

## **INTERNATIONAL HULL CLAUSES**

(FOR USE WITH THE CURRENT MAR POLICY FORM)

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*“These clauses are purely illustrative. Different policy conditions may be agreed. The specimen clauses are available to any interested person upon request. In particular:*

*(a) in relation to any clause which excludes losses from the cover, insurers may agree a separate insurance policy covering such losses or may extend the clause to cover such events;*

*(b) in relation to clauses making cover of certain risks subject to specific conditions each insurer may alter the said conditions”*

**PART 1 – PRINCIPAL INSURING CONDITIONS**

**1. GENERAL**

1.1 Part 1, Clauses 32-36 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 37-41 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 does not cover any of the costs 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 does not cover any of the costs of correcting 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 Where there is a claim recoverable under Clause 2.2.1, this insurance shall also cover one half of the costs common to the repair of the burst boiler or the broken shaft and to the repair of the loss or damage caused thereby.

2.4 Where there is a claim recoverable under Clause 2.2.2, this insurance shall also cover one half of the costs common to the correction of the latent defect and to the repair of the loss or damage caused thereby.

2.5 Master, Officers, Crew or Pilots shall not be considered Owners within the meaning of Clause 2.2 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 limit of this insurance.

#### **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 any other insurance or would be so covered 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 are 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 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

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 shall 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 (unless the Underwriters' specific written agreement shall have been obtained) 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 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, without reduction 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 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 9.4), 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 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 as referred to in Clause 8.5.

9.5 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

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 32)

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 are 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.

**These Clauses 13 and 14 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent therewith.**

## **13. CLASSIFICATION AND ISM**

13.1 At the inception of and throughout the period of this insurance and any extension thereof

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, 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 has resulted from loss or damage covered by Clause 2 or by Clause 5 or by Clause 41.1.3 (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**

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, 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 and any extension thereof 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 37 or 38), Clauses 8 and 9 and, if applicable, Clause 41) exceeds the deductible amount agreed in which case that amount 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 under Clauses 2.2.1 to 2.2.5 and Clause 41 (if applicable) or from fire or explosion when either has originated in a machinery space, 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 that amount 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 and any extension thereof 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. NEWFOR OLD**

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

## **17. BOTTOMTREATMENT**

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

17.4 supplying and applying anti-fouling coatings to those particular areas mentioned in Clauses 17.1 and 17.2, shall be included as part of the reasonable cost of repairs in respect of damage to bottom plating caused by a peril insured under this insurance.

## **18. WAGES ANDMAINTENANCE**

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. FREIGHTWAIVER**

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.

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 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 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 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 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 and 31.

**24.2** It is 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 co-subscribing 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.

**These Clauses 29, 30 and 31 shall be paramount and shall override anything contained in this insurance inconsistent therewith.**

## **29. WAR AND STRIKES 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

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

## **30. TERRORIST, POLITICALMOTIVE ANDMALICIOUS ACTS EXCLUSION**

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

30.1 any terrorist

30.2 any person acting from a political motive

30.3 the use of any weapon or the detonation of an explosive by any person acting maliciously or from a political motive.

## **31. RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS 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

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

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

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

31.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this Clause 31.4 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

31.5 any chemical, biological, bio-chemical or electromagnetic weapon.

## **PART 2 – ADDITIONAL CLAUSES (01/11/03)**

### **32. NAVIGATING LIMITS**

Unless and to the extent otherwise agreed by the Underwriters in accordance with Clause 33, the vessel shall not enter, navigate or remain in the areas specified below at any time or, where applicable, between the dates specified below (both days inclusive):

### **Area 1 - Arctic**

- (a) North of 70pN. Lat.
- (b) Barents Sea except for calls at Kola Bay, Murmansk or any port or place in Norway, provided that the vessel does not enter, navigate or remain north of 72p30' N. Lat. or east of 35p E. Long.

### **Area 2 – Northern Seas**

- (a) White Sea.
- (b) Chukchi Sea.

### **Area 3 - Baltic**

- (a) Gulf of Bothnia north of a line between Umea (63p 50' N. Lat.) and Vasa (63p 06' N. Lat.) between 10<sup>th</sup> December and 25<sup>th</sup> May.
- (b) Where the vessel is equal to or less than 90,000 DWT, Gulf of Finland east of 28p 45' E. Long. between 15<sup>th</sup> December and 15<sup>th</sup> May.
- (c) Vessels greater than 90,000 DWT may not enter, navigate or remain in the Gulf of Finland east of 28p 45' E. Long at any time.
- (d) Gulf of Bothnia, Gulf of Finland and adjacent waters north of 59p 24' N. Lat. between 8<sup>th</sup> January and 5<sup>th</sup> May, except for calls at Stockholm, Tallinn or Helsinki.
- (e) Gulf of Riga and adjacent waters east of 22p E. Long. and south of 59p N. Lat. between 28<sup>th</sup> December and 5<sup>th</sup> May.

### **Area 4 - Greenland**

Greenland territorial waters.

### **Area 5 – North America (east)**

- (a) North of 52p 10' N. Lat. and between 50p W. Long. and 100p W. Long.
- (b) Strait of Belle Isle (west of Belle Isle), Cabot Strait (west of a line between Cape Ray and Cape North), Strait of Canso (north of the Canso Causeway), Gulf of St. Lawrence or St. Lawrence River (east of Les Escoumins) and its tributaries between 21<sup>st</sup> December and 30<sup>th</sup> April.
- (c) St. Lawrence River (west of Les Escoumins) and its tributaries between 1<sup>st</sup> December and 30<sup>th</sup> April.
- (d) St. Lawrence Seaway.
- (e) Great Lakes.

### **Area 6 – North America (west)**

- (a) North of 54p 30' N. Lat. and between 100p W. Long. and 170p W. Long.
- (b) any port or place in the Queen Charlotte Islands or the Aleutian Islands.

### **Area 7 – Southern Ocean**

South of 50pS. Lat. except within the triangular area formed by rhumb lines drawn between the following points

- (a) 50p S. Lat.; 50p W. Long.
- (b) 57p S. Lat.; 67p 30' W. Long.
- (c) 50p S Lat.; 160p W. Long.

### **Area 8 – Kerguelen/Crozet**

Territorial waters of Kerguelen Islands and Crozet Islands.

### **Area 9 – East Asia**

- (a) Sea of Okhotsk north of 55p N. Lat. and east of 140p E. Long. between 1<sup>st</sup> November and 1<sup>st</sup> June.
- (b) Sea of Okhotsk north of 53p N. Lat. and west of 140p E. Long. between 1<sup>st</sup> November and 1<sup>st</sup> June.
- (c) East Asian waters north of 46pN. Lat. and west of the Kurile Islands and west of the Kamchatka Peninsula between 1<sup>st</sup> December and 1<sup>st</sup> May.

### **Area 10 – Bering Sea**

Bering Sea except on through voyages and provided that

- (a) the vessel does not enter, navigate or remain north of 54p 30' N. Lat; and
- (b) the vessel enters and exits west of Buldir Island or through the Amchitka, Amukta or Unimak Passes; and
- (c) the vessel is equipped and properly fitted with two independent marine radar sets, a global positioning system receiver (or Loran-C radio positioning receiver), a radio transceiver and GMDSS, a weather facsimile recorder (or alternative equipment for the receipt of weather and routing information) and a gyrocompass, in each case to be fully operational and manned by qualified personnel; and
- (d) the vessel is in possession of appropriate navigational charts corrected up to date, sailing directions and pilot books.

### **33. PERMISSION FOR AREAS SPECIFIED IN NAVIGATING LIMITS**

The vessel may breach Clause 32 and Clause 11 shall not apply, provided always that the Underwriters' prior permission shall have been obtained and any amended terms of cover and any additional premium required by the Underwriters are agreed.

### **34. RECOMMISSIONING CONDITION**

As a condition precedent to the liability of the Underwriters, the vessel shall not leave her 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.

### **35. PREMIUMPAYMENT**

35.1 The Assured undertakes that the premium shall be paid

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

35.1.2 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.

35.2 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.

35.3 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.

35.4 In the event of cancellation under this Clause 35, 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.

35.5 Unless otherwise agreed, the Leading Underwriter(s) designated in the slip or policy are authorised to exercise rights under this Clause 35 on their own behalf and on behalf of all co-subscribing Underwriters. Nothing in this Clause 35.5 shall, however, prevent any co-subscribing Underwriter from exercising rights under this Clause 35 on its own behalf.

35.6 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.

### **36. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

36.1 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.

36.2 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.

### **37. FIXED AND FLOATING OBJECTS**

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

37.1 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

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

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

37.1.3 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.

37.2 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

37.2.1 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

37.2.2 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.

37.3 The Underwriters shall 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 (unless the Underwriters' specific written agreement shall have been obtained) exceed 25% of the insured value of the insured vessel.

## **EXCLUSIONS**

37.4 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

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

37.4.2 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

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

37.4.4 loss of life, personal injury or illness

37.4.5 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 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.

## **38. 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.

## **39. RETURNS FOR LAY-UP**

39.1 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.

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

### **39.3 PROVIDED ALWAYS THAT**

39.3.1 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

39.3.2 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

39.3.3 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

39.3.4 in the event of any return of premium recoverable under this Clause 39 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 or any extension thereof 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 39.1.

### **40. GENERAL AVERAGE ABSORPTION**

40.1 If the Underwriters have expressly agreed in writing and subject to the provisions of Clause 8, the following shall apply in the event of an accident or occurrence giving rise to a general average act under the York-Antwerp Rules 1994 or under the provisions of the general average clause in the contract of affreightment.

40.2 The Assured shall have the option of claiming the total general average, salvage and special charges up to the amount expressly agreed by the Underwriters, without claiming general average, salvage or special charges from cargo, freight, bunkers, containers or any property not owned by the Assured on board the vessel (hereinafter the "Property Interests").

40.3 The Underwriters shall also pay the reasonable fees and expenses of the average adjuster for calculating claims under this Clause 40, in addition to any payment made under Clause 40.2.

40.4 If the Assured claims under this Clause 40, the Assured shall not claim general average, salvage or special charges against the Property Interests.

40.5 Claims under this Clause 40 shall be adjusted in accordance with the York-Antwerp Rules 1994, excluding the first paragraph of Rule XX and Rule XXI, relating to commission and interest.

40.6 Claims under this Clause 40 shall be payable without the application of the deductible(s) in Clause 15.

40.7 Without prejudice to any other defences that the Underwriters may have under this insurance or at law, the Underwriters waive any defences to payment under this Clause

40 which would have been available to the Property Interests, if the Assured had claimed general average, salvage or special charges from the Property Interests.

40.8 In respect of payments made under this Clause 40, the Underwriters waive their rights of subrogation against the Property Interests, save where the accident or occurrence giving rise to such payment is attributable to fault on the part of the Property Interests or any of them.

40.9 Claims under this Clause 40 shall be payable without reduction in respect of any under-insurance.

40.10 For the purposes of this Clause 40, special charges shall mean charges incurred by the Assured on behalf of or for the benefit of a particular interest to the adventure, for which charges the Assured is not responsible under the contract of affreightment.

#### **41. ADDITIONAL PERILS**

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

41.1.1 the costs 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, and that half of the costs common to the repair of the burst boiler or the broken shaft and to the repair of the loss or damage caused thereby which is not covered by Clause 2.3

41.1.2 the costs of correcting a latent defect where such latent defect has caused loss of or damage to the subject-matter insured covered by Clause 2.2.2, and that half of the costs common to the correction of the latent defect and to the repair of the loss or damage caused thereby which is not covered by Clause 2.4

41.1.3 loss of or damage to the vessel caused by any accident or by negligence, incompetence or error of judgment of any person whatsoever provided that such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

41.2 Master, Officers, Crew or Pilots shall not be considered Owners within the meaning of Clause 41.1 should they hold shares in the vessel.

#### **PART 3 – CLAIMS PROVISIONS (01/11/03)**

#### **42. LEADING UNDERWRITER(S)**

42.1 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 the following matters (in addition to Clause 35.5)

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

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

42.1.3 claims procedures, the handling of any claim (including, but not limited to, agreements under Clause 43.2) and the pursuit of recoveries

42.1.4 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.

42.2 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 42.1.

42.3 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.

42.4 The agreement in this Clause 42 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.

### **43. NOTICE OF CLAIMS**

43.1 In the event of an accident or occurrence whereby loss, damage, liability or expense 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 such loss, damage, liability or expense so that a surveyor may be appointed if the Leading Underwriter(s) so desire.

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

### **44. TENDER PROVISIONS**

44.1 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.

44.2 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 dispatch 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.

44.3 Due credit shall be given against the allowance in Clause 44.2 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.

44.4 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.

44.5 If the Assured fails to comply with this Clause 44, a deduction of 15% shall be made from the amount of the ascertained net claim.

### **45. DUTIES OF THE ASSURED**

45.1 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.

45.2 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

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

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

45.2.3 survey(s) of the subject-matter insured



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

45.3 It shall be a condition precedent to the liability of the Underwriters that the Assured shall not at any stage prior to the commencement of legal proceedings knowingly or recklessly

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

45.3.2 conceal any circumstance or matter from the Underwriters material to the proper consideration of a claim or a defence to such a claim.

45.4 Clause 45.3 does not require the Assured at any stage to disclose to the Underwriters any document or matter which under English law is protected from disclosure by legal advice privilege or by litigation privilege.

#### **46. DUTIES OF THE UNDERWRITERS IN RELATION TO CLAIMS**

46.1 The Leading Underwriter(s) may, at their sole discretion, upon the notification of loss, damage, liability or expense arising from an accident or occurrence which may result in a claim under this insurance

46.1.1 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

46.1.2 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).

46.2 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.

46.3 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.

46.4 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.

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

46.6 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.

46.7 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 of a satisfactory explanation as to why such documents and information are not available.

#### **47. PROVISION OF SECURITY**

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).

#### **48. PAYMENT OF CLAIMS**

Claims payable under this 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.

#### **49. RECOVERIES**

49.1 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

49.1.1 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

49.1.2 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

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

49.1.4 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.

49.2 Underwriters shall pay the reasonable costs incurred by the Assured pursuant to this Clause 49 in the same proportion as the insured losses bear to the total of the insured and uninsured losses (as defined in Clause 49.4.2).

49.3 Where the Assured have incurred reasonable costs pursuant to Clause 49.1.2 and where no claim is recoverable under this insurance, provided always that the Underwriters' written agreement to the reimbursement of such costs shall have been obtained prior to the incurring of such costs, the Underwriters shall reimburse such costs to the extent agreed, notwithstanding that no claim is recoverable under this insurance.

49.4 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

49.4.1 the reasonable costs and expenses incurred in making such recoveries from the third party shall be deducted first and returned to the paying party

49.4.2 the balance shall be apportioned between the Underwriters and the Assured in the same proportion that the insured losses and uninsured losses bear to the total of the insured and uninsured losses. For the purposes of Clause 49.2 and this Clause 49.4.2, uninsured losses shall mean loss of or damage to the subject-matter insured and any liability or expense which would have been recoverable under this insurance, but for the application of deductible(s) under Clause 15 and the limits of this insurance.

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

49.5.1 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 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.

## **50. 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.

**01/11/03**

**CL601**