

# CONTRACTING

Offshore wind transport & logistics





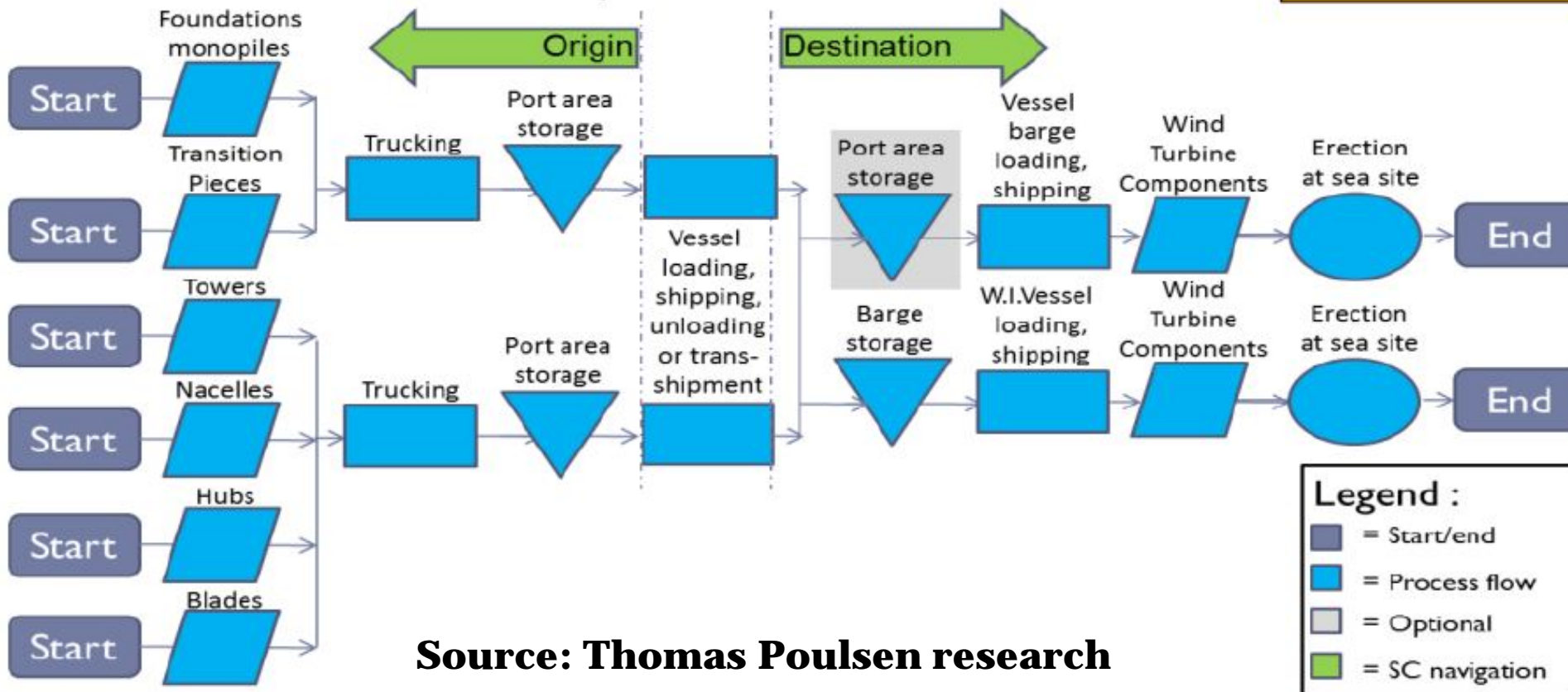
# WHO IS THE SPEAKER

- Nigel Margetson
- Education
- Work experience



**ILLUSTRATIVE ONLY**

**Flow of finished wind turbine components**



**Source: Thomas Poulsen research**





# Who is responsible for the transport?

- In the Employer – EPCI relationship
- In the EPCI – subcontractor contract:

Incoterms determine when EPCI contractor's responsibility starts

- Ex Works;
- FOB port of loading;
- CIF port of discharge;



## **Contracts the EPCI Contractor will have to consider**

- Road haulage / Rail carriage;
- Ocean carriage;
- Terminal contract;
- Warehousing / storage contracts;
- Charter parties (“c/p”) with owners of construction vessels;
- freight forwarding (door to door solutions);
- broker contracts (finding available vessels);
- Logistical Services (broad scope of logistical solutions)



# Road haulage and rail haulage (1)







## Road haulage and rail haulage (2)

- Governed by compulsory law;
- Complex liability regime;
- One year time bar;
- Liability is limited to very low amounts;
- Road: CMR: 8.33 SDR per kg (E 9.91 per kg);
- Rail: CIM/COTIF : 17 SDR per kg;



# Ocean Carriage (1)







## Ocean carriage (2)

- Charterparty or bill of lading?
- Bill of lading:
  - \* Compulsory law;
  - \* Complex system of defences for carrier (fire, deck cargo, mistake in management of the vessel, etc.);
  - \* Short time limits for claims;



# Ocean carriage (3) bill of lading

Limitations of liability:

Hague Rules : GBP 100 per package or unit;

Hague Visby Rules: 666.67 SDR per package or unit or 2 SDR per kg, whichever is higher;



## Ocean carriage (4)

Main charterparties for project cargo:

- Bimco Heavycon (Dry tow)
- Bimco Heavyliftvoy (lifting / roro)

In principle freedom of contract;





# Heavy lift voy (1) clause 1 – scope of voyage

Liberty to load / discharge part cargoes in any rotation;

Liberty to tranship and store cargo;

Best endeavours to achieve agreed transit time. Liability limited if it is not achieved;

Not responsible for delay due to weather or engine breakdown;



## **Heavy-liftvoy (2) Clause 2 – cargo**

- Merchant warrants the cargo is of sufficient internal strength to be carried;
- Merchant responsible for eyes / lugs / slinging points
- Merchant must provide certificates with weight, sizes and centre of gravity;
- Merchant indemnifies the Carrier from all consequences of not complying with the above;



## **Heavy lift voy (3) No show of carrier**

- Loading window;
- No show of carrier: Merchant may cancel;
- Carrier pays back freight that was paid in advance;
- No further liability of carrier;





# Heavy lift voy (4) loading

- Free in : merchant loads and sea-fastens;
- Liner in – carrier loads and sea-fastens;
- Time lost due to swell or port congestion for merchant;
- Carrier can cancel the c/p and sail with part cargo if swell / port congestion causes too much delay.
- Merchant liable for deadfreight and demurrage / detention;



## Heavy lift voy (5) other clauses

- Discharging : Free out / liner out;
- Deck cargo is for Merchants risk;
- Paramount clause : limitation of liability from HR / HVR is introduced into the charterparty;



# Terminal Contracts (1)



**Port of  
Eemshaven**





# Terminal Contracts (2)





## Terminal Contracts (3)

- Some ports have years of experience providing port facilities to builders of wind farms. E.g. Eemshaven:
  - \* Good road access suitable for trucks carrying rotor blades;
  - \* 220 m heavy load quay: 30 ton/m<sup>2</sup> with near quay jacking possible;
  - \* No locks or bridges so it is possible to pre-assemble rotor blades and the nacelles prior to transshipment offshore;
  - \* Proven track-record;



# Terminal Contracts (4)

Other ports have no experience and are keen to get their first contract;





# Warehousing / storage contracts

- In the Netherlands governed by non-compulsory statutory law;
- General conditions with limitations and exclusions of liability will apply;
- Fenex warehousing conditions : liability limited to 2 SDR per kg with a max of 100,000 SDR per event;



# Charterparties with owners of construction vessels





## **c/p : Supplytime 2005 / Supplytime 2017 (1)**

- E.g. for a jack up or other vessel to install jackets or monopiles;
- Not a construction contract but a contract for the hire of a vessel;
- Clause 7 (d) Supplytime 2005 has caused problems on wind projects in the past (see next slide):





## c/p : Supplytime 2005 / Supplytime 2017 (2)

(d) The entire operation, navigation, and management of the Vessel shall be in the exclusive control and command of the Owners, their Master, Officers and Crew. The Vessel will be operated and the services hereunder will be rendered as requested by the Charterers, subject always to the exclusive right of the Owners or the Master of the Vessel to determine whether operation of the Vessel may be safely undertaken. In the performance of the Charter Party, the Owners are deemed to be an independent contractor, the Charterers being concerned only with the results of the services performed.



## c/p : Supplytime 2005 / Supplytime 2017 (3)

- Breakdown of the Vessel - suspension and termination;
- Supplytime 2005: No absolute duty to repair to prevent termination:

Breakdown. - If, at any time during the term of this Charter Party a breakdown of the Owners' equipment or Vessel result in the Owners being unable to perform their obligations hereunder for a period exceeding that stated in Box 33 and have not initiated reasonable steps within 48 hours to remedy the non-performance or provided a substitute vessel pursuant to Clause 21.



## **c/p : Supplytime 2005 / Supplytime 2017 (4)**

- Liability for vessel not working limited to suspension of payment of hire;
- Knock for knock system / consequential loss:
  - \* people and property;
  - \* Pollution;
  - \* mutual indemnity for consequential loss;





## Other typical offshore construction charterparties



The Bimco Bargehire and Towcon contracts could be used for this type of transport.



# Freight forwarding (1)

- Arrange the transports on behalf of the client (EPCI contractor);
- Door to door solutions;
- No compulsory law;
- General conditions with limitations and exclusions of liability;
- Netherlands: Fenex conditions;



## Freight forwarding (2)

### Fenex limitation of liability (clause 11.3):

*“The forwarder's liability shall in all cases be limited to 10,000 SDR per occurrence or series of occurrences with one and the same cause of damage, on the understanding that in the event of damaging, loss of value or loss of the goods comprised in the order, the liability shall be limited to 4 SDR per kilogram damaged or lost gross weight, the maximum being 4,000 SDR per consignment.”*





# Contracts with brokers

Brokers are used to source vessels required for offshore operations;

Although shipbroking conditions do exist, it is unusual for a formal agreement to be in place with a broker.

Dutch shipbroking conditions: *“The General Conditions and Rules for Dutch Shipbrokers and Agents”*: liability is limited to the amount of the brokerage that would have been earned;



# Logistical Services contracts (1)

- Some logistical service providers can provide a very broad range of services: E.g. door to door transport, contracts with terminals, warehousing and chartering;
- Freedom of contract;



## **Logistical Services contracts (2)**

**Fenex Logistics Services Conditions limitation of liability:**

- For transport: the limitation of liability of the transport modality;
- For logistics activities: 4 SDR per kg of the gross weight of the lost or damaged goods until a maximum of 100,000 SDR per event;





## **Logistical Services contracts (3)**

**Fenex Logistics Services Conditions limitation of liability:**

- For damages not consisting of damage to the Goods: 10,000 SDR per event;
- For Customs and Tax representation services: 10,000 SDR per event, but no liability if damages are not due to fault or negligence of the Logistics Service provider;



# Some comments about contracting in transport and logistics (1)

- There is not much to negotiate when CMR, COTIF/CIM or Hague / Hague Visby Rules apply;
- Negotiating project cargo contracts with heavy lift ocean carriers is very tough. They are not flexible;



## **Some comments about contracting in transport and logistics (2)**

- Because of the limitations of liability in transport and logistic contracts, good cargo insurance is of paramount importance;





## **Some comments about contracting in transport and logistics (3)**

- Depending on what stage of development a Terminal is at, there can be room for negotiations regarding the question which party pays for what investments / private quays etc.;
- There is a lot of room for negotiation on Supplytime contracts. Charterers should be particularly critical when contracting under the Supplytime 2005 form;



# Some comments about contracting in transport and logistics (4)

- The wind industry differs greatly from the offshore industry:
  - \* It does not like knock for knock;
  - \* It prefers German law over English law;
  - \* It does not really (want to) understand risks of carrying out work offshore and does not apply the IMCA FAIR contracting principles (see next slide);



# Some comments about contracting in transport and logistics (5)

FAIR, IMCA's risk allocation goals, are as follows:

**Fair** (not equal) and realistic distribution of risk in proportion to relative rewards;

**Allocation of risk** – to the party best placed to assume

**Insure** – sufficient scope of cover;

**Reasonable** – avoid 'duplicate' assumptions of risk and minimise potential for dispute;





**Thank you for your attention!**

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