) and are authorised in their own right and by the owners of the cargo(es) to: (i) Authorise the blending/commingling operation and substitution of those original bills of lading as requested herein. (ii) Accept substitution of those bills of lading by new bills of lading in the terms stated above, such substitution taking effect at the time of issue of the new bills of lading.

6. In the event of any proceedings being commenced against you or any of your servants or agents in connection with blending/commingling cargo(es) on board and/or issuing bills of lading in accordance with our request, to provide you or them on demand with sufficient funds to defend the same.

7. If, in connection with blending/commingling cargo(es) on board and/or issuing bills of lading in accordance with our requests, the ship or any other ship or property in the same or associated ownership, management or control should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or interference may be justified.

8. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.

9. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice in London.

Yours faithfully,

For and on behalf of [insert name of Requestor] The Requestor

.....

For and on behalf of [insert name of bank] Bankers

.....

[insert full details of the office to which any demand or notice is to be addressed.]