

# EU Emission Trading System & ETS Clauses

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# It takes two to tango...

Does EU ETS need to be addressed in commercial contracts?

Why would parties want to reflect new legislation in their commercial contracts?

Commercial optionality





# Who is the responsible party towards the authorities?



The shipping company is defined as: *“the shipowner or any other organisation or person, such as the manager or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the shipowner and that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention”*

# Who is the responsible party for the costs?

*“In line with the ‘polluter pays’ principle and to encourage the adoption of efficiency measures and the uptake of cleaner fuels, the shipping company should therefore be entitled, under national law, to claim reimbursement for the costs arising from the surrender of allowances from the entity that is directly responsible for the decisions affecting the greenhouse gas emissions of the ship.”*

# Who is the responsible party for the costs?

(Article 3gc)

*Member States shall take the necessary measures to ensure that when the ultimate responsibility for the purchase of the fuel, or the operation of the ship, or both, is assumed by an entity other than the shipping company pursuant to a contractual arrangement, the shipping company is entitled to reimbursement from that entity for the costs arising from the surrender of allowances.*

*'Operation of the ship' for the purposes of this Article means determining the cargo carried or the route and the speed of the ship. The shipping company shall remain the entity responsible for surrendering allowances as required under Articles 3gb and 12 and for overall compliance with the provisions of national law transposing this Directive. Member States shall ensure that shipping companies under their responsibility comply with the obligations to surrender allowances under Articles 3gb and 12, notwithstanding the entitlement of such shipping companies to be reimbursed by the commercial operators for the costs arising from the surrender.*

# Time Charter Parties

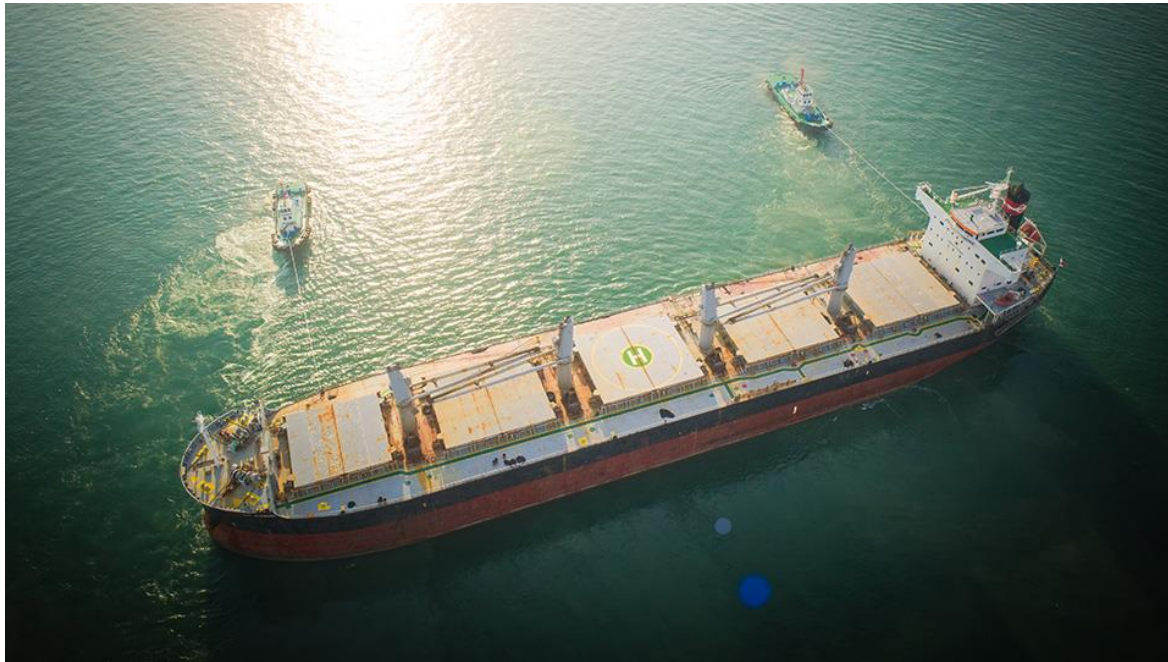


ETS - Emission Trading Scheme  
Allowances Clause for Time  
Charter Parties 2022

# Key features

- Owners to monitor and report relevant GHG emissions
  - Owners to nominate an Emission Scheme Account
  - Notifications
  - Charterers to transfer EUAs
  - Data and calculations to establish the quantities
  - Redelivery
  - Off-hire
  - Suspension of performance
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# Voyage Charter Parties



[ETS – Emission Scheme Freight Clause for Voyage Charter Parties 2023 \(bimco.org\)](#)

[ETS – Emission Scheme Surcharge Clause for Voyage Charter Parties 2023 \(bimco.org\)](#)[2023 \(bimco.org\)](#)

[ETS – Emission Scheme Transfer of Allowances Clause for Voyage Charter Parties 2023 \(bimco.org\)](#)



# Which path to choose?

Legal certainty

Predictability

Data and accuracy

Corporate structure

