



# WRECKSTAGE 2024

International Wreck Removal and Marine Services Agreement (Lump Sum – Stage Payments)

## Overview

WRECKSTAGE 2024 is a standard wreck removal and services agreement based on payment of a lumpsum in stages. The revised agreement introduces a Risk Allocation Procedure which allows parties to utilise Quantitative Risk Assessment or other bespoke risk allocation during the contracting process and incorporate it into the agreement.

WRECKSTAGE was first published in 1993 and revised in 1999, 2010 and 2024.

## Background

BIMCO's three wreck removal agreements, WRECKSTAGE, WRECKHIRE and WRECKFIXED, were first introduced to the industry in 1999. In 2010, the agreements were revised to take into account of developments in commercial practice and ensure a more equal balance between the parties.

Significant casualties and wreck removals have occurred since the 2010 forms were released, with developments in technology and sophistication in the wreck removal contracting between the parties, as well as the widespread adoption of the Nairobi Convention.

The introduction of Quantitative Risk Assessment (QRA) into the contracting process for maritime wreck removal operations and discussions between the ISU (International Salvage Union) and the IG (International Group of P&I Clubs) on revising the code of practice for wreck removal tendering, prompted a revision of WRECKSTAGE. This led to a decision to revise all three wreck removal agreements. QRA is used to assess risk in the negotiation, planning and execution of an engineering project to inform and guide decisions on the allocation of risk between the contracting parties and the consequent pricing ramifications if such risks materialise.

WRECKSTAGE is the result of a collaborative and consensual process between representatives of the International Salvage Union (ISU), salvors, the International Group of P&I Clubs and individual P&I Clubs, and legal experts. BIMCO is grateful to the drafting team for their considerable time, effort and commitment in producing the revised agreement:

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## **Explanatory notes**

The following notes explain the scope of the key provisions and clarify how the document is intended to operate. They also provide users with guidance as to the nature and extent of changes made to the WRECKSTAGE 2010 form. If you have any questions about WRECKSTAGE 2024 please contact us at [contracts@bimco.org](mailto:contracts@bimco.org) and we will be happy to assist.

## **Key features of the form**

At the heart of WRECKSTAGE 2024 is a new optional “Risk Allocation Procedure” Clause that sets out the agreed allocation of risk at the outset. A risk allocation matrix is set out in a new Annex E. All costs related to the risks accepted by the contractor form part of the lump sum with no additional remuneration. Only in the event of a misdescription or error by the company upon which the contractor has relied will the contractor be able to invoke the provisions of Clause 5 (Change of Method of Work, Personnel, Craft and Equipment and/or Estimated Time Schedule) for variation costs. The Risk Allocation Procedure will work in cases where the parties utilise QRA as part of the negotiation and contracting, but also in circumstances where more traditional risk scoring, negotiation and risk allocation is used during tendering and contracting.

## **PART I Box Layout**

Part I of WRECKSTAGE 2024 includes the traditional BIMCO box layout which enables the parties to include key information relating to the agreement, including the parties, vessel, services, payments, and cancellation and termination fees. Box 4 (Specifications of the Vessel) has been expanded to include the vessel’s lead H&M underwriter/insurer.

Box 5 has been changed and now requires the vessel’s position in addition to its condition to be stated. Box 6 has also been changed and now relates only to the extent and condition of the worksite.

Box 7 (Nature of Services) now includes references to Clause 2 (Performance of Services) and Clause 5 (Change of Method of Work, Personnel, Craft and Equipment and/or Estimated Time Schedule) as well as a link to Annex II ((Schedule of Personnel, Craft and Equipment) and Annex III (Method of Work and Estimated Time Schedule). The previous requirement to state which party is to obtain confirmation of compliance with the orders of competent authorities has been deleted. This is now dealt with under sub-clause 2(e) whereby the Contractors are obliged to provide reasonable assistance to the Company in this respect.

Boxes 9 and 10 are new additions. Box 9 requires the contracting parties to state which of them will be responsible for providing and maintaining permits needed to undertake and complete the services. Box 10 requires the parties to choose if the new optional risk allocation procedure under Clause 4 is to apply.

Boxes 18 is a new and important change which deals with fees payable on termination after mobilisation in accordance with the terms of Clause 13 (Cancellation and Termination). WRECKSTAGE 2024 makes a clear distinction between cancellation prior to mobilisation and termination after mobilisation.

The clause on conflict of terms and provisions has been elaborated to specify that in the event of a conflict between Part I, any additional clauses and the annexes, and Part II, then Part I, any additional clauses and the annexes will



prevail. In the event of a conflict between Part I and any additional clauses and the annexes, Part I and any additional clauses will prevail.

Part I incorporates the BIMCO Authenticity Clause above the signature boxes. The objective of the clause is to combat the use of counterfeit copies of BIMCO forms by including the Contract Authenticity Clause. If one of the parties provides the contract template for negotiation and is reluctant to include this clause, then this should serve as a warning that the offered contract is not a genuine BIMCO standard agreement.

## **Part II**

### **Clause 1 (Definitions)**

Several new definitions have been added to the agreement to improve the overall clarity and workability of the form. The new definitions include "Applicable Law", "Company Group", "Contractor Group", "Method of Work", "Mobilisation", "Project Change" and "Variation Order".

The definitions of "Company Group" and "Contractor Group" are derived from SUPPLYTIME 2017 and define the entities that the company/contractor is responsible for under WRECKSTAGE. Thus, all parties operating at the Worksite and which may suffer loss or damage when working are covered by the knock-for-knock regime. Companies both up and down the company's/contractor's contractual chain are included and the company/contractor will not be liable towards contractual counterparties in the other parties' group. This assists in clarifying which indemnities the parties must give and ensures a robust and clear-cut knock-for-knock liability regime. Its scope is limited by the requirement of the listed entities having to be related to the work or project.

### **Clause 2 (Performance of Services)**

This clause deals with the contractor's obligations to provide the agreed services, as well as the provision of personnel, craft and equipment, the method of work, and any change in the method of work, or provision of personnel, craft and equipment. Consistent with the approach taken in the 1989 Salvage Convention, the contractor is obliged to exercise "due care" when providing the services. Provided that it is not inconsistent with the nature of the services to be rendered, the contractor must also exercise "due care" to prevent and minimise damage to the environment.

Subclause (a) has been amended to clarify that the due diligence obligation in carrying out the services should be in accordance with the agreement and its annexes, applicable law as well as in accordance with good industry practice. The reference "good industry practice" has been added to establish a benchmark of consistency and quality, capable of evolution over time.

The obligation on the contractor to consult with the company in case of substantial changes in the method of work etc. has been deleted as this is covered by the Clause 5 (Change of Method of Work, Personnel, Craft and Equipment and/or Estimated Time Schedule).

Subclause 2(e) contains an important change in that the contractors are now obliged to assist the company in complying with the company's legal obligations to remove the wreck. Previously subclause (e) referred to an option in Box 7(ii) for the parties to decide which party assisted the other in this respect. The new wording reflects that compliance with wreck removal orders always rests with the company.

### **Clause 3 (Company Representative)**



This clause, which concerns the presence of a representative of the company onsite, has been divided into three subclauses as compared with WRECKSTAGE 2010 and includes more detailed provisions on the company representative's access to the craft and equipment used for the services, accommodation and meals on board, and insurance.

Subclause (a) now stipulates that a company representative should be present on-site during performance of the services, or at least be readily contactable. In contrast, the previous clause made this conditional upon the contractor's reasonable requirement.

## **Clause 4 (Risk Allocation Procedure)**

A main feature of WRECKSTAGE 2024 is the newly introduced risk allocation procedure which outlines how risks and their associated costs are managed between the parties. It ensures that both parties know their responsibilities and how changes or errors affecting those responsibilities are addressed. The clause is optional and will only apply if the parties positively state this in Box 10. Details on the risk allocation can be inserted in Annex E (Risk Allocation Matrix) of the agreement.

Subclause 4(b)(i) sets out risks allocated to the contractor. These risks fall within the lumpsum and no recourse to additional remuneration is available, with one specific exception as described in subclause 4(c).

Subclause 4(b)(ii) sets out risks allocated to the company and gives direct access to additional remuneration as per the procedure under subclause 5(b)(i)-(iii) should such a risk arise during the performance of services under the agreement.

Subclause 4(c) sets out the limited exception to the risk allocation procedure in Subclause 4(b)(i), namely when a project change is required due to a misdescription or error in the vessel specification or in the documents provided in accordance with subclause 6(d).

Subclause 4(d) specifies that if there are risks not specifically covered by the initial risk allocation contained in subclauses 4(b)(i) and (ii), then Clause 5 regarding changes in work method, personnel, equipment, or project timelines will apply.

## **Clause 5 (Change of Method of Work, Personnel, Craft and Equipment and/or Estimated Time Schedule)**

Problems may arise during the operation that require a substantial change of method, equipment, etc. This clause deals with the circumstances under which the contractor may seek a variation to the lump sum stated in Box 11.

The clause is split into three distinct sections. The first section (subclause (b)) deals with project changes before or during the services resulting in additional costs and only applies if the contractor was not at fault. The second section (subclause (c)) deals with the task becoming easier due to a change in circumstances and where the company can ask for a reduction in the money due to the contractor. In both cases the parties must agree to a work variation order and to any increase or decrease in costs. In subclause (d) provision is made for the parties to resolve any disagreement in respect of subclauses (b) and (c) by referring the matter to a new expert evaluation procedure or to mediation or arbitration. For the avoidance of doubt it is specified that the contractor is obliged to continue operations pending the outcome of any evaluation, mediation or arbitration.

Subclause (e) contains a procedure for termination of the agreement by either party if they cannot agree on the additional costs resulting from a project change and sets out what each party should pay in case of the other's termination.

## **Clause 6 (Miscellaneous)**

This clause, which is largely unchanged from the WRECKSTAGE 2010 edition, deals with matters such as the marking of the vessel, use of the vessel's machinery and equipment, removal or jettison of parts of the vessel and/or its cargo, and provision of plans and other information required by the contractor.

The reference in subclause (a) to contractor's "own equipment" has been amended to "contracted craft and equipment" to cater for use of e.g. subcontractors' craft and equipment.

The reference to "appurtenances" has been replaced with "fixtures and fittings" as a more modern wording which can be distinguished from equipment not necessarily physically attached to the vessel.

It has been clarified in subclause (c) that actions considered necessary by the contractor shall be fully in accordance with applicable law.

According to subclause (d), the company should use its "best endeavours" to provide the contractor with vessel plans, drawings and other data/information, as the company may simply not be in possession of some of the requested information. The contractor is at liberty to request the company to provide plans, drawings and information but such requests must be "reasonable".

## **Clause 7 (Permits)**

This clause deals with the need to obtain licences, approvals, authorisations and permits. It differs from WRECKSTAGE 2010 in that the parties must agree and state the responsible party in Box 9. The other party must assist where necessary, for example in situations where a particular permit can only be issued to the other party or where the submission of certificates can only be done by the other party.

Compared to WRECKSTAGE 2010, amendments include modernising the phrase "let or hindrance" in the first paragraph to "obstruction or delay". Additionally, a reference to Box 9 has been added to specify the party responsible for obtaining the necessary permits.

## **Clause 8 (Delays)**

This clause, which applies subject to Clause 4 (Risk Allocation Procedure) if the parties have chosen that this clause should apply, is divided into three sections and offers a sophisticated method of dealing with delays encountered during the salvage operation.

A new General section has been inserted as subclause (b), placing the onus on the contractor to act swiftly to advise the company of any delays to which the contractor considers the delay payment rate should apply. The contractor must also at that time inform the company in writing (which would normally be done as part of the daily report).

The clause sets out the position of the parties and which rate should apply in the event of delays whether caused by adverse weather or sea conditions or any other reason outside the contractor's control (subclause (c)) or by hired-in or subcontracted personnel, craft and equipment (subclause (d)).



The subclause also provides a means of resolving any disagreement as to what (if any) additional compensation applies in the different circumstances listed in subclauses (c) and (d). If the parties cannot agree, then the matter is referred to a new expert evaluation procedure (Clause 18) or to arbitration or mediation (Clause 19).

Subclause (d)(iv) excludes from delay compensation in respect of hired-in or subcontracted personnel, craft and equipment individual delays of six running hours or less duration. This “free time” represents half a working day and is felt by salvors to be a reasonable compromise. However, if the delay exceeds six hours then the entire delay period is to count at the delay payment rate.

## **Clause 9 (Completion of Services)**

This clause deals with the contractor’s delivery or disposal of the vessel after completion of the services provided and the title has been amended accordingly as compared with WRECKSTAGE 2010 (Clause 9 “Delivery and/or Disposal”).

Subclause (a)(iii) specifies that when the vessel is not accepted promptly by the company or delivery is prevented or delayed by action outside the contractor’s control, any additional time used and expenses reasonably and necessarily incurred by the contractor shall be reimbursed by the company.

If the contractor “reasonably” considers that it will be impossible or unsafe for the ship to be delivered or disposed of at the place indicated, the contractor according to subclause (b) has to notify the company and the company must nominate an alternative place of delivery or disposal.

Subclause (e) specifies that references to delivery and/or disposal also includes parts of the vessel, cargo and other things emanating from the vessel. This is intended to include bunkers and it is recognised that disposal of such items may take place at different locations and at different times from the disposal of other parts of the vessel.

## **Clause 10 (Payment)**

The payment clause is fundamental to the proper working of the agreement.

Subclauses (a), (b) and (c) deal with the payment of the agreed lump sum in instalments irrevocably earned when due and without deduction.

Subclause (d) provides for the lump sum instalments to be paid in the agreed currency to the stated bank account.

Subclause (e) enables the contractors to charge the company interest at the agreed rate in the event any sums due and payable are not received by the contractors within the agreed period.

Subclause (f) gives the contractor a right of termination in the event that payment is not made in accordance with the terms of the agreement. In case of such non-payment, the contractor shall require payment within seven days and, if payment has still not been received by then, the contractor may within three banking days send the company notice of termination. If payment is received before the notice of termination, the right to terminate is extinguished.

## **Clause 11 (Extra Costs)**

This clause provides for any extra costs incurred to be for the account of the company or contractor, as decided in advance by the parties. If a risk has already been addressed and allocated under Clause 4 (Risk Allocation Procedure), then Clause 11 will not be applicable.



The reference to “Contractor’s own or hired in craft” has been replaced by “craft used for the services” to cater for the use of subcontractors’ craft.

## **Clause 12 (Security)**

This clause requires the company to provide an irrevocable and unconditional security in a form and amount as agreed between the parties. The company is required to provide satisfactory security to cover monies due to the contractor. The contractor may also request further security when “reasonably” required.

A new subclause (c) addresses the situation where the company has not provided the security requested and gives the contractor the right to terminate the agreement under certain circumstances.

## **Clause 13 (Cancellation and Termination)**

This clause sets out the circumstances under which the agreement may be cancelled and terminated. It is based on Clause 8 (Termination) in WRECKSTAGE 2010. Subclause (a) deals with cancellation of the agreement prior to commencement of mobilisation by the company, which can be done upon payment of a cancellation fee.

Subclause (b) deals with the way the termination of the agreement will be carried out by the contractor if performance of further services becomes impossible. The contractor is entitled to payment of all monies due in case of termination.

Subclause (c) deals with the situation if termination of the services is not allowed by the competent authorities.

## **Clause 14 (Liabilities)**

This clause provides the usual knock-for-knock provisions common in offshore contracts.

The clause has been modified compared to WRECKSTAGE 2010 to cater for the introduction of the Company Group and Contractor Group definitions.

The clause has been updated to reflect a more comprehensive “knock for knock” arrangement, which has commonly been amended in practice between the parties. The clause reflects the specialist nature of the wreck removal operation and the comprehensive protection required for both parties in respect of a wreck removal project. The clause aligns with the insurance arrangements that both parties may have and also common sub-contracts that are utilised by the contractor.

## **Clause 15 (Himalaya Clause)**

The aim of the Himalaya provision is to extend the contractor’s benefits under the agreement to the contractor group and its underwriters, and the company’s benefits to the company group and its underwriters. The purpose of the agency provision in the final paragraph is to provide the mechanism whereby the protective clauses in the agreement will be applicable to the third parties listed in the previous paragraphs.

## **Clause 16 (Lien)**

This clause remains unchanged from WRECKSTAGE 2010.



## **Clause 17 (Time for Suit)**

This clause remains unchanged from WRECKSTAGE 2010. Notifications under the clause should be made in line with Clause 20 (Notices).

## **Clause 18 (Expert Evaluation)**

The expert evaluation was introduced in WRECKSTAGE 2010 as a new method of dealing with certain types of disputes under the agreement – notably disputes relating to the application of delay payment rates and the adjustment of costs following a change to the nature of the services. It was felt that the standard BIMCO Dispute Resolution Clause used at the time in most BIMCO forms was simply not well suited to resolving issues that require an on-the-spot decision so that work is not interrupted. Conventional arbitration lacks the infrastructure and expertise to determine such types of disputes.

For the same reason, the two-tier approach to dispute resolution introduced in WRECKSTAGE 2010 has been maintained in WRECKSTAGE 2024 but has been updated to make it more appealing to users. The preamble to the clause explains the intention of the expert evaluation and that the parties are expected to work towards a resolution of disputes in good faith.

In the first instance, if the parties cannot resolve an issue that has arisen between them, they may request an expert evaluation. In a break from WRECKSTAGE 2010, the expert need not be a SCR (Special Casualty Representative) chosen from the Panel of SCRs maintained by the Salvage Arbitration Branch of Lloyd's. Instead, the only qualifier is that they be "impartial, immediately available, and have the requisite experience to deal with the issues in question." Once appointed, the expert will consider short written submissions provided by each party within 24 hours and then as quickly as possible give written advice to the parties of their decision. Each party has five working days to notify the other if they agree to the expert evaluation. If one party disagrees with the evaluation or does not provide any notification, the evaluation will not be binding on the parties.

The reason for not making the evaluation binding by default on either party is to encourage the parties to opt for this form of dispute resolution (over arbitration or mediation) to not delay or further delay the salvage operation. The parties only agree that whatever the expert proposes is given immediate effect but without prejudicing their right to resolve the dispute by conventional methods later as set out in Clause 19.

The cost of an expert evaluation is to be borne by both parties. However, if one party disagrees with the evaluation, then that party will be at risk of liability for costs (including the costs of the expert) on an indemnity basis in the event that the expert's evaluation is upheld or an outcome no more favourable to the party disagreeing with the evaluation is obtained.

## **Clause 19 (Arbitration and Mediation)**

The Arbitration and Mediation Clause of WRECKSTAGE 2024 has been carried over from the 2010 edition of the agreement and builds on the "Governing Law and Arbitration" Clause in WRECKSTAGE 99. It was preferred not to include the BIMCO's Law & Arbitration Clause 2020 as the WRECKSTAGE clause makes special provision for using Lloyd's Salvage Arbitrators who are experts in resolving salvage related disputes.

The parties may choose an applicable law and arbitration venue from a choice of English law/London arbitration; US law/New York arbitration; or a choice of law and arbitration as chosen and agreed by the parties. Subclause (a) incorporates the LMAA's intermediate claims procedure to supplement the existing small claims procedure.





The last paragraph of subclauses (a) and (b), respectively, addresses the correct service of arbitration notices and communications. Parties are free to serve notices by whatever effective means they choose, but if they choose email then they must send the email to the e-mail address of the contractor stated in Box 22 or the company stated in Box 23, as applicable. Notices are considered effectively served immediately on sending by email.

The clause, in subclause (d), maintains the mediation provision contained in WRECKSTAGE 2010 which permits the parties to refer all or part of a dispute, for which arbitration has been commenced, to mediation.

## **Clause 20 (Notices)**

This clause, which has been updated to reflect current means of communication, provides that all notices must be in writing and sent using one of the prescribed formats. The clause also sets out when notices given under the agreement take effect depending on the method of communication used.

## **Clause 21 (Insurance)**

This clause provides for each party to warrant that they have in place appropriate insurance cover. The warranty in subclause (b) (company insurance) applies not only to normal P&I risks at the time of the incident but also to the normal covered liabilities and consequences arising from or related to the incident and the services.

## **Clause 22 (Damage to the Environment and Pollution)**

This clause requires, according to subclause (a), the contractor to exercise “due care” to prevent and minimise damage to the environment and to have in place an oil spill response plan which meets the requirements of the competent authorities and the company.

Subclauses (b) and (c) provide knock-for-knock provisions in relation to damage to the environment or pollution resulting from or caused by the vessel and the craft used by the contractor to perform the services. The provisions have been extended to cover the contractor’s group and company group.

The clause has been aligned throughout to cater for damage to the environment and pollution and the clause title has been amended accordingly.

## **Clause 23 (Rotation and Replacement of Craft, Equipment and Personnel)**

This clause gives the contractor the right to swap resources/equipment in and out of the salvage operation for maintenance and/or fatigue-relief purposes, subject to the agreement of the company (which shall not be unreasonably withheld).

## **Clause 24 (General Provisions)**

This set of clauses covering the enforceability of provisions; third party beneficiaries; no-waiver; and warranty of authority etc, reflects additional clauses commonly added to wreck removal and other marine service agreements used in the salvage/offshore industry. The clauses have been carried over unamended from WRECKSTAGE 2010.

## **Annexes**



The annex numbering system in WRECKSTAGE 2024 has been updated from Roman numerals to alphabetical letters, aligning it with the consistent format observed in other standard BIMCO documents.

A new Annex A (Worksite) has been included to enable the parties to provide further details of the position of the vessel and the area it is in, in addition to what is stated in Boxes 5 and 6.

Annexes B (Schedule of Personnel, Craft and Equipment), C (Method of Work and Estimated Time Schedule) and D (Contractor's Daily Reports) are unchanged from the previous edition of WRECKSTAGE except that it has been clarified at the end of the proforma template for the contractor's daily reports (Annex D) that the contact details of the recipients should be stated.

A new Annex E (Risk Allocation Matrix) has been added where the parties, if it has been agreed that Clause 4 (Risk Allocation Matrix) should apply, can insert information about the allocation of risks in technical, non-technical and other matters.

Two new annexes have also been included for the parties to insert plans and drawings of the vessel, cargo manifests, storage plans, etc. (Annex F), and the form of any variation orders (Annex G).

## **Copyright and availability**

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