

## **INTERNATIONAL HULL CLAUSES**

(FOR USE WITH THE CURRENT MAR POLICY FORM)

### **PART 1 – PRINCIPAL INSURING CONDITIONS**

#### **1 GENERAL**

1.1 Part 1, Clauses 34-39 of Part 2 and Part 3 apply to this insurance. Parts 2 and 3 shall be those current at the date of inception of this insurance. Clauses 40-44 of Part 2 shall only apply where the Underwriters have expressly so agreed in writing.

1.2 This insurance is subject to English law and practice.

1.3 This insurance is subject to the exclusive jurisdiction of the English High Court of Justice, except as may be expressly provided herein to the contrary.

1.4 If any provision of this insurance is held to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this insurance which shall remain in full force and effect.

#### **2 PERILS**

2.1 This insurance covers loss of or damage to the subject-matter insured caused by

2.1.1 perils of the seas, rivers, lakes or other navigable waters

2.1.2 fire, explosion

2.1.3 violent theft by persons from outside the vessel

2.1.4 jettison

2.1.5 piracy

2.1.6 contact with land conveyance, dock or harbour equipment or installation

2.1.7 earthquake, volcanic eruption or lightning

2.1.8 accidents in loading, discharging or shifting cargo, fuel, stores or parts

2.1.9 contact with satellites, aircraft, helicopters or similar objects, or objects falling therefrom.

2.2 This insurance covers loss of or damage to the subject-matter insured caused by

2.2.1 bursting of boilers or breakage of shafts but excludes the cost of repairing or replacing the boiler which bursts or the shaft which breaks

2.2.2 any latent defect in the machinery or hull, but only to the extent that the cost of repairing the loss or damage caused thereby exceeds the cost that would have been incurred to correct the latent defect

2.2.3 negligence of Master, Officers, Crew or Pilots

2.2.4 negligence of repairers or charterers provided such repairers or charterers are not an Assured under this insurance

2.2.5 barratry of Master, Officers or Crew provided that such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

2.3 Master, Officers, Crew or Pilots shall not be considered Owners within the meaning of this Clause 2 should they hold shares in the vessel.

#### **3 LEASED EQUIPMENT**

3.1 This insurance covers loss of or damage to equipment and apparatus not owned by the Assured but installed for use on the vessel and for which the Assured has assumed contractual liability, where such loss or damage is caused by a peril insured under this insurance.

3.2 The liability of the Underwriters shall not exceed the lesser of the contractual liability of the Assured for loss of or damage to such equipment or apparatus or the reasonable cost of their repair or their replacement value. All such equipment and apparatus are included in the insured value of the vessel.

#### **4 PARTS TAKEN OFF**

4.1 This insurance covers loss of or damage to parts taken off the vessel, where such loss or damage is caused by a peril insured under this insurance.

4.2 Where the parts taken off the vessel are not owned by the Assured but where the Assured has assumed contractual liability for such parts, the liability of the Underwriters for such parts taken off shall not exceed the lesser of the contractual liability of the Assured for loss of or damage to such parts or the reasonable cost of their repair or their replacement value.

4.3 If at the time of loss of or damage to the parts taken off the vessel, such parts are covered by or would be covered by any other insurance but for this Clause 4, then this insurance shall only be excess of such other insurance.

4.4 Cover in respect of parts taken off the vessel shall be limited to 60 days whilst not on board the vessel. Periods in excess of 60 days shall be held covered provided notice is given to the Underwriters prior to the expiry of the 60 day period and any amended terms of cover and any additional premium required by them be agreed.

4.5 In no case shall the total liability of the Underwriters under this Clause 4 exceed 5% of the insured value of the vessel.

#### **5 POLLUTION HAZARD**

This insurance covers loss of or damage to the vessel caused by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution hazard or damage to the environment or threat thereof, resulting directly from damage to the vessel for which the Underwriters are liable under this insurance, provided that such act of governmental authority has not resulted from want of due diligence by the Assured, Owners or Managers to prevent or mitigate such hazard or damage or threat thereof. Master, Officers, Crew or Pilots shall not be considered Owners within the meaning of this Clause 5 should they hold shares in the vessel.

#### **6 3/4THS COLLISION LIABILITY**

6.1 The Underwriters agree to indemnify the Assured for three fourths of any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable by way of damages for

6.1.1 loss of or damage to any other vessel or property thereon

6.1.2 delay to or loss of use of any such other vessel or property thereon

6.1.3 general average of, salvage of, or salvage under contract of, any such other vessel or property thereon, where such payment by the Assured is in consequence of the insured vessel coming into collision with any other vessel.

6.2 The indemnity provided by this Clause 6 shall be in addition to the indemnity provided by the other terms and conditions of this insurance and shall be subject to the following provisions

6.2.1 where the insured vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 6 shall be calculated on the principle of crossliabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision

6.2.2 in no case shall the total liability of the Underwriters under Clauses 6.1 and 6.2 exceed their proportionate part of three fourths of the insured value of the insured vessel in respect of any one collision.

6.3 The Underwriters will also pay three fourths of the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability, provided always that their prior written consent to the incurring of such costs shall have been obtained and that the total liability of the Underwriters under this Clause 6.3 shall not exceed 25% of the insured value of the insured vessel.

## **EXCLUSIONS**

6.4 In no case shall the Underwriters indemnify the Assured under this Clause 6 for any sum which the Assured shall pay for or in respect of

6.4.1 removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever

6.4.2 any real or personal property or thing whatsoever except other vessels or property on other vessels

6.4.3 the cargo or other property on, or the engagements of, the insured vessel

6.4.4 loss of life, personal injury or illness

6.4.5 pollution or contamination, or threats thereof, of any real or personal property or thing whatsoever (except other vessels with which the insured vessel is in collision or property on such other vessels) or damage to the environment, or threat thereof, save that this exclusion shall not exclude any sum which the Assured shall pay for or in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

## **7 SISTERSHIP**

Should the insured vessel come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the Assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of Owners not interested in the insured vessel; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured.

## **8 GENERAL AVERAGE AND SALVAGE**

8.1 This insurance covers the vessel's proportion of salvage, salvage charges and/or general average, reduced in respect of any under-insurance, but in case of general average sacrifice of the vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.

8.2 General average shall be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules.

8.3 When the vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1994 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated, the voyage shall thereupon be deemed to be terminated.

8.4 The Underwriters shall not be liable under this Clause 8 where the loss was not incurred to avoid or in connection with the avoidance of a peril insured under this insurance.

8.5 The Underwriters shall not be liable under this Clause 8 for or in respect of 8.5.1 special compensation payable to a salvor under Article 14 of the International Convention on Salvage, 1989 or under any other provision in any statute, rule, law or contract which is similar in substance

8.5.2 expenses or liabilities incurred in respect of damage to the environment, or the threat of such damage, or as a consequence of the escape or release of pollutant substances from the vessel, or the threat of such escape or release.

8.6 Clause 8.5 shall not however exclude any sum which the Assured shall pay

8.6.1 to salvors for or in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account

8.6.2 as general average expenditure allowable under Rule XI(d) of the York-Antwerp Rules 1994, but only where the contract of affreightment provides for adjustment according to the York-Antwerp Rules 1994.

## **9 DUTY OF THE ASSURED (SUE AND LABOUR)**

9.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.

9.2 Subject to the provisions below and to Clause 15, the Underwriters shall contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 9.5), special compensation and expenses as referred to in Clause 8.5 and collision defence or attack costs are not recoverable under this Clause 9.

9.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

9.4 When expenses are incurred pursuant to this Clause 9, the liability under this insurance shall not exceed the proportion of such expenses that the amount insured under this insurance bears to the value of the vessel as stated herein, or to the sound value of the vessel at the time of the accident or occurrence giving rise to the expenditure if the sound value exceeds that value. Where the Underwriters have admitted a claim for total loss and property insured by this insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.

9.5 When the Underwriters have admitted a claim for total loss of the vessel under this insurance and expenses have been reasonably incurred in saving or attempting to save the vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro

rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the vessel, excluding all special compensation and expenses referred to in Clause 8.5; but if the vessel is insured for less than its sound value at the time of the accident or occurrence giving rise to the expenditure, the amount recoverable under this Clause shall be reduced in proportion to the under-insurance.

9.6 The sum recoverable under this Clause 9 shall be in addition to the loss otherwise recoverable under this insurance but shall in no circumstances exceed the insured value of the vessel.

## **10 NAVIGATION PROVISIONS**

Unless and to the extent otherwise agreed by the Underwriters in accordance with Clause 11 below

10.1 the vessel shall not sail nor be employed in breach of any provisions of this insurance as to cargo, trade or locality (including, but not limited to, Clause 34 below)

10.2 the vessel may sail or navigate with or without pilots, go on trial trips and assist and tow vessels or craft in distress, but shall not be towed, except as is customary (including customary towage in connection with loading or discharging) or to the first safe port or place when in need of assistance, or undertake towage or salvage services under a contract previously arranged by the Assured and/or Owners and/or Managers and/or Charterers

10.3 the Assured shall not enter into any contract with pilots or for customary towage which limits or exempts the liability of the pilots and/or tugs and/or towboats and/or their owners except where the Assured or their agents accept or are compelled to accept such contracts in accordance with established local law or practice

10.4 the vessel shall not be employed in trading operations which entail cargo loading or discharging at sea from or into another vessel (not being a harbour or inshore craft).

## **11 BREACH OF NAVIGATION PROVISIONS**

In the event of any breach of any of the provisions of Clause 10, the Underwriters shall not be liable for any loss, damage, liability or expense arising out of or resulting from an accident or occurrence during the period of breach, unless notice is given to the Underwriters immediately after receipt of advices of such breach and any amended terms of cover and any additional premium required by them be agreed.

## **12 CONTINUATION**

Should the vessel at the expiration of this insurance be at sea and in distress or missing, she shall be held covered until arrival at the next port in good safety, or if in port and in distress until the vessel is made safe, at a pro rata monthly premium, provided that notice be given to the Underwriters as soon as possible.

## **13 CLASSIFICATION AND ISM**

**This Clause 13 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent therewith.**

13.1 At the inception of and throughout the period of this insurance

13.1.1 the vessel shall be classed with a Classification Society agreed by the Underwriters

13.1.2 there shall be no change, suspension, discontinuance, withdrawal or expiry of the vessel's class with the Classification Society

13.1.3 any recommendations, requirements or restrictions imposed by the vessel's Classification Society which relate to the vessel's seaworthiness or to her maintenance in a seaworthy condition shall be complied with by the dates required by that Society

13.1.4 the Owners or the party assuming responsibility for operation of the vessel from the Owners shall hold a valid Document of Compliance in respect of the vessel as required by chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) 1974 as amended and any modification thereof

13.1.5 the vessel shall have in force a valid Safety Management Certificate as required by chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) 1974 as amended and any modification thereof.

13.2 Unless the Underwriters agree to the contrary in writing, in the event of any breach of any of the provisions of Clause 13.1 above, this insurance shall terminate automatically at the time of such breach, provided

13.2.1 that if the vessel is at sea at such date, such automatic termination shall be deferred until arrival at her next port

13.2.2 where such change, suspension, discontinuance or withdrawal of her class under Clause 13.1.2 above has resulted from loss or damage covered by Clause 2 or by Clause 44.1.3 (if applicable) or which would be covered by an insurance of the vessel subject to current Institute War and Strikes Clauses Hulls-Time, such automatic termination shall only operate should the vessel sail from her next port without the prior approval of the Classification Society.

A pro rata daily net return of premium shall be made provided that a total loss of the vessel, whether by perils insured under this insurance or otherwise, has not occurred during the period of this insurance or any extension thereof.

## **14 MANAGEMENT**

**This Clause 14 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent therewith.**

14.1 Unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically at the time of

14.1.1 any change, voluntary or otherwise, in the ownership or flag of the vessel

14.1.2 transfer of the vessel to new management

14.1.3 charter of the vessel on a bareboat basis

14.1.4 requisition of the vessel for title or use provided that, if the vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, such automatic termination shall if required be deferred, whilst the vessel continues her planned voyage, until arrival at final port of discharge if with cargo or at port of destination if in ballast. However, in the event of requisition for title or use without the prior execution of a written agreement by the Assured, such automatic termination shall occur fifteen days after such requisition whether the vessel is at sea or in port.

14.2 Unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically at the time of the vessel sailing (with or without cargo) with an intention of being broken up, or being sold for breaking up.

14.3 In the event of termination under Clause 14.1 or Clause 14.2 above, a pro rata daily net return of premium shall be made provided that a total loss of the vessel, whether by perils insured under this insurance or otherwise, has not occurred during the period of this insurance or any extension thereof.



14.4 It is the duty of the Assured, Owners and Managers at the inception of and throughout the period of this insurance to

14.4.1 comply with all statutory requirements of the vessel's flag state relating to construction, adaptation, condition, fitment, equipment, operation and manning of the vessel

14.4.2 comply with all requirements of the vessel's Classification Society regarding the reporting to the Classification Society of accidents to and defects in the vessel. In the event of any breach of any of the duties in this Clause 14.4, the Underwriters shall not be liable for any loss, damage, liability or expense attributable to such breach.

## **15 DEDUCTIBLE(S)**

15.1 Subject to Clause 15.2, no claim arising from a peril insured under this insurance shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence (including claims under Clauses 2, 3, 4, 5, 6 (including, if applicable, Clause 6 as amended by Clauses 40 or 41), Clauses 8 and 9 above and, if applicable, Clauses 43 and 44) exceeds the deductible amount agreed in which case this sum shall be deducted. Nevertheless the expense of sighting the bottom after stranding, if reasonably incurred specially for that purpose, shall be paid even if no damage is found.

15.2 No claim for loss of or damage to any machinery, shaft, electrical equipment or wiring, boiler, condenser, heating coil or associated pipework, arising from any of the perils enumerated in Clauses 2.2.1 to 2.2.5 or from fire or explosion when either has originated in a machinery space and no claim arising under Clause 44 (if applicable), shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence exceeds the additional machinery damage deductible amount agreed (if any) in which case this sum shall be deducted. Any balance remaining, after application of this deductible, with any other claim arising from the same accident or occurrence, shall then be subject to the deductible referred to in Clause 15.1.

15.3 Clauses 15.1 and 15.2 shall not apply to a claim for total or constructive total loss of the vessel or, in the event of such a claim, to any associated claim under Clause 9 arising from the same accident or occurrence.

15.4 Claims for damage by heavy weather occurring during a single sea passage between two successive ports shall be treated as being due to one accident. In the case of such heavy weather extending over a period not wholly covered by this insurance the deductible to be applied to the claim recoverable under this insurance shall be the proportion of the deductible in Clause 15.1 that the number of days of such heavy weather falling within the period of this insurance bears to the number of days of heavy weather during the single sea passage. The expression "heavy weather" in this Clause 15.4 shall be deemed to include contact with floating ice.

15.5 Claims for damage occurring during each separate lightening operation and/or each separate cargo loading or discharging operation from or into another vessel at sea, where recoverable under this insurance, shall be treated as being due to one accident.

## **16 NEW FOR OLD**

Claims recoverable under this insurance shall be payable without deduction on the basis of new for old.

## **17 BOTTOM TREATMENT**

The Underwriters shall not be liable in respect of scraping, gritblasting and/or other surface preparation or painting of the vessel's bottom except that

17.1 gritblasting and/or other surface preparation of new bottom plates ashore and supplying and applying any "shop" primer thereto

17.2 gritblasting and/or other surface preparation of

17.2.1 the butts or area of plating immediately adjacent to any renewed or refitted plating damaged during the course of welding and/or repairs

17.2.2 areas of plating damaged during the course of fairing, either in place or ashore

17.3 supplying and applying the first coat of primer/anti-corrosive to those particular areas mentioned in Clauses 17.1 and 17.2 above, shall be included as part of the reasonable cost of repairs in respect of bottom plating damaged by a peril insured under this insurance.

## **18 WAGES AND MAINTENANCE**

Other than in general average, the Underwriters shall not be liable for wages and maintenance of the Master, Officers and Crew or any member thereof, except when incurred solely for the necessary removal of the vessel from one port to another for the repair of damage covered by the Underwriters, or for trial trips for such repairs, and then only for such wages and maintenance as are incurred whilst the vessel is under way.

## **19 AGENCY COMMISSION**

No sum shall be recoverable under this insurance either by way of remuneration of the Assured for time and trouble taken to obtain and supply information or documents or in respect of the commission or charges of any manager, agent, managing or agency company or the like, appointed by or on behalf of the Assured to perform such services.

## **20 UNREPAIRED DAMAGE**

20.1 The measure of indemnity in respect of claims for unrepaired damage shall be the reasonable depreciation in the market value of the vessel at the time this insurance terminates arising from such unrepaired damage, but not exceeding the reasonable cost of repairs.

20.2 In no case shall the Underwriters be liable for unrepaired damage in the event of a subsequent total loss of the vessel (whether by perils insured under this insurance or otherwise) sustained during the period of this insurance or any extension thereof.

20.3 The Underwriters shall not be liable in respect of unrepaired damage for more than the insured value of the vessel at the time this insurance terminates.

## **21 CONSTRUCTIVE TOTAL LOSS**

21.1 In ascertaining whether the vessel is a constructive total loss, 80% of the insured value of the vessel shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

21.2 No claim for constructive total loss of the vessel based upon the cost of recovery and/or repair of the vessel shall be recoverable hereunder unless such cost would exceed 80% of the insured value of the vessel. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.

## **22 FREIGHT WAIVER**

If a total or constructive total loss of the vessel has been admitted by the Underwriters, they shall make no claim for freight whether notice of abandonment has been given or not.

## **23 ASSIGNMENT**



No assignment of or interest in this insurance or in any moneys which may be or become payable under this insurance is to be binding on or recognised by the Underwriters unless a dated notice of such assignment or interest signed by the Assured, and by the assignor in the case of subsequent assignment, is endorsed on the policy and the policy with such endorsement is produced before payment of any claim or return of premium under this insurance.

## **24 DISBURSEMENTS WARRANTY**

24.1 Additional insurances as follows are permitted by the Underwriters:

24.1.1 *Disbursements, Managers' Commissions, Profits or Excess or Increased Value of Hull and Machinery.* A sum not exceeding 25% of the value stated herein.

24.1.2 *Freight, Chartered Freight or Anticipated Freight, insured for time.* A sum not exceeding 25% of the value as stated herein less any sum insured, however described, under Clause 24.1.1 above.

24.1.3 *Freight or Hire, under contracts for voyage.* A sum not exceeding the gross freight or hire for the current cargo passage and next succeeding cargo passage (such insurance to include, if required, a preliminary and an intermediate ballast passage) plus the charges of insurance. In the case of a voyage charter where payment is made on a time basis, the sum permitted for insurance shall be calculated on the estimated duration of the voyage, subject to the limitation of two cargo passages as laid down herein. Any sum insured under Clause 24.1.2 above to be taken into account and only the excess thereof may be insured, which excess shall be reduced as the freight or hire is advanced or earned by the gross amount so advanced or earned.

24.1.4 *Anticipated Freight if the vessel sails in ballast and not under Charter.* A sum not exceeding the anticipated gross freight on next cargo passage, such sum to be reasonably estimated on the basis of the current rate of freight at time of insurance plus the charges of insurance. Any sum insured under Clause 24.1.2 above to be taken into account and only the excess thereof may be insured.

24.1.5 *Time Charter Hire or Charter Hire for Series of Voyages.* A sum not exceeding 50% of the gross hire which is to be earned under the charter in a period not exceeding 18 months. Any sum insured under Clause 24.1.2 above to be taken into account and only the excess thereof may be insured, which excess shall be reduced as the hire is advanced or earned under the charter by 50% of the gross amount so advanced or earned but the sum insured need not be reduced while the total of the sums insured under Clause 24.1.2 and Clause 24.1.5 above does not exceed 50% of the gross hire still to be earned under the charter. An insurance under this Clause may begin on the signing of the charter.

24.1.6 *Premiums.* A sum not exceeding the actual premiums of all interests insured for a period not exceeding 12 months (excluding premiums insured under the foregoing sections but including, if required, the premium or estimated calls on any Club or War etc. Risk insurance) reducing pro rata monthly.

24.1.7 *Returns of Premium.* A sum not exceeding the actual returns which are allowable under any insurance but which would not be recoverable thereunder in the event of a total loss of the vessel whether by perils insured under this insurance or otherwise.

24.1.8 *Insurance irrespective of amount against:* Any risks excluded by Clauses 29, 30, 31, 32 and 33 below.

24.2 Warranted that no insurance on any interests enumerated in the foregoing Clauses 24.1.1 to 24.1.7 in excess of the amounts permitted therein and no other insurance which includes total loss of the vessel P.P.I., F.I.A., or subject to any other like term, is or shall be effected to operate during the period of this insurance or any extension thereof by or for account of the Assured, Owners, Managers

or Mortgagees. Provided always that a breach of this warranty shall not afford the Underwriters any defence to a claim by a Mortgagee who has accepted this insurance without knowledge of such breach.

## **25 CANCELLING RETURNS**

If this insurance shall be cancelled by agreement, the Underwriters shall pay a pro rata monthly net return of premium for each uncommenced month, provided always that a total loss of the vessel, whether by perils insured under this insurance or otherwise, has not occurred during the period of this insurance or any extension thereof.

## **26 SEPARATE INSURANCES**

If more than one vessel is insured under this insurance, each vessel insured is deemed to be separately insured, as if a separate policy had been issued in respect of each vessel.

## **27 SEVERAL LIABILITY**

The Underwriters' obligations are several and not joint and are limited solely to the extent of their individual subscriptions. The Underwriters are not responsible for the subscription of any cosubscribing Underwriter who for any reason does not satisfy all or part of its obligations.

## **28 AFFILIATED COMPANIES**

In the event of the vessel being chartered by an associated, subsidiary or affiliated company of the Assured, and in the event of loss of or damage to the vessel by perils insured under this insurance, the Underwriters waive their rights of subrogation against such charterers, except to the extent that any such charterer has the benefit of liability cover for such loss or damage.

**The following Clauses shall be paramount and shall override anything contained in this insurance inconsistent therewith.**

## **29 WAR EXCLUSION**

In no case shall this insurance cover loss damage liability or expense caused by

29.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

29.2 capture seizure arrest restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat

29.3 derelict mines torpedoes bombs or other derelict weapons of war.

## **30 STRIKES EXCLUSION**

In no case shall this insurance cover loss damage liability or expense caused by

30.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

30.2 any terrorist or any person acting from a political motive.

## **31 MALICIOUS ACTS EXCLUSION**

In no case shall this insurance cover loss damage liability or expense arising from

31.1 the detonation of an explosive

31.2 any weapon of war and caused by any person acting maliciously or from a political motive.

## **32 RADIOACTIVE CONTAMINATION EXCLUSION**

In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

32.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel

32.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof

32.3 any weapon employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

32.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this Clause 32.4 does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.

### **33 CHEMICAL, BIOLOGICAL, BIO-CHEMICAL, ELECTROMAGNETIC WEAPONS AND CYBER ATTACK EXCLUSION**

In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

33.1 any chemical, biological, bio-chemical or electromagnetic weapon

33.2 the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.

## **PART 2 – ADDITIONAL CLAUSES (01/11/02)**

### **34 NAVIGATING LIMITS**

34.1 The vessel shall not enter these areas:

34.1.1 Atlantic Coast of North America, its rivers or adjacent islands

(a) north of 52° 10' N. Lat. and west of 50° W. Long.

(b) south of 52° 10' N. Lat. in the area bounded by lines drawn between Battle Harbour/Pistolet Bay; Cape Ray/Cape North; Port Hawkesbury/Port Mulgrave and Baie Comeau/Matane, between 21<sup>st</sup> December and 30<sup>th</sup> April both days inclusive ("b.d.i.")

(c) west of Baie Comeau/Matane (but not west of Montreal) between 1<sup>st</sup> December and 30<sup>th</sup> April b.d.i.

34.1.2 Great Lakes or St. Lawrence Seaway west of Montreal

34.1.3 Greenland Waters

34.1.4 Pacific Coast of North America its rivers or adjacent islands north of 54° 30' N. Lat., or west of 130° 50' W. Long.

34.2 The vessel shall not enter the Baltic Sea or adjacent waters east of 15° E. Long.

34.2.1 North of a line between Mo (63° 24' N. Lat.) and Vasa (63° 06' N. Lat.) between 10<sup>th</sup> December and 25<sup>th</sup> May b.d.i.

34.2.2 East of a line between Viipuri (Vyborg) (28° 47' E. Long.) and Narva (28° 12' E. Long.) between 15<sup>th</sup> December and 15<sup>th</sup> May b.d.i.

34.2.3 North of a line between Stockholm (59° 20' N. Lat.) and Tallinn (59° 24' N. Lat.) between 8<sup>th</sup> January and 5<sup>th</sup> May b.d.i.

34.2.4 East of 22° E. Long., and south of 59° N. Lat. between 28<sup>th</sup> December and 5<sup>th</sup> May b.d.i.

34.3 The vessel shall not pass North of 70°N. Lat. other than on voyages direct to or from any port or place in Norway or Kola Bay.

34.4 The vessel shall not enter the Bering Sea (save in the manner provided for in Clause 35), nor East Asian waters north of 46°N. Lat. nor enter or sail from any port or place in Siberia except Nakhodka and/or Vladivostock.

34.5 The vessel shall not proceed to Kerguelen and/or Crozet Islands or south of 50° S. Lat., except to ports and/or places in Patagonia and/or Chile and/or Falkland Islands, but liberty is given to enter waters south of 50° S. Lat., if en route to or from ports and/or places not excluded by this Clause 34.

34.6 The vessel shall not sail with Indian Coal as cargo

34.6.1 between 1<sup>st</sup> March and 30<sup>th</sup> June, b.d.i.

34.6.2 between 1<sup>st</sup> July and 30<sup>th</sup> September, b.d.i., except to ports in Asia, not West of Aden or East of or beyond Singapore.

### **35 BERING SEA TRANSIT**

The vessel may, when on through voyages to or from the Far East, navigate the Bering Sea provided that

35.1 the vessel has on board the appropriate hydrographic charts corrected up to date

35.2 entry is made through the Unimak Pass and exit west of Buldir Island or vice versa

35.3 the vessel is equipped and properly fitted with marine radar, a satellite navigator or Loran, sonic depth sounding apparatus, radio direction finder and giro compass, all fully operational and manned by qualified personnel. (Alternatively the vessel may enter or leave through the Amchitka, Amukta or Attu Passes, but only when equipped and properly fitted with marine radar, Loran, a satellite navigator, sonic depth sounding apparatus, radio direction finder, giro compass and a weather facsimile recorder, all fully operational and manned by qualified personnel.)

### **36 RECOMMISSIONING CONDITION**

As a condition precedent to the liability of the Underwriters, the vessel shall not sail from lay-up berth under her own power or navigate following a lay-up period of more than 180 consecutive days unless the Assured has arranged for the Classification Society or a surveyor agreed by the Underwriters to examine the vessel and has carried out any repairs or requirements recommended by the Classification Society or such surveyor.

### **37 HELICOPTER ENGAGEMENT**

The practice of engaging helicopters for the transportation of personnel, supplies and equipment to and/or from the vessel shall not prejudice this insurance, provided that such operations are carried out in accordance with the recommendations and procedures contained in the International Chamber of Shipping "Guide to Helicopter/Ship Operations" dated May 1989 and any modification thereof.

### **38 PREMIUM PAYMENT**

38.1 The premium shall be paid

38.1.1 in full to the Underwriters within 45 days (or such other period as may be agreed) of inception of this insurance; or

38.1.2 where payment by instalment premiums has been agreed

(a) the first instalment premium shall be paid within 45 days (or such other period as may be agreed) of inception of this insurance, and

(b) the second and subsequent instalments shall be paid by the date they are due.

38.2 If the premium (or the first instalment premium) has not been so paid to the Underwriters by the 46th day (or the day after such period as may have been agreed) from the inception of this insurance (and, in respect of the second and subsequent instalment premiums, by the date they are due), the Underwriters shall have the right to cancel this insurance by notifying the Assured via the broker in writing.

38.3 The Underwriters shall give not less than 15 days prior notice of cancellation to the Assured via the broker. If the premium or instalment premium due is paid in full to the Underwriters before the notice period expires, notice of cancellation shall automatically be revoked. If not, this insurance shall automatically terminate at the end of the notice period.

38.4 In the event of cancellation, premium is due to the Underwriters on a pro rata basis for the period that the Underwriters are on risk but the full premium shall be payable to the Underwriters in the event of loss, damage, liability or expense arising out of or resulting from an accident or occurrence prior to the date of termination which gives rise to a recoverable claim under this insurance.

38.5 Unless otherwise agreed, the Leading Underwriter(s) designated in the slip or policy are authorised to exercise rights under this Clause on their own behalf and on behalf of all cosubscribing Underwriters. Nothing in this Clause 38.5 shall, however, prevent any cosubscribing Underwriter from exercising rights under this Clause on its own behalf.

38.6 Where the premium is to be paid through a Market Bureau, payment to the Underwriters will be deemed to occur on the day of delivery of a premium advice note to the Bureau.

### **39 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

39.1 No benefit of this insurance is intended to be conferred on or enforceable by any party other than the Assured, save as may be expressly provided herein to the contrary.

39.2 This insurance may by agreement between the Assured and the Underwriters be rescinded or varied without the consent of any third party to whom the enforcement of any terms has been expressly provided for.

### **40 4/4THS COLLISION LIABILITY**

If the Underwriters have expressly agreed in writing, then Clause 6 is amended such that the words “three fourths of” are deleted on each occasion in which they appear in Clause 6.

### **41 FIXED AND FLOATING OBJECTS**

If the Underwriters have expressly agreed in writing, then Clauses 6 and 7 are amended to read as follows

41.1 The Underwriters agree to indemnify the Assured for three fourths of any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable by way of damages for

41.1.1 loss of or damage to any other vessel or fixed or floating object or property thereon

41.1.2 delay to or loss of use of any such other vessel or fixed or floating object or property thereon

41.1.3 general average of, salvage of, or salvage under contract of, any such other vessel or property thereon, where such payment by the Assured is in consequence of the insured vessel coming into collision with any other vessel or striking any fixed or floating object.



41.2 The indemnity provided by this Clause 6 shall be in addition to the indemnity provided by the other terms and conditions of this insurance and shall be subject to the following provisions

41.2.1 where the insured vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 6 shall be calculated on the principle of cross-liabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision

41.2.2 in no case shall the total liability of the Underwriters under Clauses 6.1 and 6.2 exceed their proportionate part of three fourths of the insured value of the insured vessel in respect of all claims arising out of one occurrence.

41.3 The Underwriters will also pay three fourths of the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability, provided always that their prior written consent to the incurring of such costs shall have been obtained and that the total liability of the Underwriters under this Clause 6.3 shall not exceed 25% of the insured value of the insured vessel.

## EXCLUSIONS

41.4 In no case shall the Underwriters indemnify the Assured under this Clause 6 for any sum which the Assured shall pay for or in respect of

41.4.1 removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever

41.4.2 any real or personal property or thing whatsoever except other vessels or any fixed or floating object struck by the insured vessel or property on other vessels or any such fixed or floating object

41.4.3 the cargo or other property on, or the engagements of, the insured vessel

41.4.4 loss of life, personal injury or illness

41.4.5 pollution or contamination, or threats thereof, of any real or personal property or thing whatsoever (except other vessels with which the insured vessel is in collision or property on such other vessels) or damage to the environment, or threat thereof, save that this exclusion shall not exclude any sum which the Assured shall pay for or in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

Should the insured vessel come into collision with another vessel or fixed or floating object belonging wholly or in part to the same owners or under the same management or receive salvage services from another vessel belonging wholly or in part to the same owners or under the same management, the assured shall have the same rights under this insurance as they would have were the other vessel or the fixed or floating object entirely the property of owners not interested in the insured vessel; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the underwriters and the assured.

## 42 RETURNS FOR LAY-UP

42.1 If the Underwriters have expressly agreed in writing, such percentage of the net premium as agreed by the Underwriters shall be returned for each period of 30 consecutive days the vessel may be laid up, not under repair, in a port or in a lay-up area provided such port or lay-up area is approved by the Underwriters.

42.2 The vessel shall not be considered to be under repair when work is undertaken in respect of ordinary wear and tear of the vessel and/or following recommendations in the vessel's Classification



Society survey, but any repairs following loss of or damage to the vessel or involving structural alterations, whether covered by this insurance or otherwise, shall be considered as under repair.

#### **42.3 PROVIDED ALWAYS THAT**

42.3.1 a total loss of the vessel, whether by perils insured under this insurance or otherwise, has not occurred during the period of this insurance or any extension thereof

42.3.2 a return of premium shall not be allowed when the vessel is lying in exposed or unprotected waters, or in a port or lay-up area not approved by the Underwriters

42.3.3 loading or discharging operations or the presence of cargo on board shall not debar a return of premium but no return shall be allowed for any period during which the vessel is being used for the storage of cargo or for lightering purposes

42.3.4 in the event of any return of premium recoverable under this Clause 42 being based on 30 consecutive days which fall on successive insurances effected for the same Assured, this insurance shall only be liable for an amount calculated at pro rata of the agreed percentage net for the number of days which come within the period of this insurance and to which a return is actually applicable. Such overlapping period shall run, at the option of the Assured, either from the first day on which the vessel is laid up or the first day of a period of 30 consecutive days as provided under Clause 42.1 above.

#### **43 GENERAL AVERAGE ABSORPTION**

43.1 If the Underwriters have expressly agreed in writing and subject to the provisions of Clause 8, the Assured shall have the option of claiming the total general average in full (excluding only commission and interest) from the Underwriters without recourse to any other contributing interests, up to the amount expressly agreed by the Underwriters.

43.2 In such cases the Assured shall not claim general average from the other contributing interests, against whom the Underwriters specifically waive any rights of subrogation in relation to general average contributions.

43.3 Any claim under this Clause, including the fees of any average adjuster, shall not exceed the amount expressly agreed by the Underwriters and shall, for the avoidance of doubt, be subject to the application of the deductible(s) in Clause 15.

#### **44 ADDITIONAL PERILS**

44.1 If the Underwriters have expressly agreed in writing, this insurance covers

44.1.1 the cost of repairing or replacing any boiler which bursts or shaft which breaks, where such bursting or breakage has caused loss of or damage to the subject matter insured covered by Clause 2.2.1

44.1.2 the cost that would have been incurred to correct the latent defect where such latent defect has caused loss of or damage to the subject-matter insured covered by Clause 2.2.2

44.1.3 loss of or damage to the vessel caused by any accident or by negligence, incompetence or error of judgment of any person whatsoever.

44.2 The cover provided in Clause 44.1 is subject to the proviso that such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers. Master, Officers, Crew or Pilots shall not be considered Owners within the meaning of this Clause 44.2 should they hold shares in the vessel.

#### **PART 3 – CLAIMS PROVISIONS – (01/11/02)**

## **45 LEADING UNDERWRITER(S)**

45.1 Where there is co-insurance in respect of this insurance, all subscribing Underwriters agree that the Leading Underwriter(s) designated in the slip or policy may act on their behalves so as to bind them for their respective several proportions in respect of Clause 38 of Part 2 and the following matters under Part 3 of this insurance

45.1.1 the appointment of surveyors, experts, average adjusters and lawyers, in relation to matters which may give rise to a claim under this insurance

45.1.2 the duties and obligations to be undertaken by the Underwriters including, but not limited to, the provision of security

45.1.3 claims procedures, the handling of any claim (including, but not limited to, agreements under Clause 46.2) and the pursuit of recoveries

45.1.4 all payments or settlements to the Assured or to third parties under this insurance other than those agreed on an 'ex-gratia' basis.

Notwithstanding the above, the Leading Underwriter(s), or any of them, may require any such matters to be referred to the co-subscribing Underwriters.

45.2 The co-subscribing Underwriters shall, to the extent of their respective several proportions, indemnify and hold harmless the Leading Underwriter(s) in respect of all liabilities, costs or expenses incurred by the Leading Underwriter(s) in respect of the matters in Clause 45.1.

45.3 If the Leading Underwriter(s) require expenses incurred for or on behalf of the Underwriters to be collected for a party instructed by the Leading Underwriter(s), the collecting party shall be entitled to charge 5% of the amount collected for this service or such other amount as may be agreed in advance by the Leading Underwriter(s), such fee to be paid by the Underwriters.

45.4 The agreement in this Clause 45 between the Leading Underwriter(s) and co-subscribing Underwriters is subject to the exclusive jurisdiction of the English High Court of Justice and is subject to English law and practice.

## **46 NOTICE OF CLAIMS**

46.1 In the event of an accident or occurrence which may result in a claim under this insurance, notice must be given to the Leading Underwriter(s) as soon as possible after the date on which the Assured, Owners or Managers become aware of the accident or occurrence so that a surveyor may be appointed if the Leading Underwriter(s) so desire.

46.2 If notice is not given to the Leading Underwriter(s) within 180 days of the Assured, Owners or Managers becoming aware of any such accident or occurrence, no claim shall be recoverable under this insurance in respect of any loss, damage, liability or expense arising out of or resulting from any such accident or occurrence, unless the Leading Underwriter(s) agree to the contrary in writing.

## **47 TENDER PROVISIONS**

47.1 The Leading Underwriter(s) shall be entitled to decide the port to which the vessel shall proceed for docking or repair (the actual additional expense of the voyage arising from compliance with the Leading Underwriter(s)' requirements being refunded to the Assured) and shall have a right of veto concerning a place of repair or a repairing firm.

47.2 The Leading Underwriter(s) may also take tenders or may require further tenders to be taken for the repair of the vessel. Where such a tender has been taken and a tender is accepted with the approval of the Leading Underwriter(s), an allowance shall be made at the rate of 30% per annum on the insured value for the time lost between the despatch of the invitations to tender required by the Underwriters

and the acceptance of a tender to the extent that such time is lost solely as the result of tenders having been taken and provided that the tender is accepted without delay after receipt of the Leading Underwriter(s)' approval.

47.3 Due credit shall be given against the allowance in Clause 47.2 for any amounts recovered in respect of fuel, stores, wages and maintenance of the Master, Officers and Crew or any member thereof, including amounts allowed in general average, and for any amounts recovered from third parties in respect of damages for detention and/or loss of profit and/or running expenses, for the period covered by the tender allowance or any part thereof.

47.4 Where a part of the cost of the repair of damage other than a fixed deductible is not recoverable from the Underwriters the allowance shall be reduced by a similar proportion. If the Assured fails to comply with this Clause 47, a deduction of 15% shall be made from the amount of the ascertained net claim.

## **48 DUTIES OF THE ASSURED**

48.1 The Assured shall, upon request and at their own expense, provide the Leading Underwriter(s) with all relevant documents and information that they might reasonably require to consider any claim.

48.2 Upon reasonable request, the Assured shall also assist the Leading Underwriter(s) or their authorised agents in the investigation of any claim, including, but not limited to

48.2.1 interview(s) of any employee, ex-employee or agent of the Assured

48.2.2 interview(s) of any third party whom the Leading Underwriter(s) consider may have knowledge of matters relevant to the claim

48.2.3 survey(s) of the subject-matter insured

48.2.4 inspection(s) of the classification records of the vessel.

48.3 It shall be a condition precedent to the liability of the Underwriters that the Assured shall not at any stage (whether legal proceedings be commenced or not) knowingly or recklessly

48.3.1 mislead or attempt to mislead the Underwriters in the proper consideration of a claim or the settlement thereof by relying in the presentation or maintenance of such claim on any evidence which is false

48.3.2 conceal any circumstance or matter from the Underwriters which might be material to the proper consideration of a claim or a defence to such a claim.

## **49 DUTIES OF UNDERWRITERS IN RELATION TO CLAIMS**

49.1 The Leading Underwriter(s) may, at their sole discretion, upon the notification of an accident or occurrence which may result in a claim under this insurance

49.1.1 instruct a surveyor who shall report to the Leading Underwriter(s) concerning the cause and extent of damage, the necessary repairs and the fair and reasonable cost thereof and any other matter which the Leading Underwriter(s) or the surveyor consider relevant

49.1.2 confirm the appointment of an independent average adjuster to assist the Assured in the preparation of the claim. If not already agreed, the Assured shall propose the average adjuster to be appointed who may be a Fellow of the Association of Average Adjusters of the United Kingdom or any other average adjuster mutually acceptable to the Assured and the Leading Underwriter(s).

49.2 Where such appointments are made, the Underwriters shall be responsible for payment of reasonable fees directly to the surveyor and the average adjuster irrespective of whether a claim ultimately arises under this insurance. However, the Underwriters' liability for the fees of the

appointed average adjuster shall cease no later than at such time as the Underwriters pay, settle or communicate their intention to deny the claim under this insurance or when it becomes apparent that any claim is unlikely to exceed the relevant deductible(s) in Clause 15.

49.3 The making of such appointments is not an admission by the Underwriters that the accident, occurrence or resulting claim is covered under this insurance or a waiver of any rights or defences that the Underwriters may have under this insurance or at law.

49.4 The reports of the surveyor shall, subject to no conflict of interest being identified by the Leading Underwriter(s), be released without delay to the Assured and the appointed average adjuster.

49.5 The Leading Underwriter(s) shall be entitled to request the appointed average adjuster to provide status reports at any stage.

49.6 The Leading Underwriter(s) shall give prompt consideration to the making of a payment on account upon the recommendation of the appointed average adjuster or, if no adjuster is appointed, upon the request of the Assured supported by appropriate documentation.

49.7 The Leading Underwriter(s) shall make a decision in respect of any claim within 28 days of receipt by them of the appointed average adjuster's final adjustment or, if no adjuster is appointed, a fully documented claim presentation sufficient to enable the Underwriters to determine their liability in relation to coverage and quantum. If the Leading Underwriter(s) request additional documentation or information to make a decision, they shall make a decision within a reasonable time after receipt of the additional documents or information requested, or a satisfactory explanation as to why such documents and information are not available.

## **50 PROVISION OF SECURITY**

50.1 If the Assured is obliged to provide security to a third party in order to prevent the arrest of, or to obtain the release of, the vessel, due to an accident or occurrence giving rise to a claim alleged to be covered under this insurance, the Underwriters shall give due consideration to assisting the Assured by providing security on behalf of the Assured or counter-security in a form to be determined by the Leading Underwriter(s), subject to

50.1.1 the amount of any such security or counter-security not exceeding the insured value of the vessel

50.1.2 an acceptable counter guarantee being provided by the Assured, if required by the Leading Underwriter(s)

50.1.3 any mortgagee(s) and/or assignee(s) and/or any other party who may have an interest in this insurance or the proceeds of claims recoverable under this insurance providing their written agreement to the terms on which security or counter-security is provided, including the terms of this Clause 50

50.1.4 the payment by the Assured to the Underwriters of the amount of the deductible(s) in Clause 15, if required by the Leading Underwriter(s).

50.2 The providing of security or counter-security by the Underwriters is not an admission that the accident or occurrence giving rise to the security demand is covered under this insurance or a waiver of any rights or defences that Underwriters may have under this insurance or at law.

50.3 Any payment(s) made by the Underwriters under the security or counter-security shall extinguish or reduce the Underwriters' liability under this insurance in respect of the claim made against the Assured and/or the vessel to the extent of such payment(s).

50.4 Should the accident or occurrence giving rise to the security demand not be covered under this insurance or fall below the deductible(s) in Clause 15, any payment(s) made by the Underwriters under the security or counter-security shall be promptly reimbursed to them by the Assured.

50.5 Where the accident or occurrence giving rise to the security demand is covered under this insurance and exceeds the deductible(s) in Clause 15, all fees reasonably incurred in connection with the provision of security or counter-security will form part of any recoverable claim.

## **51 PAYMENT OF CLAIMS**

Claims payable under the insurance shall, subject to the terms of any assignment, be paid to the loss payee or, if no loss payee has been agreed, to the Assured or as they may direct in writing. Such payment, whether in account or otherwise, when made shall be a complete discharge of the Underwriters' obligations under this insurance in respect of the amount so paid.

## **52 RECOVERIES**

52.1 The Assured shall, whether or not the Underwriters have paid a claim or agreed to pay a claim or potential claim under this insurance, take reasonable steps to

52.1.1 assess as soon as possible whether there are any prospects of a recovery from third parties in respect of matters giving rise to a claim or to a potential claim under this insurance

52.1.2 protect any claims against such third parties if necessary by the commencement of proceedings and the taking of appropriate steps to obtain security for the claim from third parties

52.1.3 keep the Leading Underwriter(s) and the appointed average adjuster (if any) advised of the recovery prospects and any action taken against third parties

52.1.4 co-operate with the Leading Underwriter(s) in the taking of such steps as may be reasonably required to pursue any claims against third parties.

52.2 Underwriters shall pay the reasonable costs incurred by the Assured pursuant to this Clause 52 in the same proportion as the insured losses bear to the uninsured losses (as defined in Clause 52.3.2).

52.3 In the event of recoveries from third parties in respect of claims which have been paid in whole or in part under this insurance, such recoveries shall be distributed between the Underwriters and the Assured as follows

52.3.1 the reasonable costs and expenses incurred in making the recovery from the third party shall be deducted first and returned to the paying party

52.3.2 the balance shall be apportioned between the Underwriters and the Assured in the same proportion that the uninsured losses bear to the insured losses. For the purposes of Clause 52.2 and this Clause 52.3.2, uninsured losses shall mean any deductible(s) under Clause 15 and any uninsured loss of or damage to the subject matter insured arising out of an accident or occurrence covered under this insurance.

52.4 In the event that coverage under this insurance is not provided in accordance with Clause 6, the following shall apply

52.4.1 Where the insured vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, any recovery due to the Underwriters shall be calculated on the principle of crossliabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision.

### **53 DISPUTE RESOLUTION**

Subject to the overriding provisions of Clause 1.3, disputes between the Assured and the Underwriters may, if not settled amicably by negotiation, be referred at the request of the Assured or the Underwriters to mediation or other form of alternative dispute resolution and, in default of agreement as to the procedure to be adopted, any such mediation or other form of alternative dispute resolution shall be in accordance with the current CEDR Solve model procedures.

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