

232 - 011533

RECEIVED

'96 MAR -7 10:25

Original Title Page



FEDERAL MARITIME  
COMMISSION  
OFFICE OF THE SECRETARY

TITLE PAGE

AGREEMENT NAME: CGM TDM/Marfret Reciprocal Space Charter,  
Sailing and Cooperative Working Agreement

FMC NUMBER: \_\_\_\_\_

CLASSIFICATION: The generic classification of this Agreement  
in conformity with 46 C.F.R. §572.104 are  
Cooperative Working Agreement, Space Charter  
Agreement and Sailing Agreement.

CURRENT EXPIRATION  
DATE: Not Applicable

REPUBLISHED: Not Applicable

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1: FULL NAME OF THE AGREEMENT.....	2
ARTICLE 2: PURPOSE OF THE AGREEMENT.....	2
ARTICLE 3: PARTIES TO THE AGREEMENT.....	2
ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT.....	2
ARTICLE 5: AGREEMENT AUTHORITY.....	3
ARTICLE 6: OFFICIALS OF THE AGREEMENT AND DELEGATIONS OF AUTHORITY.....	6
ARTICLE 7: MEMBERSHIP, WITHDRAWAL, READMISSION AND EXPULSION.....	6
ARTICLE 8: VOTING.....	7
ARTICLE 9: DURATION AND TERMINATION OF THE AGREEMENT...	7
ARTICLE 10: ADMINISTRATIVE MATTERS.....	8
ARTICLE 11: APPLICABLE LAW.....	9
ARTICLE 12: ARBITRATION.....	9
ARTICLE 13: FORCE MAJEURE.....	9
ARTICLE 14: NOTICES.....	11
ARTICLE 15: NON-ASSIGNMENT OR CHANGE OF COMPANY OWNERSHIP.....	11
ARTICLE 16: ENFORCEABILITY.....	12
ARTICLE 17: COUNTERPARTS.....	12
ARTICLE 18: SHIPPING ACT OF 1984.....	12
ARTICLE 19: SIGNATURE PAGE.....	13



232-011533--

ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is CGM TDM/MARFRET Reciprocal Space Charter, Sailing and Cooperative Working Agreement (hereinafter referred to as the "Agreement").

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of the Agreement is to permit the parties to achieve efficiencies and economies in their respective services offered in the trade covered by the Agreement.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter "Party" or "Parties") are:

1. CGM Tour du Monde S.A.  
22 Quai Gallieni  
92158 Suresnes  
France
2. La Compagnie Maritime Marfret, S.A.  
13 Quai de la Joliette  
13002 Marseille  
France



ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of this Agreement shall extend via direct service or transshipment West bound between:

- (1) all ports in continental Europe, the United Kingdom, the Republic of Ireland, Central and Eastern Europe, Scandinavia

~~232-011533~~ - -

and the Mediterranean and all inland and coastal points via such ports (referred to hereinafter as the "Trade"), and U.S. Atlantic Gulf and West Coast ports and all inland and coastal points via such ports,

(2) U.S. Atlantic Gulf and West Coast ports and all inland and coast points via such ports on the one hand and, on the other hand, ports in the islands of the Central and South Pacific, including but not limited to, Tahiti, New Caledonia and Papua, New Guinea, and all ports in Australia, Asia, South East Asia and the Indian subcontinent including but not limited to Sri Lanka.

ARTICLE 5: AGREEMENT AUTHORITY

5.1 Coordination of Sailings

The Parties may consult and agree upon sailing schedules, service frequency, ports to be served and port rotation.

5.2 Reciprocal Space Chartering

a. Authority

The Parties may charter space to and from each other on their respective vessels and/or on vessels on which they have contracted for space. The Parties may agree on the number of slots and/or space to be chartered and the compensation for said transportation. The Parties may interchange the space allocated to each Party on the terms and conditions and for a compensation to be agreed. The Parties anticipate deploying up to seven (7) vessels with a maximum capacity of 9,500 TEUs, but not all of the capacity will be dedicated to U.S. trade.



282-011533

b. Designation of Parties as Charterer and Owners

As used herein, either Party who charters vessel capacity from the other shall be referred to as "Charterer". A Party whose vessel capacity is chartered by the other Party for transportation hereunder shall be referred to as "Owner".

c. Obligation of the Parties

(1) Each Party shall accept for transportation and transport any and all containerized cargo and/or equipment tendered to it by the other Party, on its own behalf or on behalf of its contract parties, on its next vessel on such terms as they may agree. Pursuant to such terms as they may agree each Party shall ensure and warrant that sufficient space is available on its next vessel to accommodate and transport, within the scope of this Agreement, any and all cargo and/or equipment tendered to it by the other Party on its own behalf or on behalf of its contract parties. Equipment includes, without limitation, containers owned or leased by the Parties, whether full, partially loaded or empty and other freight service equipment that the Parties may agree upon.

(2) The Parties may consult and agree on the acceptance and transportation or ro/ro, breakbulk and/or bulk cargo under this Agreement.

(3) Each Owner is obligated to maintain the vessel it operates in the Trade in good operating condition.



**232-011533**

d. Insurance

Each Owner will, as to its vessels, provide, pay for, and provide the other Party with satisfactory evidence of, Hull, P&I and financial responsibility for oil pollution insurance within thirty (30) days of the signing of this Agreement. Each Party further agrees to provide the other with written notice prior to cancellation of any such insurance and prompt notice of any change, modification or non-renewal of such insurance for non-payment of premiums thereon.

e. Advertising

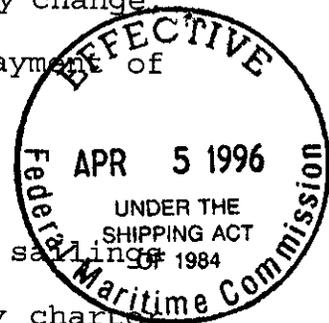
Each Charterer or its contract parties may advertise sailing space by vessels of each Owner on which Charterer will or may charter space.

5.3 Tonnage

The Parties may consult and agree on the number, size and type of vessels to be provided by each Party hereunder and operated in the Trade. The Parties shall consult prior to employment in the Trade of any tonnage in excess of that previously scheduled. The vessels operated may be owned or chartered in.

5.4 Efficient Use of Equipment, Terminals, Stevedores, Ports and Suppliers

The Parties may interchange, establish pools of, or otherwise cooperate in connection with their empty containers, chassis and/or related equipment to provide for the efficient use of such



**232-011533**

equipment as between themselves, or to, from, or with other on such terms as they may agree. The Parties may also jointly contract with or coordinate in contracting with stevedores, terminals, ports, and suppliers of equipment, land or services or may designate the other to provide or manage such services and equipment or equipment pools on the designating Party's behalf. Nothing herein shall authorize the Parties jointly to operate a marine terminal.

ARTICLE 6: OFFICIALS OF THE AGREEMENT AND  
DELEGATIONS OF AUTHORITY

The following are authorized to subscribe to and file this Agreement and any accompanying materials, as well as any subsequent modifications which may be adopted by the Parties:

Paul M. Keane  
Cichanowicz, Callan & Keane  
61 Broadway, Suite 3000  
New York, New York 10006-2802



ARTICLE 7: MEMBERSHIP, WITHDRAWAL,  
READMISSION AND EXPULSION

Membership is limited to the Parties hereto, except that additional carriers may be admitted or readmitted by unanimous consent of the Parties and by amendment of the Agreement pursuant to the Shipping Act of 1984.

232-011533

ARTICLE 8: VOTING

All determinations made and/or actions to be taken, pursuant to this Agreement require unanimous vote of the Parties.

ARTICLE 9: DURATION AND TERMINATION OF THE AGREEMENT

9.1 Duration

a. Term

The Agreement shall be in effect up to and including August 24, 1998 unless sooner terminated in accordance with Article 9.2(a), (2), (3), (4) and (5) and will continue thereafter unless notice is given according to 9.2. Subsequent to August 24, 1998 this Agreement shall be extended on a year by year basis unless otherwise terminated by the parties pursuant to the terms of this Agreement.

b. Effective Date

The Effective Date shall be the latest of (1) such date that each Party notifies the other, in a writing sent to the address set forth herein, of its readiness to implement the Agreement or (2) the date the Agreement becomes effective pursuant to the Shipping Act of 1984.

9.2 Termination

a. The Agreement may be terminated as follows:

(1) Either Party may terminate the Agreement by serving written notice on the other Party not less than six (6) months



**232-011533 - -**

prior to the termination date specified in such notice, but, except as provided in Article 9.2(a), (2), (3) and (4) said termination date shall not be prior to one year following the Effective Date of the Agreement.

(2) Either Party may terminate the Agreement at any time immediately by serving written notice on the other Party if:

(i) the other commits a material breach of this Agreement; or

(ii) the other Party repeatedly fails to serve the Trade with the agreed itinerary; or

(iii) the other Party fails to operate the vessels as from time to time agreed in the Trade.

(3) Either Party may terminate the Agreement at any time immediately by serving written notice thereof on the other Party if the other Party files, or has filed against it, proceedings under bankruptcy, reorganization, insolvency or other similar laws.

(4) The Agreement may be terminated at any time by written mutual agreement of the Parties.

b. The FMC shall be promptly notified in writing of the termination of this Agreement.

ARTICLE 10: ADMINISTRATIVE MATTERS

The Parties may consult and agree upon general administrative matters necessary to implement this Agreement, including but not



**232-011533 - \***

limited to recordkeeping, insurance, claims and settlement procedures, liabilities and indemnifications, and will bear these administrative expenses as the Parties may from time to time agree.

ARTICLE 11: APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of France.

ARTICLE 12: ARBITRATION

Except as otherwise provided herein any dispute or claim arising hereunder which is not amicably settled by the Parties shall be settled by arbitration. Arbitration shall be conducted in Paris in accordance with the Rules of the Maritime Arbitration Chamber of Paris. Such decision shall be final and conclusive, and may be enforced in a court of competent jurisdiction.

A copy of such decision shall be served by the arbitrators on the Parties.

ARTICLE 13: FORCE MAJEURE

Except as may be otherwise specifically provided herein, the obligations of the Parties hereunder shall be totally excused to the extent made necessary by the existence and continuation of conditions beyond the Parties' control that render either Party, or both, unable to carry out their obligations (other than obligations



CGM TDM/MARFRET RECIPROCAL SPACE  
CHARTER, SAILING AND COOPERATIVE  
WORKING AGREEMENT  
FMC AGREEMENT

Original Page No. 10

**232 - 011533**

of the affected Party to pay or to expend monies in connection with the performance of such Party's responsibilities under the Agreement) because of, or due to, war, civil commotion, invasion, rebellion, hostilities, strikes, labor disputes, sabotage or other work stoppage, unusually severe weather, legal intervention including without limitation regulations or orders of any governmental authority, acts of God, or inability to obtain materials or services, provided that the Party asserting the existence of such conditions as excuse for non-performance shall promptly give written notice of such conditions to the other Party. The burden of proof in regard to an allegation of Force Majeure and its consequences on such Party's ability to fulfill its obligations shall at all times be on the Party invoking this Force Majeure clause and such Party shall take all appropriate measures needed to minimize its damages under the circumstances. Should any one of the aforementioned events impede the maintenance of the service as scheduled under this Agreement the Parties shall adapt the service to the new situation created to the extent commercially reasonable and possible. In the event that such adaptation cannot be realized the performance of both Parties under this Agreement shall be suspended until such time as such event of Force Majeure shall terminate.



232-011533

ARTICLE 14: NOTICES

All notices and other communications pertaining to the Agreement, except as the Parties may otherwise provide, shall be sent by registered mail, return receipt requested and addressed as follows:

1. CGM Tour du Monde S.A.  
22 Quai Gallieni  
92158 Suresnes  
France
2. La Compagnie Maritime Marfret, S.A.  
13 Quai de la Joliette  
13002 Marseille  
France



Priority notices and communications may be sent by telex or fax and confirmed by mail. Telex and fax communications shall be deemed to have been received if such communications bear the recipient's answerback.

ARTICLE 15: NON-ASSIGNMENT OR CHANGE OF COMPANY OWNERSHIP

a. No Party shall assign or transfer this Agreement or all or any part of its rights hereunder to any person, firm or corporation without the prior written consent of the other Party.

b. In case the ownership or shareholding of either Party is modified in a way altering the relevant Party's financial control, the other Party shall be entitled to terminate the present Agreement on three (3) months prior written notice if it judges in good faith that such modification is likely to jeopardize the Agreements implementation and performance.

**232 - 011533**

ARTICLE 16: ENFORCEABILITY

If at any time during the performance of any transportation under the provisions of the Agreement, any term, covenant, condition or proviso contained in the Agreement or the application thereto to any person or circumstances shall be held to be invalid, illegal or unenforceable, the remainder of the Agreement or the application of such term, covenant, condition or proviso to persons or circumstances other than those to which it is invalid, illegal or unenforceable shall not be affected thereby and each term, covenant, proviso or condition of the Agreement shall be valid and be enforceable to the full extent permitted by law.

ARTICLE 17: COUNTERPARTS

This Agreement may be executed in counterparts. Each such counterpart shall be deemed an original, but all together shall constitute but one and the same instrument.

ARTICLE 18: SHIPPING ACT OF 1984

The Parties covenant and agree that neither of them in the discharge of any provision of the Agreement shall make any payment of a rebate, remittance or allowance in violation of the Shipping Act of 1984.



232-011533

ARTICLE 19: SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers or agents.

CGM TOUR DU MONDE S.A.

LA COMPAGNIE MARITIME  
MARFRET, S.A.

By: Jean Louis Bellencourt  
[Insert Name of Person]

By: JoAnne Latham  
[Insert Name of Person]

Its: [Insert Title of Person]  
Owner's Representative

Its: [Insert Title of Person]  
Owner's Representative

