



English Court Clarifies
'Typical' vs. 'Guarantees' In
Contract For Sale Of Fuel Oil

In A Nutshell:
US/Israeli Military Intervention
In Iran - Charterparty
Implications

Market Snapshot

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- ❑ In A Nutshell:
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English Court Clarifies 'Typical' vs. 'Guarantees' In Contract For Sale Of Fuel Oil

Mercuria Energy Trading SA -v- Onex DMCC [2026] EWHC 130 (Comm)

Factual Background

- Mercuria Energy Trading (“Mercuria”) and Onex DMCC (“Onex”) are both oil traders. In 2022, Mercuria purchased a cargo of Iraqi fuel oil on CIF terms from Onex under a sale agreement that incorporated the BP Oil International Limited General Terms & Conditions for Sales and Purchases of Crude Oil and Petroleum Productions 2015 Edition, Version 1.2 (“BP GTC”).
- The contract specified that the “Product” for sale was “...SOMO Basrah pipeline high-sulphur straight-run fuel oil in line with the following typicals:...”. It included two tables: the first table set out product typicals which included a requirement of 4.1 ppm and a maximum of 5 ppm organic chloride (“OC”); the second table contained guarantees which did not mention the specification for OC content.
- The BP GTC defined “typical” in section 57.1.61 as “a quality or characteristic often attributable to ... Product from a particular source, given without guarantee and not amounting to a representation or warranty that such typical quality or attribute will be present in the ... Product supplied ...”. Section 59.1.1 further stated that “neither typicals nor any stipulation as to time of delivery shall form part of the ... Product's description, quality or fitness for purpose”.
- Mercuria’s buyer rejected the cargo on the ground that the OC level exceeded the 5 ppm guarantee in their contract. After several months of unsuccessful attempts to reduce the OC content, Mercuria resold the cargo to other buyers at a lower price. Mercuria subsequently claimed damages of around USD26 million against Onex for breach of contract in respect of product quality and description.

❖ The Disputing Issue 1

Mercuria submitted that the contract required the cargo to be “in line with the typical” which included OC level. The “in line with” wording, as specially agreed term, was inconsistent with the section 57.1.61 or 59.1.1 of the standard BP GTC. Mercuria argued that this inconsistency meant the agreed wording overrode the BP GTC, thereby creating an obligation amounting to a guarantee that the cargo would meet the specified parameters.

Onex, however, contended that “typicals” were not guarantees and did not form part of the description, quality, or fitness obligations under section 59.1.1 of the BP GTC. Onex argued that within the BP GTC framework, obligations relating to quality were dealt with exclusively under section 59.1.1, the “Quality” clause, and the Guarantees section. Accordingly, there was no conflict between the sale agreement and the incorporated BP GTC provisions.

The Commercial Court found in favor of Onex, holding that it had no contractual obligation to Mercuria regarding the OC content of the cargo:

- The two tables had identified characteristics separately under “typicals” and “guarantees”, meaning the items listed by each table were distinct and fell into different categories. Onex was only prepared to guarantee the specifications in the “guarantees” table, and OC content was not included there.
- On the literal reading of BP GTC section 57.1.61, a “typical” is not a guaranteed specification or a warranty.

❖ The Disputing Issue 1 (Cont'd)

- The Court rejected Mercuria's argument that "typicals" should be interpreted independently of the BP GTC and defined solely by reference to the special provisions. Applying the guidance in case law authorities (*Septo Trading Inc v Tintrade Ltd (The Nounou)* [2021] EWCA Civ 718), the Court held that the contract must be construed as a whole, and specially agreed terms could not be interpreted without reference to the printed terms.
- The wording of "in line with", just like other phrases such as "as follows" or "in accordance to", did not carry sufficient contractual significance to elevate a "typical" into a guarantee. The Court concluded that there was no inconsistency between the specially agreed terms and the BP GTC; rather, the BP GTC clarified the agreed terms without displacing them.

❖ The Disputing Issue 2

Mercuria submitted that Onex was obliged to deliver cargo that was "100% SOMO Iraqi HSSR" as agreed in the contract; however, the presence of OC indicated the cargo contained material of non-straight-run origin, thereby breaching the guarantee that the cargo would be 100% Iraqi origin HSSR.

Onex defended that "100% SOMO Iraqi HSSR" addressed the Iraqi origin, not its quality. Onex further argued that the OC content represented only an insignificant volume, so trivial that it could be disregarded.

The Court agreed with Onex, finding that the cargo was indeed of SOMO Iraqi origin. It also accepted that in any case, some OC would be naturally present in such cargo even if it was "in line with the typicals".

❖ The Disputing Issue 3

Mercuria further submitted that the OC level of the cargo was so high that it was neither “100% SOMO Iraqi HSSR” nor “SOMO Basrah pipeline high-sulphur straight-run fuel oil”; in other words, the cargo had lost its commercial identity as a result of the OC contamination, and Onex was therefore in breach of the description of the product.

The Court rejected Mercuria’s argument, holding that the cargo had not lost its commercial identity despite the elevated OC level, and that Onex was not in breach of the description clause. A key evidence was that Mercuria had in fact on-sold the cargo to multiple buyers under the description of “Iraqi SRFO”. The Court reasoned that, although the OC contamination was commercially significant and reduced the product’s value, it did not deprive the cargo of its commercial identity.

Ultimately, the Court dismissed Mercuria’s claim in full.

❖ Assessment of Damages

Mercuria claimed a total of USD 26,033,735, comprising a primary loss of approximately USD 19 million and a secondary loss of USD 7 million due to a fall in market value over several months. Since Onex succeeded on liability, no damages were awarded. However, the Court went on to consider the quantum of Mercuria’s claim in obiter, which attracted wider interest in the legal market.

❖ Assessment of Damages (Cont'd)

The measure of damages is usually governed by Section 53(3) of the Sale of Goods Act 1979:

“In the case of breach of warranty of quality such loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the warranty...”

Mercuria submitted that the appropriate assessment should compare the value of sound goods on one day with the value of defective goods on a later date, when the innocent party was able to resell the cargo:

- The measure of loss in Section 53(3) is only prima facie, and there was no absolute rule that the difference between value of sound goods and value of defective goods must be taken at the same time.
- The Section 53(3) is applied with the presumption that a prejudiced party could reasonably be expected to mitigate its loss immediately at the time of delivery (e.g. by purchasing replacement sound goods or reselling the defective goods). However, such presumption does not reflect the realistic commercial practice.

Onex contended that the difference in value must be ascertained at the date of the resale by relying on *The Mercini Lady [2013]*, a case concerning defective petroleum products which had been resold at a later date. In that case, the judge held that values of both sound and unsound goods must be assessed at the same time; otherwise, *“one would not be comparing like with like and market distortion would be introduced”*.

❖ Assessment of Damages (Cont'd)

Based on the facts and expert evidence, the Court found that Mercuria acted reasonably from the date upon which the claim arose until the dates on which their losses were crystallised. Recognising that the Section 53(3) sets out only a prima facie measure, the Court emphasised each case was highly fact-sensitive. It distinguished *The Mercini Lady*, as in that case the defect did not become obvious until later than the delivery date.

The Court concluded that, had Mercuria succeeded on liability, its loss would have been realistically and fairly assessed by comparing the value of the cargo at the time of breach with its value at the date of resale, and the principal damage claimed would be awarded.

❖ Comments

- This decision illustrates how courts approach contractual interpretation in agreements that incorporate both industry-standard terms and recap/special terms. The courts adopt a practical approach, guided by business common sense, rather than a purely literal or mechanical exercise. Where two clauses can be read fairly and sensibly to give effect to both, the court is likely to construe the contract in that way.
- For contracting parties, the case highlights the importance of carefully distinguishing which specification should be guaranteed and which may remain as non-binding typicals. Wherever possible, critical terms such as those relating to cargo description and quality, should be drafted on a back-to-back basis to ensure consistency across the contractual framework.

US / Israeli Military Intervention In Iran: Charterparty Implications

Given the outbreak of hostilities in the Middle East and critical situation of in the Strait of Hormuz, this article summarises some of the important charterparty implications under English law.

❖ War Risks Clause

Many charterparties contain an express war risks clause, the most common being BIMCO's CONWARTIME and VOYWAR clauses. CONWARTIME 2013 and 2025 entitle owners to refuse to proceed to areas that may expose the vessel, crew or cargo to war risks, as based on reasonable judgement of the master or owners. If a vessel refuses to proceed to a loading port or discharge port, owners may request an alternative nomination within the permitted range and within the agreed time frame (e.e., 48 or 72 hours, as applicable). If charterers fail to provide such nomination, owners may discharge at any safe port of their choosing, with cost borne by charterers.

VOYWAR grants owners similar rights to discontinue and request alternative port nomination. It also deals with the situation where the usual route becomes dangerous, permitting owners to take an alternative route and recover / adjust freight due to such change.

To rely on these clauses, owners' judgment on the exposure of war risks must be exercised in good faith and be objectively reasonable. The exposure must amount to "a real likelihood" or "a serious possibility". Decisions should be based on a careful, evidence-driven risk assessment rather than mere risk avoidance. Owners may need to consider not only flag state advisories but also tailored assessments from professional risk consultants to support their decision-making.

❖ War Risks Clause (Cont'd)

Where owners have accepted the risk of trading in a particular area under the charterparty—for example, where a route is expressly agreed as “always allowed”—they cannot ordinarily refuse orders unless they can demonstrate a qualitative change in the risks since the charterparty was formed. Wording such as “Strait of Hormuz always allowed,” or similar formulations indicating owners’ acceptance of risks, would prima facie make it more difficult for owners to justify refusal to proceed.

In assessing whether a qualitative change in risks has occurred, it is critical to consider the timing of contract formation and the knowledge of risks reasonably attributable to the parties at that point. Such an assessment will be highly fact-sensitive and dependent on the specific clauses contained in the charterparty agreement.

❖ Safe Port Warranties

Most charterparties contain an express or implied provision that the vessel shall only proceed to safe ports or berths. The well-established test for a safe port is: *“in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship”*.

Under time charter, if a port becomes unsafe before the vessel arrives, charterers are under a secondary obligation to give alternative voyage instruction which is prospectively safe. In the context of voyage charter, there is no such secondary obligation on a voyage charterer as a matter of law, but as a matter of contract, many voyage charters include wording to permit the vessel to proceed as near to the nominated port as she “may safely get”, or proceed to an alternative safe port.

❖ Safe Port Warranties (Cont'd)

The safety of port must be assessed at the time the order is given, but the assessment is one of prospective safety to consider the situation of port when the vessel is expected to arrive at and use the port. If the port is safe when vessels arrived and became unsafe during vessel's call, there is generally no breach of safe port warranty.

The current situation of Persian Gulf is highly fluid and changing from day to day. While the region may broadly be considered unsafe, this is not determinative for each individual port. On one hand, ongoing attacks have deterred many ship operators; on the other, some vessels continue to trade in the region, particularly where safe transit has been secured through diplomatic channels. Moreover, compared with physical attacks (e.g., projectiles or missiles), the impact of AIS and GPS spoofing or jamming on port safety is uncertain and may depend on preventative measures taken and the quality of seamanship during interference. Accordingly, whether a particular port in the region is unsafe is ultimately a question of fact.

❖ Termination of the Charterparty - Frustration

Frustration arises where, without fault of either party, a change of circumstances renders the performance of contractual obligations so “radically different” from what was reasonably contemplated at the time of contract formation that it would be unjust to hold the parties to those obligations. A charterparty will not be frustrated merely because:

- Performance of obligations becomes more costly or time-consuming;
- The charterparty terms adequately provide for the consequences of the alleged frustrating event;
- The parties have agreed that, under certain circumstances, alternative performance may be tendered without inordinate delay or expense.

❖ Termination of the Charterparty – Frustration (Cont'd)

Whether war operations in the Strait of Hormuz could frustrate a charterparty depends on the specific facts and contractual terms. If vessels cannot safely transit the Strait for a prolonged period, frustration may arise. However, if prolonged delays are already common knowledge before the charterparty is concluded, owners may be deemed to have accepted the risk of delay, making it difficult to rely on frustration.

The financial consequence of frustration vary between time and voyage charterparty. If a voyage charterparty is frustrated, the losses will lie where they fall, and neither party can claim damages from the other. The frustration of time charterparty is governed by the Law Reform (Frustrated Contract) Act 1945. Hire generally ceases to be payable from the date of discharge, and hire paid in advance may be recoverable. Courts and tribunals retain discretion to adjust outcomes where justice requires.

❖ Termination of the Charterparty – Force Majeure

English law does not recognise a free-standing doctrine of force majeure. Reliance on force majeure therefore depends entirely on the specific terms of the charterparty. The burden of proof lies with the party seeking to rely on the clause, who must establish that the event said to delay or prevent performance falls within the circumstances expressly set out in the relevant provision.



Market Snapshot

Global Supply Chain Disruption Accelerates In 2025

- Global supply-chain disruption accelerated in 2025, with event-driven alerts rising about 33% year-on-year to roughly 59,000. The surge was driven primarily by escalating geopolitical instability and a higher frequency of severe natural hazards, which made disruptions less predictable and quicker to escalate.
- Geopolitical alerts were the fastest growing category, jumping roughly 167% year-on-year. The Asia Pacific region saw the largest relative increase - geopolitical alerts rose more than sixfold - reflecting regional tensions, trade fragmentation and political instability that strain supplier networks.
- Natural hazard alerts increased about 27% in 2025, with medium severity events up around 74% and high severity events up about 21%. Europe, Latin America and APAC experienced notable upticks in higher-severity incidents, shifting the overall severity mix upward.
- Given this environment, periodic assessments are no longer sufficient. Organisations need continuous, data-driven visibility, early warning across multi-tier suppliers, on site audits and actionable intelligence to limit downstream impacts, shorten recovery times, and strengthen supply chain resilience.

Container Contagion: Port Congestion Amid Hormuz

- The US/Israel–Iran conflict has disrupted container trade, causing major port congestion and an over -360% surge in diversions. Market voice said daily diversions jumped from about 218 to around 1,010, peaking at 2,363 on 5 March 2026 . Data showed over 80% of 454 monitored ports are in critical status; 60–70% were severely congested.
- Carriers have bypassed Gulf hubs; Abu Dhabi, Jebel Ali and Hamad take diverted volumes while Khawr Fakkan, Sohar, Hambantota and Indian gateways (Mundra, Navi Mumbai) absorb rerouted cargo.
- Performance metrics deteriorated sharply: Mundra on time arrivals fell from 44% to 31%; Nhava Sheva from 50% to 33%. It was reported that Mundra departures delayed about 72% (approx. 11 days) and Navi Mumbai departures about 118% (approx. 13 days); arrival delays also rose.
- Carriers are pausing bookings, rerouting, slow steaming and raising rates. Longer transits, higher costs on fuel and insurance, increased container dwell and manufacturing delays are expected to persist for weeks or months.

Rising Costs: The Surge In Bunker Prices Is Reshaping Dry Bulk Freight Dynamics

- Rising bunker prices have reshaped dry bulk voyage economics: using Singapore VLSFO as a benchmark, bunker costs more than doubled from the February 2026 average, squeezing voyage margins and lifting freight. It was noted that C3 route rates rose about 24% as a result.
- The US/Israel–Iran conflict had limited direct effect on trade volumes but has pushed crude and bunker prices higher by tightening regional supply chains. That shifted market focus from vessel availability to input-cost pressure, creating upside risk for freight even without demand growth.
- For a non-scrubber Capesize carrying 170,000 tonnes of iron ore, bunker costs jumped from under 50% of total freight in February to over 85% in March. Scrubber-fitted vessels benefit from the widening fuel price spread and therefore face relatively lower fuel costs.
- With fuel now dominating voyage economics, elevated bunker prices are likely to keep freight levels high. Dry-bulk fundamentals remain stable, but near-term market direction will be driven more by fuel costs rather than by cargo shortages.

European Thermal Coal Imports May Rise As Middle East War Jolts Gas Supply Outlook

- Europe’s utilities and traders are prepared to increase seaborne thermal coal purchases as the Middle East conflict has boosted the gas price volatility and made gas-to-coal switching more economical ahead of summer. Initial restocking is expected in Northwest Europe, with impacts possibly lasting into Q3-Q4 2026 if LNG disruptions continue.
- Europe’s thermal coal imports fell from 81.7 million tonnes in 2022 to 37.4 million tonnes in 2025, yet market signals now point to higher coal burn risk this summer. Regional gas storage stood at about 28.7%, and analysts expect utilities to rebuild inventories.
- Damage to Qatar’s LNG facilities and other supply concerns tightened the gas outlook, lifting Dutch TTF futures and flipping spark/dark spreads in coal’s favour. Softer Chinese LNG demand eases short-term competition for cargoes but Asian summer demand could tighten availability later.
- Even without full baseload coal use, incremental coal burn to hedge gas insecurity could pull in extra seaborne volumes; continued LNG uncertainty keeps upside risk for spot coal prices.

War Risks Rates Soar As Iranians Ramp Up Ship Attacks

- War-risk insurance for Strait of Hormuz transits has spiked. Some London underwriters are reported to be quoting about 5% of hull value for additional cover — roughly USD 5 million for a USD 100 million tanker for a two-week period.
- Several insurers are declining Hormuz transits outright or offering cover only for vessels that remain in the Middle East Gulf or Gulf of Oman. Some underwriters argue a 5% premium still understates the risk after recent attacks; others say a 15–18% rate would better reflect current exposure.
- Freight and war-risk premiums have surged amid major oil-market disruption. Few owners are accepting offered cover due to heightened attack risk, crew reluctance, and conflicting reports of mine-laying in the area, all of which complicate safe-passage prospects.
- The US has unveiled a USD 20 billion reinsurance facility, led by Chubb, to support shipping. The scheme reportedly targets “US-linked” vessels and is tied to naval escorts, but the Development Finance Corporation has not published eligibility or operational details.

Middle East Conflict: Strait Of Hormuz Transits Remain 95% Down

- Strait of Hormuz transits remain roughly 95% below pre-conflict levels, with 75% of recent transits exiting the Gulf. About 10 oil tankers passed the Strait in the past seven days, while previously it would be 250 vessels.
- Crude exports from Yanbu have risen to about 4 million bpd, up from about 1 million bpd, potentially reaching 5 million bpd, with nearly 40 VLCCs waiting or en route, whilst arbitrage dynamics supporting long-haul US oil and gas exports. Experts estimate around 10% of global oil supply and about 6% of global gas supply are offline, alongside about 3% of global refining capacity.
- Excluding local traders, circa 1,100 ships are in the Gulf, including about 300 tankers and 4% of product tankers tonnage as well as 4% of VLGC and 1% of containership and bulker tonnage.
- The cost to move a barrel of crude oil remains elevated at USD10/bbl (on a US Gulf-Asia voyage), up from USD5/bbl starting this year. High bunker prices amid oil supply shortages, and market data suggest that average container vessel speeds are down 2% across March.

Tanker Market: Is Crude Oil Supply Under Threat?

- The Middle East war has entered its fourth week, with strikes now targeting energy infrastructure across the Gulf. Reports cite attacks on Iran's South Pars gas field and retaliatory drone and missile strikes on facilities in Qatar, the UAE, Saudi Arabia, and Kuwait. Drone strikes cause fires at Kuwait's Mina Al Ahmadi and Mina Abdullah refineries, with the former being struck repeatedly, forcing a shutdown of the refinery.
- Saudi Arabia's Yanbu SAMREF refinery was hit, prompting Aramco to briefly halt crude loadings. Yanbu has become Saudi Arabia's only crude export outlet following Hormuz closures, making it a critical bypass route. Disruption there could reduce VLCC loadings.
- As per market data, about 87.3% of volumes loaded in the Arabian Gulf countries in Jan-Feb 2026 were carried in VLCCs, 10.2% were carried in Suezmaxes, and 2.2% in Aframax. The proportions increased in recent years in favour of the largest tankers, as Suezmaxes and Aframax were diverted to carry non Russian cargoes.
- Meanwhile, the Islamic Revolutionary Guard Corps is reportedly vetting vessels between Larak and Qeshm islands, and in at least one case there is reported fee of USD 2 million. European nations and Japan have pledged support for safe passage, though operational details remain unclear.
- Washington is considering lifting sanctions on about 140 million barrels of Iranian crude stranded on tankers and has granted a 60-day Jones Act waiver allowing foreign ships to move energy cargoes between U.S. ports. Iraq and the Kurdistan Regional Government also agreed to resume Kirkuk flows to Ceyhan.
- Oil markets remain volatile. Crude exports out of Yanbu have picked up significantly, with averaged over 2.5 mbd of Arab Light in March versus circa 800 kbd in February. Analysts warn that prolonged damage or escalation could restrict flows and weigh on tanker markets. Stabilization, however, may restore trade and support longer-term demand.

Happy Reading, See You In April !

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