



# MARINE SHIPPING MUTUAL INSURANCE COMPANY LIMITED

RULES



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MSMI and the Managers respectively are Companies registered in England  
Nos 1065393 and 3922841.

Effective from 1 July 2010





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# I Introduction

## RULE 1 MEMORANDUM AND ARTICLES OF ASSOCIATION

These Rules are subject to the Memorandum and Articles of Association of Marine Shipping Mutual Insurance Company Limited.

## RULE 2 DEFINITIONS

### **Amount Insured**

The amount to be insured hereunder in respect of an interest other than Hull and Machinery Insurance and which shall be an agreed value.

### **Associated Company**

In relation to any Member, any company which is for the time being a subsidiary or holding company (each expression as defined in Section 736 of the Companies Act 1985) of that Member or a subsidiary of that Member's holding company.

### **Calls**

Any monies payable to the Company in respect of an Entered Ship pursuant to Rule 10.

### **The Company**

Marine Shipping Mutual Insurance Company Limited.

### **Contribution**

Any Call or any other payments due to the Company.

### **Day**

The day of any occurrence means the day as computed according to GMT and shall be considered to begin at Midnight and end at Midnight upon the following day.

### **The Directors**

The Directors (other than the Managing Director) for the time being of the Company or as the context may require those Directors present at a duly convened meeting of the Directors at which a quorum is present.

### **Entered Ship**

A Ship which has been entered for insurance with the Company.

### **Fleet Entry**

The entry of more than one Ship by one or more Members on the basis that those Ships will be treated together as a fleet for underwriting purposes.

**GMT**

Greenwich Mean Time.

**Insurance**

Any insurance or reinsurance against the risks specified in these Rules.

**Insured Value**

The value of Hull and Machinery Insurance to be insured hereunder and which shall be an agreed value.

**Institute Warranties**

Institute Warranties 1/7/76.

**ITC-Hulls**

The Institute Time Clauses Hulls 1/10/83 or, if elected in writing by the Member, either:

- (a) the Institute Time Clauses - Hulls, Disbursements and Increased Value (Total Loss only, including Excess Liabilities) (1/10/83); or
- (b) the Institute Time Clauses Hulls 1/10/83 and the Institute Time Clauses - Hulls, Disbursements and Increased Value (Total Loss only, including Excess Liabilities) (1/10/83).

**The Managers**

The Managers for the time being of the Company including the Managing Director.

**Member**

A Member of the Company as defined in the Articles of Association.

**Policy**

A document and any endorsement thereto issued by the Company in accordance with these Rules and the Articles of Association which records the names of Members interested in, and evidences the contract of insurance in respect of, an Entered Ship.

**Policy Year**

A year from midnight GMT on any 30th June to midnight GMT on the next following 30th June.

**The(se) Rules**

The rules and regulations for the time being in force which shall be deemed to incorporate ITC-Hulls.

**Ship**

In the context of a Ship entered or proposed to be entered in the Company, a ship, boat, hovercraft or other description of vessel or structure (including any ship,

boat, hovercraft, or other description of vessel or structure under construction) used or intended to be used for any purposes whatsoever in navigation or otherwise on, under, over or in water, or any part of such Ship, or any proportion of the tonnage thereof, or any share therein.

#### **Underwriters**

The Company.

#### **The United Kingdom**

Great Britain and Northern Ireland.

Writing shall include printing, typewriting, lithography, facsimile and any other mode or modes of representing or reproducing words in a visible form.

Words importing the singular number only shall include the plural number and vice versa.

Words importing the masculine gender only shall include the feminine gender.

Words importing persons shall include individuals, partnerships, companies, corporations and associations.

### **RULE 3 COVER**

- 3(1)** The cover afforded by the Company provides insurance for a Member against loss, damage, liability or expense incurred by him to the extent that such loss, damage, liability or expense arises in respect of the Member's interest in an Entered Ship, and is provided subject to the terms and conditions of the clauses referred to in Rule 16 except to the extent that these Rules provide, or the Managers have expressly agreed in accordance with Rule 7, to the contrary.
- 3(2)** The entry of a Ship in the Company is only valid provided that the Member has paid Contributions as specified in Rule 10 or any notice sent to the Member by the Company or Managers under Rule 28[c].
- 3(3)** It is not intended that any benefit or rights should be acquired through the operation of the Contracts (Rights of Third Parties) Act 1999 or other similar legislation.

### **RULE 4 MEMBERSHIP**

- 4(1) Entry of a Ship**

Every person, whose application to enter a Ship in the Company for the insurance of his interest in that Ship is accepted, if not already a Member of the Company, shall become and be a Member as from the date of the acceptance of his application.

**4(2) Reinsurance**

Whenever the Company agrees to accept the reinsurance of any risks from an insurer the Managers may in their discretion decide that the insurer reinsured by the Company and/or the person insured by such insurer is to be a Member and they may accept the application on any such basis.

**4(3) Cessation of Membership**

A person shall cease to be a Member if for any reason whatsoever the entry of all Ships in respect of which his interest was insured by the Company shall have ceased or terminated.

**RULE 5 RIGHT OF RECOVERY**

**5(1)** If a Member shall become liable in damages or otherwise or shall incur any loss, costs or expenses in respect of a Ship which was entered in the Company at the time of the casualty or event giving rise to such liability, loss, costs or expenses, such Member shall be entitled to recover out of the funds of the Company the amount of such liability, loss, costs or expenses provided by these Rules and by the Policy.

Notwithstanding the foregoing, when such Member is entitled to limit his liability, the liability of the Company shall not exceed the amount of such limitation. But if a value less than the full Insured Value of the Ship, or where applicable the Amount Insured, was entered in the Company the Member shall be entitled only to recover such proportion as the value bears to the full Insured Value, or where applicable the Amount Insured, of the Ship.

**5(2) Set-off**

Without prejudice to any other part of these Rules the Company shall be entitled to set-off any amount due from a Member against any amount due to such Member from the Company.

**5(3) Both to Blame Collision**

Where the entered Ship 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 the insurance 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 Member in consequence of the collision.

**5(4) Disbursements etc., Valuation**

The amount and/or value insured on Disbursements, Increased Value or other Total Loss Interests shall be the agreed value. Subject to the terms and conditions of this insurance, if the Entered Ship becomes a total loss (actual or constructive) this agreed value will be paid in full, whether the Entered Ship be fully or partly loaded or in ballast and whether chartered or unchartered. There shall be no cover under this insurance, other than for excess liabilities, for any claim that does not result from a total loss (actual or constructive) of the Entered Ship.

## II Entry and Contribution

### RULE 6 ENTRY

#### 6(1) Application

Any person who wishes to enter a Ship for insurance in the Company shall apply for such entry in such form as may from time to time be required by the Managers and shall furnish any particulars and information requested by the Managers.

6(2) All particulars and information given in the course of applying for insurance shall, if the entry of the relevant Ship be accepted, be deemed to form part of the contract of insurance between the Member and the Company and it shall be a condition precedent of such insurance that all particulars and information were true so far as was within the Member's knowledge or could with reasonable diligence have been ascertained.

#### 6(3) Policy

As soon as reasonably practicable after accepting an application for the entry of a Ship for insurance in the Company and for each Policy Year thereafter, the Managers shall issue a policy which shall state the names of the Members on whose behalf such Ship has been entered and their interests in such Ship, the time and date of the commencement and expiry of the period of insurance, the terms and conditions on which the Ship has been accepted for insurance, the Insured Value, and where applicable the Amount Insured. Each such policy shall evidence a separate contract of insurance.

6(4) The Managers may in their discretion and without giving any reason refuse an application by any person for entry of a Ship whether or not that person is already a Member of the Company.

### RULE 7 VARIATION AND SPECIAL INSURANCE

#### 7(1) Variation

The Managers shall, so far as provided elsewhere in these Rules, have the power to agree with the Member to vary the terms and conditions set out in these Rules whether in respect of new or existing insurances.

As soon as reasonably practicable after such agreement, the Managers shall confirm in writing to the Member the nature of such variation and the date from which such variation is to be effective.

## **7(2) Special Insurance**

The Managers may accept insurances from other insurers and shall have the power, not otherwise provided for by Rule 7(1), to agree with the Member to vary any of the terms and conditions set out in these Rules whether in respect of new or existing insurances.

Such variation shall be effective only to the extent that it is expressly acknowledged by the Managers as a "Rule 7(2) Special Insurance".

As soon as reasonably practicable after such agreement, the Managers shall confirm in writing to the Member the nature of such variation and the date from which such variation is to be effective.

## **RULE 8 JOINT ENTRIES AND ASSOCIATED COMPANIES**

### **8(1) Payment**

Where any Ship is entered in the names or on behalf of more persons than one (hereinafter referred to as Joint Members) they shall be jointly and severally liable to pay all Contributions in respect of such entry and the receipt by any Joint Members of any payment by the Company shall be deemed to be the receipt by all Joint Members jointly and shall fully discharge the obligations of the Company in respect of such payment.

### **8(2) Disclosure**

Failure by any Joint Member to disclose any material information within his knowledge shall be deemed to have been failure of all the Joint Members.

### **8(3) Conduct**

Conduct of any Joint Member which would have entitled the Company to decline to reimburse or indemnify him shall be deemed the conduct of all the Joint Members.

### **8(4) Communications**

Unless the Managers have otherwise agreed in writing, the contents of any communication from or on behalf of the Company to any Joint Member shall be deemed to be within the knowledge of all Joint Members, and any communication from any Joint Member to the Company, the Managers or their agents shall be deemed to have been made with the full approval and authority of all the Joint Members.

### **8(5)**

The Managers may accept the entry of any Ship upon terms that the benefit of the cover afforded by the Company to a Member in respect of that Ship shall be extended to Associated Companies of that Member. The rights and obligations as between the Company and any such Associated Company shall be such as may be agreed between the Member and the Managers.

**8(6) Conditions of Reimbursement**

The liability of the Company to the Member and to Associated Companies to whom cover is extended in accordance with Rule 8(5) shall be limited in amount to reimbursement of claims relating to liabilities, losses, costs or expenses incurred by one or more of the Associated Companies to the extent and amount only that the Member:

(a) would have incurred the same liabilities, losses, costs and expenses if the same claims had been pursued against him, and

(b) would thereafter have been entitled to obtain reimbursement or indemnification from the Company in accordance with the terms of entry of the Ship in the Company.

Provided always that conduct of any Associated Company which would have entitled the Company to decline to reimburse or indemnify that company shall be deemed to be the conduct of the Member.

**8(7) Receipt of Reimbursement**

The receipt by the Member, or any Associated Company to whom cover has been extended in accordance with Rule 8(5), of any payment by the Company shall be deemed to be the receipt by the Member and all such Associated Companies jointly and shall fully discharge the obligations of the Company in respect of such payment.

**RULE 9 PERIOD OF COVER**

**9(1)** Subject as otherwise provided in these Rules cover afforded by the Company otherwise than for a fixed period shall commence at the time and date specified in the first policy and shall continue until midnight GMT of 30th June next ensuing and thereafter, unless terminated in accordance with Rules 28 and 29, from Policy Year to Policy Year.

**9(2)** Cover afforded by the Company in respect of each Entered Ship for a fixed period shall, subject as otherwise provided in these Rules, cease at the expiry of such fixed period.

**9(3) Change of terms and Conditions**

The cover shall continue for the next Policy Year upon the same terms and conditions as those in force for the current Policy Year, unless:

- (a) notice shall have been given in writing by either the Member to the Managers or the Managers to the Member not later than midnight GMT on the 30th May in any year that the cover (not being for a fixed period) specified in the notice is to cease. In either event the cover shall cease at the end of the then current Policy Year or
- (b) the Managers shall have given notice not later than the tenth day before the expiry of the Policy Year that the terms and conditions of the cover afforded by the Company for the next following Policy Year are to be changed. In the event of such notice being given the cover for the next following Policy Year shall continue upon such terms as may be agreed between the Member and Managers before noon GMT on the 30th June immediately following such notice and if no terms shall by then have been agreed the cover shall thereupon cease.

*Provided also that:*

If before the end of any Policy Year these Rules shall have been altered, then such alteration shall be binding upon the Member and for all purposes take effect as from the commencement of the next ensuing Policy Year.

- 9(4)** An Entered Ship shall not be withdrawn from the Company at any time or in any manner except under the provisions of Rule 9(3) or with the consent of the Directors or Managers.

**RULE 10 CALLS**

- 10(1)** Unless otherwise agreed between the Member and the Managers in accordance with Rule 7 Members who have Entered Ships for insurance in the Company for any part of a Policy Year shall through the Company insure each other as hereinafter set out against liabilities, losses, costs and expenses which they or any of them may incur or may become liable to pay in respect of such Entered Ships, and for this purpose the said Members shall contribute by way of Calls to the funds required to meet:

- (a) the claims, expenses, reinsurance premiums, unpaid contributions and other outgoings (whether incurred, accrued or anticipated) which in the opinion of the Directors necessarily and properly fall upon the Company in respect of such Policy Year;
- (b) such of the general expenses of the Company as the Directors may from time to time think fit to charge against the insurance business of the Company in respect of such Policy Year;
- (c) such transfers to reserves or provisions as the Directors may deem it expedient to make, including transfers to reserves and provisions in respect of any deficiency which has occurred or which may be thought likely to occur in respect of any closed Policy Year as the Directors think fit;

(d) the proportion attributable to the Company of such sums as the Company may by any Governmental legislation or regulation be required to set aside in order to establish and/or maintain an adequate Solvency Margin and/or Guarantee Fund in respect of any Policy Year.

- 10(2)** The Directors shall have the power to raise Calls from time to time. These shall reflect the estimated liabilities of the Company in any year as set out in Rule 10(1)(a)-(d) inclusive. Calls shall be made at such times and in such manner and proportion as the Directors in their absolute discretion may determine.

## **RULE 11 PAYMENT**

- 11(1)** Unless otherwise agreed between the Member and the Managers in accordance with Rule 7(1), every Call shall be payable in such instalments and on such dates as the Directors may specify.

- 11(2)** As soon as reasonably practicable after the rate of any Call shall have been fixed the Managers shall notify each Member concerned:

(a) of such rates;

(b) of the date on which the Call concerned is payable or, if such Call is payable by instalments, of the amounts of such instalments and the respective dates on which they are payable;

(c) of the amount payable by such Member in respect of each Ship entered by him.

- 11(3) Set-off**

No claim of any kind whatsoever by a Member against the Company shall constitute any set-off against the Contributions due to the Company or shall entitle a Member to withhold or delay payment of any such contributions.

- 11(4) Interest for Late Payment**

Without prejudice to the rights and remedies of the Company under Rule 28(c) if any contribution, instalment or part thereof or any other sum of whatsoever nature due from any Member is not paid by such Member on or before the date specified for payment thereof the Directors may order such Member to pay interest on the amount not so paid from and including the date so specified down to the date of payment at such rate as the Directors may from time to time determine.

- 11(5) Insurance Premium Taxes**

Unless a Member shall first have paid or discharged the same directly, he shall on demand pay to the Company or to its order the amount of any premium tax or other similar tax levied on or in connection with the insurance or reinsurance provided by the Company to the Member for which the Company determines it or the Member has or may become liable, and shall indemnify the Company and hold it harmless in respect of any loss, damage, liability, cost or expense which the Company may incur in respect of such premium tax or other similar tax.

#### **11(6) Lien**

The Company shall be entitled to, and the Member hereby grants, a lien on the Entered Ship in respect of any amount whatsoever owed by the Member to the Company.

#### **RULE 12 LAID-UP RETURNS**

Unless otherwise agreed in writing between the Member and the Managers in accordance with Rule 7(1) laid-up returns shall be payable to Members in respect of any Entered Ship in accordance with the provisions of ITC-Hulls, at such rate as may be determined by the Managers from time to time.

#### **RULE 13 SUMS PAYABLE TO THE COMPANY**

Notwithstanding Rule 38, the Company may, in its sole discretion, recover any monies from time to time payable by a Member either:

(a) by court proceedings, and where a Member is domiciled within a State which is an original and/or acceding party to the Brussels Convention (1968) and/or Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (1988 or 2007) the English courts will have jurisdiction in respect of court proceedings commenced for the recovery of any such monies payable by that Member; or

(b) by arbitration in London before two Arbitrators (one to be appointed by the Company and the other by the Member) and an Umpire to be appointed by the Arbitrators, with the submission to arbitration and all the proceedings therein being subject to the English Arbitration Act 1996 and any statutory modification or re-enactment thereof.

#### **RULE 14 FLEET ENTRY**

Where one or more Ships have been entered as a Fleet Entry then the debts of any one Member or Joint Member in respect of any such Entered Ship shall be treated as the debt of all the other Members and Joint Members whose Ships are or were entered as part of the same Fleet Entry and the Company shall be entitled to act as if all the Ships forming the Fleet Entry were entered by the same Member.

## RULE 15 MORTGAGES

(1) In the event of an Entered Ship being mortgaged, the Member shall forthwith notify the Company of such mortgage.

(2) At the request of a mortgagee and with the consent of the Member, the Managers may in their discretion and subject to the provisions relating to assignment in the ITC-Hulls, agree:

(a) to pay to the mortgagees or to their order any recovery the Member is entitled to receive from the funds of the Company in respect of any liability, losses, costs or expenses incurred by the Member on receipt of notice from the mortgagees that the Member is in default under the mortgage;

(b) to give the mortgagees 14 days' notice of the Company's intention to cancel the insurance of the Member by reason of his failure to pay when due and demanded any Contribution due from him to the Company.

### III Risks Covered

#### RULE 16 RISKS COVERED

Subject always to Rules 23 and 24, the risks covered shall be the perils set out in the following clauses.

(a) Hull and Machinery Insurance

Institute Time Clauses Hulls 1/10/83

Institute Additional Perils Clauses – Hulls 1/10/83,

or such other clauses as may be agreed in writing between the Member and the Managers.

(b) Disbursements and/or Increased Value Insurance

Institute Time Clauses – Hulls Disbursements and Increased Value (Total Loss only, including Excess Liabilities) 1/10/83,

Additional Perils Clause (Total Loss Interests),

or such other clauses as may be agreed in writing between the Member and the Managers.

(c) Loss of Hire or other Insurance

Such clauses as may be agreed in writing between the Member and the Managers.

## IV Conditions, Exclusions, Limitations and Warranties

The cover afforded by the Company shall be subject to:

(a) Rules 17 to 24 inclusive, and

(b) except to the extent that the Rules provide, or the Managers have agreed in accordance with Rule 7(1), to the contrary, the Conditions, Exclusions, Limitations and Warranties as set out in the clauses referred to in Rule 16.

### **RULE 17 PAYMENT FIRST BY THE MEMBER**

Except in the case of claims for total loss or unrepaired damage, unless the Directors in their discretion otherwise decide, it is a condition precedent of a Member's right to recover from the funds of the Company in respect of any liabilities, losses, costs or expenses that he shall first have discharged or paid the same.

### **RULE 18 IMPRUDENT OR HAZARDOUS OPERATIONS, CONTRABAND, BLOCKADE RUNNING OR UNLAWFUL TRADING**

Unless and to the extent that the Directors in their discretion otherwise decide no claim on the Company shall be allowed if it arises out of or is consequent upon an Entered Ship carrying contraband, blockade running or being employed in an unlawful, imprudent, unsafe, unduly hazardous or improper trade.

### **RULE 19 DOUBLE INSURANCE**

The Company shall not, unless and to the extent that the Directors in their discretion otherwise decide, be liable for any liabilities, losses, costs or expenses recoverable under any other insurance or which would have been so recoverable:

(a) apart from any terms in such other insurance excluding or limiting liability on the ground of double insurance; and

(b) if the Ship had not been entered in the Company with cover against the risks set out in these Rules.

### **RULE 20 TRADING WARRANTIES**

Unless otherwise agreed between the Member and the Managers in accordance with Rule 7(1) the Trading Warranties shall be as set out in the Institute Warranties.

## **RULE 21 CLASSIFICATION AND STATUTORY REQUIREMENTS**

Unless otherwise agreed between the Member and the Managers in accordance with Rule 7(1) the following conditions will be deemed to be incorporated in the terms of cover for each Entered Ship:

- (i) the Ship must be and remain throughout the period of entry classed with a Classification Society approved by the Managers, and
- (ii) the Member must comply with all the Rules, recommendations and requirements affecting seaworthiness of that Classification Society relating to the Entered Ship,
- (iii) the Member authorises the Managers to inspect any information, relating to the maintenance of class of the Entered Ship, in the possession of any Classification Society with which that Ship is or at any time has been classed, and will where necessary authorise such Classification Society or Societies to disclose and make available that information to the Managers upon request by the Managers and for whatsoever purposes the Managers may consider necessary,
- (iv) the Member must comply with all statutory requirements of the Ship's Flag State relating to the construction, adaptation, condition, fitment and equipment of the Entered Ship and must at all times maintain the validity of such statutory certificates as are issued by or on behalf of the Ship's Flag State in relation to such requirements and in relation to safety management systems.

Unless and to the extent that the Directors otherwise decide, a Member shall not be entitled to any recovery from the Company in respect of any claim arising from the Member's failure to fulfil those conditions.

## **RULE 22 OBLIGATIONS OF THE MEMBER IN RESPECT OF SURVEYS**

- (a) The Managers may at any time require a Member to submit his Ship to be surveyed, by a surveyor nominated by the Managers but at the expense of the Member, within such period as may be specified by the Managers. No claim for recovery from the Company as a result of an incident arising after the expiry of such period shall be allowed save in the sole discretion of the Directors if the Ship shall not have been made available for survey within the period specified.
- (b) In the light of the survey and any recommendations by the surveyor as to the repairs or other action to be taken by the Member, the Managers shall have the power, in their discretion, to:
  - (i) terminate the Member's entry forthwith whereupon the Member shall cease to be insured and shall be allowed a return of premium pro rata for the period in respect of which the insurance has ceased;
  - (ii) amend or vary the terms of entry in such manner as they think fit;
  - (iii) impose conditions on the terms of entry in such form as they think fit including, without limitation, the exclusion of all or part of the risks insured unless and until the Member has complied with the recommendations of the surveyor as to repairs

or other action to be taken by the Member within such time as may be specified by the Managers to the satisfaction of the Managers and their surveyor;

(c) Without prejudice to the generality of Rule 36 nothing said, seen or done by the surveyor appointed by the Company or advice given prior to, during, or after survey and/or inspection shall be taken as in any way derogating from the Member's responsibility for the safety and seaworthiness of the Ship and its mandatory compliance with any classification, statutory, flag state or port state requirement or any other issues relating to the safety of the Ship, its crew, cargo, and any other person, places or entities which may be affected by the operation of the Ship.

## **RULE 23 RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL, ELECTROMAGNETIC WEAPON AND COMPUTER VIRUS EXCLUSION**

Notwithstanding anything herein to the contrary, the Company shall not be liable for any liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from:

(a)

(i) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from combustion of nuclear fuel,

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

(iii) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter,

(iv) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-Rule 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,

(b)

(i) any chemical, biological, bio-chemical or electromagnetic weapon,

(ii) the use or operation as a means for inflicting harm, of any computer virus.

Provided always that this Rule 23(b)(ii) is only to apply to claims in respect of war and terrorism not excluded elsewhere in this insurance.

## **RULE 24 VIOLENT THEFT AND PIRACY EXCLUSION**

Notwithstanding anything herein to the Contrary, in no case shall the Company be liable for any loss damage liability or expense caused by piracy or violent theft by persons from outside the Entered Ship.

## V Claims

Claims shall be made in accordance with:

(a) Rules 25 to 27 inclusive, and

(b) Except to the extent that the Rules provide, or the Managers have agreed in accordance with Rule 7(1), to the contrary, the clauses referred to in Rule 16.

### RULE 25 OBLIGATIONS IN RESPECT OF CLAIMS ON THE COMPANY

#### 25(1) Notice

(a) In the event of an accident or occurrence whereby loss, damage, liability or expense may result in a claim, notice must be given to the Company as soon as possible after the date on which the Member becomes aware of such loss, damage, liability or expense so that a surveyor may be appointed if the Company so desire.

(b) If notice is not given to the Company within 180 days of the Member becoming aware of such loss, damage, liability or expense 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 Company agree to the contrary in writing.

(c) Whenever damage repairs are likely to form a claim on the Company notice of the intention to commence such repairs must be given to the Company.

#### 25(2) Information

A Member must at all times promptly notify the Managers of any information, documents or reports in his or his agents' possession or knowledge relevant to any incident referred to under Rule 25(1). Further he shall, whenever so requested by the Managers, give the Company or its representatives free access to such information, documents or reports with liberty to inspect and copy. Such free access shall include the right to conduct a survey, or to interview any officer, servant or agent of the Member who may in the opinion of the Company be in possession of information relevant to the said incident. Reports on all casualties must be submitted from the Master of the Ship concerned and an estimate of the cost of repairs made available to the Company as expeditiously as possible.

25(3) Neither the Member nor his servants or agents shall admit liability for, nor take any action which shall otherwise prejudice the Member's position in respect of any incident which may give rise to a claim against the Company unless with the permission of the Company.

**25(4) Time Limit for Reimbursement**

All requests by a Member for reimbursement or indemnification of any losses, costs, or expenses recoverable from the Company must be made to the Company within twelve months of the latest of the incurring of the loss or the payment of the cost or expense by the Member or, where the Managers agree in writing, the issue of an Adjustment apportioning such loss, cost or expense.

**25(5) Repairs**

(a) Where repairs have been effected, no claim will be treated by the Company as a claim for unrepaired damage solely because those repairs were not effected prior to expiry of the policy period to which the claim relates.

(b) If repairs are not effected within three years from the date of the casualty in which any damage resulting in a claim, other than a claim for Loss of Hire, on the Company was sustained settlement of such claim on the Company will become due immediately upon the expiry of that period. Settlement will then be made of the Company's liability on such terms as may be agreed by the Directors.

**25(6) Documents**

Any claim submitted for payment shall be supported by receipted repair accounts, vouchers relating to any expenses incurred in connection with the claim, average adjustments and all other documents which the Company may require.

**25(7) Sale of Entered Ship**

When an Entered Ship is sold all outstanding claims against the Company in respect of such Ship shall be assessed and settled as soon as possible after the date of sale on such terms as may be agreed by the Directors.

**RULE 26 POWERS OF THE MANAGERS RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS**

**26(1)** The Managers shall have the right, if they so decide, to control or direct the conduct of any claim or legal or other proceedings relating to any matter which may result in loss, damage, expense or liability in respect of which the Member is or may be insured and to require the Member to settle, compromise or otherwise dispose of such claim or proceedings in such manner and upon such terms as the Managers see fit.

**26(2)** If the Member does not settle, compromise, or dispose of a claim or of proceedings after being required to do so by the Managers in accordance with Rule 26(1), any eventual recovery by the Member from the Company in respect of such claim or proceedings shall be limited to the amount he would have recovered if he had acted as required by the Managers.

### **26(3) Appointment**

(a) Without prejudice to any other provision of these Rules and without waiving any of the Company's rights hereunder, the Managers may at any and all times appoint on behalf of the Member, upon such terms as the Managers may think fit, lawyers, surveyors, or other persons with a view to advising them upon, investigating or dealing with any matter which may result in loss, damage, expense or liability in respect of which the Member is or may be insured under these Rules, including taking or defending legal or other proceedings in connection therewith. The Managers may also at any time discontinue such employment if they think fit.

(b) All lawyers, surveyors or other persons appointed by the Managers on behalf of the Member, or appointed by the Member with the prior consent of the Managers, shall at all times be and be deemed to be appointed and employed on the terms:

(i) that they have been instructed by the Member at all times (both while so acting and after having retired from the matter) to give advice and to report to the Company in connection with the matter without prior reference to the Member and to produce to the Company without prior reference to the Member any documents or information in their possession or power relating to such matter, all as if such person had been appointed to act and had at all times been acting on behalf of the Company; and

(ii) that any advice they may give to the Member is that of an independent contractor employed by the Member and shall in no way bind the Company.

(c) Without prejudice to the generality of the above provisions or Rule 36, nothing said, seen or done by any surveyor appointed by the Company or advice given prior to, during, or after survey and/or inspection shall be taken as in any way derogating from the Member's responsibility for the safety and seaworthiness of the Ship and its mandatory compliance with any classification, statutory, flag state or port state requirement or any other issues relating to the safety of the Ship, its crew, cargo, and any other person, places or entities which may be affected by the operation of the Ship.

### **26(4) Bail**

The Company is under no obligation to provide bail or other security on behalf of any Member, but where the same is provided it shall be on such terms as the Managers may consider appropriate (including but not limited to the provision by the Member of counter security in a form acceptable to the Managers) and shall not constitute any admission of liability by the Company for the claim in respect of which the bail or other security is given. In no case shall cash deposits be made by the Company.

**RULE 27 POWERS OF THE DIRECTORS RELATING TO THE SETTLEMENT OF CLAIMS ON THE COMPANY**

**27(1) Meetings**

The Directors shall meet as often as may be required for settlement of claims which shall be paid by the Company as the Directors may determine in accordance with these Rules, but the Directors shall have power from time to time to authorise the Managers to effect payment of claims without prior reference to the Directors. No Director shall take part in the consideration of or vote upon any claim against the Company in which he is interested.

**27(2) Claims**

(a) Without prejudice to any other provision of these Rules, the Directors shall have power in their discretion to reject a claim or reduce the sum payable by the Company in respect thereof if the Members shall have failed to comply with any of the provisions of Rules 25 and 26.

(b) Notwithstanding anything contained in these Rules, the Directors shall have power to admit any claim which they consider should be paid by the Company.

**27(3) Interest and Consequential Losses**

In no case shall a Member be entitled to be paid interest on his claim against the Company. Unless the Directors in their discretion shall otherwise determine, a Member shall have no right to recover any losses suffered as a consequence of delay or failure on the part of the Company to reimburse a Member.

## VI Cesser of Insurance

### RULE 28 CESSER OF ALL INSURANCES

A Member shall cease to be insured by the Company in respect of any and all Ships entered by him or on his behalf (or in a Fleet Entry in which any one or all of his Ships are entered) upon the happening of any of the following events:

(a) where the Member, being a company or corporation:

(i) has a receiver, manager, administrator, administrative receiver, liquidator (provisional or otherwise) supervisor or nominee proposed or appointed; or

(ii) passes a resolution for winding up (otherwise than for the purpose of a solvent amalgamation or reconstruction); or

(iii) proposes, enters into or is subject to any composition or arrangement with his creditors; or

(iv) has an administration order made in relation to him; or

(v) becomes the subject of a voluntary arrangement; or

(vi) makes or is the subject of an application to a court (or its equivalent) of competent jurisdiction for protection from his creditors; or

(vii) is the subject of a court order to the effect stipulated in (i) to (vi) above; or

(viii) files a petition, passes any resolution or takes any other step to procure the commencement of any proceedings or process of a nature described in (i) to (vii) above or there commences any similar proceeding against him or his assets under applicable bankruptcy or insolvency laws in any jurisdiction; or

(ix) ceases to trade, is struck off or dissolved.

(b) where the Member, being an individual or partnership:

(i) applies for an interim order; or

(ii) proposes or enters into an individual voluntary arrangement or is made bankrupt; or

(iii) proposes, enters into or is subject to any composition or arrangement with his creditors; or

(iv) has a receiver or manager appointed over any of his assets, business or income; or

(v) proposes, makes or is the subject of an application to or order by a court for his winding up or administration; or

(vi) makes or is the subject of an application to a court (or its equivalent) of competent jurisdiction for protection from his creditors; or

(vii) files a petition, passes any resolution or takes any other step to procure the commencement of any proceedings or process of a nature described in (i) to (vi) above or there commences any similar proceeding against him or his assets under applicable bankruptcy or insolvency laws in any jurisdiction; or

(viii) ceases to trade and where the Member is a partnership, is dissolved; or  
(xi) dies or becomes incapable by reason of mental disorder of managing and administering his property and affairs (and if a partnership, all of the partners die or become mentally incapable).

(c) if having failed to pay when due and demanded by the Managers any sum due from him to the Company, he is served with a notice by or on behalf of the Managers or the Company requiring to pay such sum on or before any date which may be specified in such notice and he fails to pay such sum in full on or before the date so specified.

(d) where by operation of law the Company is prohibited or prevented from providing Insurance to the Member (the reference to "operation of law" includes any direction, regulation, sanction or other measure issued or implemented by any government, authority or power in a position to require, compel or enforce compliance therewith by the Company or its Members, Directors, Managers, officers, employees, servants or agents).

## **RULE 29 CESSER OF SHIP ENTRY**

Unless otherwise agreed between the Member and the Managers in accordance with Rule 7(1) a Member shall cease to be insured by the Company in respect of an Entered Ship upon the happening of any of the following events in relation to such Ship:

(a) any of the events referred to in ITC-Hulls Clause 4;

(b) If the Ship becomes an actual total loss or is accepted as being a constructive, compromised or arranged total loss whether under this or any other insurance.

## **RULE 30 EFFECT OF CESSER OF INSURANCE**

### **30(1) For failure to pay**

If the cesser of insurance shall have occurred by virtue of Rule 28(c) (Failure to pay sums due) the Company shall not be liable for any claims under these Rules whether the incident giving rise to such claim occurred before or after the cesser of insurance.

### **30(2) For any other reason**

If the cesser of insurance shall have occurred by virtue of any other reason the Company shall remain liable for all claims under these Rules arising by reason of any incident which occurred before the cesser but shall be under no liability whatsoever by reason of any incident which occurred after the cesser.

## **RULE 31 CONTRIBUTIONS DUE ON CESSER OF INSURANCE**

**31(1)** A Member whose Entered Ship or Ships cease to be insured by the Company for any reason, shall be and remain liable to pay to the Company all Contributions in respect of such Ship or Ships for the Policy Year in which the insurance ceases which such Member would have been liable to pay had the insurance of such Ship or Ships not ceased.

*Provided always that:*

the Member shall be liable for Contributions for such Policy Year pro rata only for the period beginning with the date of entry and ending with the happening of the event that occasioned the cesser of insurance if such cesser arises:

(i) upon the happening of the events specified under Rule 29 excluding 29(b) (Total Loss) and the Member gives notice of the event in writing to the Managers within one month of the date thereof, or

(ii) by virtue of Rule 28(d).

### **31(2) Set-off**

For the purpose of determining whether any (and if so, what) sum is due for the purposes of Rule 31(1) or otherwise under these Rules no account shall be taken of any amount due or alleged to be due by the Company to the Member for any reason whatsoever, and no set-off of any kind (including any set-off which might otherwise have arisen by reason of the bankruptcy or winding up of the Member) shall be allowed against such sum (whether or not any set-off against Contributions has been allowed at any time in the past) except to the extent (if any) to which any sum demanded by the Managers is due, and required to be paid in a notice served under Rule 28(c) (Cesser for non-payment) may (in the Managers' discretion) in itself have already allowed for a set-off or credit in favour of the Member.

**31(3)** A Member whose Entered Ship or Ships cease to be insured by the Company for any reason shall immediately become liable to pay to the Company a sum equivalent to any deductible under the terms of entry for any claim for which bail or other security has been provided by the Company under Rule 26(4).

## VII The Funds of the Company

### RULE 32 CLOSING OF POLICY YEARS

- 32(1)** The Directors shall declare, with effect from such date after the end of each Policy Year as they think fit, that such Policy Year shall be closed.
- 32(2)** After any Policy Year shall have been closed no further Call may be levied in respect of the Policy Year.
- 32(3)** If upon the closing of any Policy Year or at any other time it shall appear to the Directors that the whole of the Contributions and other receipts in respect of such Policy Year (and of all transfers from reserves and provisions made for the credit of or in respect of such Policy Year) are unlikely to be required to meet the claim, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 10) then the Directors may decide to dispose of any excess which in their opinion is not so required in one or both of the following ways:
- (a) by transferring the excess or any part thereof to the reserves of the Company in accordance with Rule 34;
  - (b) by returning it in whole or in part to the Members or such of them in such manner and in such proportions as the Directors in their absolute discretion shall determine.
- 32(4)** If at any time or times after a Policy Year shall have been closed it shall appear to the Directors that the claims, expenses and outgoings arising in respect of that Policy Year (as referred to in Rule 10) exceed or are likely to exceed the totality of the Calls and other receipts in respect of provisions made for the credit of or in respect of such Policy Year then the Directors may decide to provide for such deficiency in any one or more of the following ways:
- (a) by transferring funds from the reserves of the Company;
  - (b) by transferring funds standing to the credit of any different closed Policy Year;
  - (c) by making a Call in respect of an open Policy Year with the intention (as permitted by Rule 10(1)(c)) or applying a part thereof to meet any such deficiency.
- If the Directors shall resolve as set out in sub-paragraph (c) above, then the Managers shall inform the Members entered for such Policy Year on or before the time that payment is demanded.
- 32(5)** At any time after any Policy Year shall have been closed the Directors may resolve to amalgamate the accounts of any two or more closed Policy Years and to pool the amounts standing to the credit of the same. If the Directors shall so resolve then the two or more closed Policy Years concerned shall for all purposes be treated as though they constituted a single closed Policy Year.

## **RULE 33 REINSURANCE**

### **Risks of the Company**

The Managers may reinsure or cede on behalf of the Company the whole or any part of the risks of the Company with such reinsurers and on such terms as the Managers shall consider appropriate.

## **RULE 34 RESERVES**

- 34(1)** The Directors may establish and maintain such reserve funds or other accounts for such contingencies or purposes as they think fit including but not limited to the following:
- To stabilise the level of Calls payable from Policy Year to Policy Year; to protect the Company against any actual or potential losses on exchange, or in connection with its investments, realised or unrealised.
- 34(2)** The Directors may apply the sums standing to the credit of any reserve for any of the purposes for which the reserve was maintained even though the sum be paid in respect of any different Policy Year or Years from that from which the funds originated. The Directors may also apply the sums standing to the credit of any reserve for any other or different purposes whenever the Directors consider this to be in the interests of the Company or its Members. The Directors may also at times transfer sums from one reserve to another.
- 34(3)** The funds required to establish such reserves or accounts may be raised in either or both of the following ways:
- (a) The Directors, when deciding on the rate of any Call for any Policy Year, may resolve that any specified amount or proportion of such Call shall be transferred to and applied for the purposes of any such reserve or account.
- (b) The Directors may on the closing of any Policy Year or at any time or times thereafter resolve that any specified amount or proportion of the funds standing to the credit of that Policy Year shall be transferred to and applied for the purposes of any such reserve or account.
- 34(4)** If the Directors shall resolve as set out in Rule 34(3)(a) then the Managers shall inform the Members entered for such Policy Year on or before the time that payment is demanded.

## **RULE 35 INVESTMENT**

- 35(1)** The funds of the Company may (subject to the general supervision of the Directors) be invested by the Managers by means of the purchase of such stocks, shares, bonds, debentures or other securities or the purchase of such currencies, commodities, or other real or personal property, or by means of being deposited in such accounts as the Managers may think fit. The funds of the Company may also be invested by such other method as the Directors may approve.
- 35(2)** Unless the Directors otherwise decide, all the funds standing to the credit of any Policy Year or of any reserve or account shall be pooled and invested as one fund.
- 35(3)** When funds are pooled as provided in Rule 35(2) the investment income arising on the pooled funds (including capital gains and losses and gains and losses on foreign exchange transactions) may be applied to or apportioned between one or more Policy Years, reserve, fund or account at the Directors' sole discretion, irrespective of the Policy Year from which the funds originated.
- 35(4)** Without prejudice to Rule 35(3), the Directors may direct that after the closing of any Policy Year that Year shall not be credited with any share of the apportionments made under that paragraph and that its share shall instead be credited to any reserve or account maintained by the Company.

## VIII General Terms and Conditions

### RULE 36 FORBEARANCE

**36(1)** No act, omission, course of dealing, forbearance, delay, indulgence or conduct (including negligence) of the Company whatsoever and whensoever occurring, whether by or through its officers, servants or agents or otherwise shall constitute any admission or promise that the Company will forego any of its rights under these Rules or relevant statutory enactments.

#### **36(2) Waiver by Directors & Managers**

(a) The Directors and/or the Managers may in their sole discretion reinstate insurance (whether retroactively or otherwise) where such insurance has ceased pursuant to the provisions of these Rules from such date and to such extent and upon such terms and conditions as the Directors and/or the Managers may determine.

(b) Although the Company shall at all times and without notice be entitled to insist on the strict application of these Rules or relevant statutory enactments, the Directors and/or the Managers may in their sole discretion waive any of the Company's rights arising from any neglect or non-compliance therewith, or breach thereof by a Member, and may pass and pay in full or in part any claim which they think fit.

*Provided always that:*

in Rule 36(2)(b) where such neglect, non-compliance or breach of any of these Rules by a Member has resulted in his insurance ceasing, the Directors and/or the Managers shall have first determined that such insurance should be reinstated in accordance with Rule 36(2)(a).

### RULE 37 DELEGATION

#### **By the Directors**

Whenever any power, duty or discretion is stated in these Rules to be vested in the Directors such power, duty or discretion shall be exercisable by the Directors unless the same shall have been delegated to any sub-committee of the Directors or to the Managers in accordance with the provisions as regards delegation contained in the Memorandum and Articles of Association of the Company in which event the power, duty or discretion may be exercised by any person to whom the same shall have been so delegated.

## **RULE 38 DISPUTES AND DIFFERENCES**

**38(1)** Except as provided in Rule 13, any difference or dispute which arises between a Member and the Company out of or in connection with these Rules or any contract between them or as to the rights or obligations of the Company or the Member thereunder or in connection therewith, shall in the first instance be referred to and adjudicated upon by the Directors. Such reference and adjudication shall be on written submissions only.

**38(2)** If the Member concerned in such difference or dispute does not accept the decision of the Directors it shall be referred to the arbitration in London of two Arbitrators (one to be appointed by the Company and the other by such Member) and an Umpire to be appointed by the Arbitrators and the submission to arbitration and all the proceedings therein shall be subject to the provisions of the English Arbitration Act, 1996 and any statutory modification or re-enactment thereof. Such arbitration shall be commenced within one (1) year of the date when notice of the decision of the Directors is given to the Member, failing which any such dispute or difference shall be time barred.

### **38(3) Sole remedy**

No Member shall be entitled to maintain any action, suit or other legal proceedings against the Company otherwise than in accordance with the procedures laid down in this Rule 38. The right to appeal to the Courts is excluded under these procedures and the Member may only commence proceedings other than the arbitration under Rule 38(2) so as to enforce an award under such arbitration and then only for such sum if any as the award may direct to be paid by the Company. The sole obligation of the Company to such Member under these Rules and any policy in respect of such difference or dispute shall be to pay such sum as may be directed by such an award.

*Provided always that:*

notwithstanding Rules 38(1) and (2) the Company shall be entitled at any time to take whatever action is deemed necessary by the Managers to obtain security for any claims the Company may have against the Member, including the right of the Company to take action and/or commence proceedings in any jurisdiction to enforce its right of lien on ships.

## **RULE 39 NOTICES**

### **39(1) On the Company**

A notice or other document required under these Rules to be served on the Company may be served in writing by sending it through the post in a pre-paid letter or by sending it by courier, facsimile or other electronic communication addressed to the Company at the Company's registered office for the time being.

### **39(2) On a Member**

A notice or other document required under these Rules to be served on a Member may be served in writing by sending it through the post in a pre-paid letter or by sending it by courier, facsimile or other electronic communication addressed to the Member at his address appearing in the Company's records or to his broker or agent. In the case of Joint Members notice shall be served on any such Member or on his broker or agent and such service shall be sufficient service upon all Joint Members.

### **39(3) Addresses**

(a) Any Member described in the Company's records by an address not within the United Kingdom who shall from time to time give the Company an address within the United Kingdom at which notices may be served upon him, or an address to which notice may be sent using electronic communication, shall be entitled to have notices or other documents served upon him at such address which shall be deemed to be his address as appearing in the Company's records for the purpose of Rule 39(2).

(b) In this Rule 39 "address", in relation to electronic communication, includes any number or address for the time being notified for that purpose to the person giving the notice.

### **39(4) Date of Service**

Any notice or other document, if served by post or courier, shall be deemed to have been served on the day following the day on which the letter containing the same was put in the post or handed to the courier and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and put into the post in a pre-paid letter or handed to the courier. Any such notice or other document served by facsimile or other electronic communication shall be deemed to have been served on the day on which it was despatched and in proving such service it shall be sufficient to prove that the notice was duly despatched.

**39(5) Successors**

The successors of anyone who is or was at any time a Member of the Company shall be bound by a notice or other document served as aforesaid if sent to the last such address of the Member or of his broker or agent notwithstanding that the Company may have notice of the Member's death, disability, lunacy, bankruptcy or liquidation.

**RULE 40 JURISDICTION**

These Rules and any contract of insurance between the Company and a Member shall be governed by and construed in accordance with English law, subject to the right of the Company under Rule 38(3) to enforce its right of lien in any jurisdiction in accordance with the local law of such jurisdiction.

## Appendix 'A'

1/10/83

### INSTITUTE TIME CLAUSES HULLS

This insurance is subject to English law and practice.

#### 1 NAVIGATION

1.1 The Vessel is covered subject to the provisions of this insurance at all times and has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but it is warranted that the Vessel shall not be towed, except as is customary 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. This Clause 1.1 shall not exclude customary towage in connection with loading and discharging.

1.2 In the event of the Vessel being employed in trading operations which entail cargo loading or discharging at sea from or into another vessel (not being a harbour or inshore craft) no claim shall be recoverable under this insurance for loss of or damage to the Vessel or liability to any other vessel arising from such loading or discharging operations, including whilst approaching, lying alongside and leaving, unless previous notice that the Vessel is to be employed in such operations has been given to the Underwriters and any amended terms of cover and any additional premium required by them have been agreed.

1.3 In the event of the Vessel sailing (with or without cargo) with an intention of being (a) broken up, or (b) sold for breaking up, any claim for loss of or damage to the Vessel occurring subsequent to such sailing shall be limited to the market value of the Vessel as scrap at the time when the loss or damage is sustained, unless previous notice has been given to the Underwriters and any amendments to the terms of cover, insured value and premium required by them have been agreed. Nothing in this Clause 1.3 shall affect claims under Clauses 8 and/or 11.

#### 2 CONTINUATION

Should the Vessel at the expiration of this insurance be at sea or in distress or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

### 3 BREACH OF WARRANTY

Held covered in case of any breach of warranty as to cargo, trade, locality, towage, salvage services or date of sailing, provided notice be given to the Underwriters immediately after receipt of advices and any amended terms of cover and any additional premium required by them be agreed.

### 4 TERMINATION

**This Clause 4 shall prevail notwithstanding any provision, whether written typed or printed in this insurance inconsistent therewith.**

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

- 4.1 change of the Classification Society of the Vessel, or change, suspension, discontinuance, withdrawal or expiry of her Class therein, provided that if the Vessel is at sea such automatic termination shall be deferred until arrival at her next port. However where such change, suspension, discontinuance or withdrawal of her Class has resulted from loss or damage covered by Clause 6 of this insurance 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,
- 4.2 any change, voluntary or otherwise, in the ownership or flag, transfer to new management, or charter on a bareboat basis, or requisition for title or use of the Vessel, 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.  
A pro rata daily net return of premium shall be made.

### 5 ASSIGNMENT

No assignment of or interest in this insurance or in any moneys which may be or become payable thereunder is to be binding on or recognised by the Underwriters unless a dated notice of such assignment of 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 thereunder.

## 6 PERILS

- 6.1 This insurance covers loss of or damage to the subject-matter insured caused by
  - 6.1.1 perils of the seas rivers lakes or other navigable waters
  - 6.1.2 fire, explosion
  - 6.1.3 violent theft by persons from outside the Vessel
  - 6.1.4 jettison
  - 6.1.5 piracy
  - 6.1.6 breakdown of or accident to nuclear installations or reactors
  - 6.1.7 contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or installation
  - 6.1.8 earthquake volcanic eruption or lightning.
- 6.2 This insurance covers loss of or damage to the subject-matter insured caused by
  - 6.2.1 accidents in loading discharging or shifting cargo or fuel
  - 6.2.2 bursting of boilers breakage of shafts or any latent defect in the machinery or hull
  - 6.2.3 negligence of Master Officers Crew or Pilots
  - 6.2.4 negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder
  - 6.2.5 barratry of Master Officers or Crew
    - provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.
- 6.3 Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause 6 should they hold shares in the Vessel.

## 7 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 threat thereof, resulting directly from damage to the Vessel for which the Underwriters are liable under this insurance, provided such act of governmental authority has not resulted from want of due diligence by the Assured, the Owners, or Managers of the Vessel or any of them to prevent or mitigate such hazard or threat. Master, Officers, Crew or Pilots not to be considered Owners within the meaning of this Clause 7 should they hold shares in the Vessel.

## 8 3/4THS COLLISION LIABILITY

- 8.1 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
- 8.1.1 loss of or damage to any other vessel or property on any other vessel
  - 8.1.2 delay to or loss of use of any such other vessel or property thereon
  - 8.1.3 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 Vessel hereby insured coming into collision with any other vessel.
- 8.2 The indemnity provided by this Clause 8 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:
- 8.2.1 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 8 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.
  - 8.2.2 in no case shall the Underwriters' total liability under Clauses 8.1 and 8.2 exceed their proportionate part of three-fourths of the insured value of the Vessel hereby insured in respect of any one collision.
- 8.3 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, with the prior written consent of the Underwriters.

## EXCLUSIONS

- 8.4 Provided always that this Clause 8 shall in no case extend to any sum which the Assured shall pay for or in respect of
- 8.4.1 removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever
  - 8.4.2 any real or personal property or thing whatsoever except other vessels or property on other vessels
  - 8.4.3 the cargo or other property on, or the engagements of, the insured Vessel

- 8.4.4 loss of life, personal injury or illness
- 8.4.5 pollution or contamination 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).

## 9 SISTERSHIP

Should the Vessel hereby insured 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 Vessel hereby insured; 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.

## 10 NOTICE OF CLAIM AND TENDERS

- 10.1 In the event of accident whereby loss or damage may result in a claim under this insurance, notice shall be given to the Underwriters prior to survey and also, if the Vessel is abroad, to the nearest Lloyd's Agent so that a surveyor may be appointed to represent the Underwriters should they so desire.
- 10.2 The Underwriters 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 Underwriters' requirements being refunded to the Assured) and shall have a right of veto concerning a place of repair or a repairing firm.
- 10.3 The Underwriters 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 Underwriters, an allowance shall be made at the rate of 30% per annum on the insured value for time lost between the despatch of the invitations to tender required by 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 Underwriters' approval.

Due credit shall be given against the allowance as above for any amounts recovered in respect of fuel and stores and 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.

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.

- 10.4 In the event of failure to comply with the conditions of this Clause 10 a deduction of 15% shall be made from the amount of the ascertained claim.

## 11 GENERAL AVERAGE AND SALVAGE

- 11.1 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.
- 11.2 Adjustment to be 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.
- 11.3 When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1974 (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.
- 11.4 No claim under this Clause 11 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.

## 12 DEDUCTIBLE

- 12.1 No claim arising from a peril insured against 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 8, 11 and 13) exceeds..... 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 be found. This Clause 12.1 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 13 arising from the same accident or occurrence.
- 12.2 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 hereunder shall be the proportion of the above deductible 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 12.2 shall be deemed to include contact with floating ice.

- 12.3 Excluding any interest comprised therein, recoveries against any claim which is subject to the above deductible shall be credited to the Underwriters in full to the extent of the sum by which the aggregate of the claim unreduced by any recoveries exceeds the above deductible.
- 12.4 Interest comprised in recoveries shall be apportioned between the Assured and the Underwriters, taking into account the sums paid by the Underwriters, and the dates when such payments were made, notwithstanding that by the addition of interest the Underwriters may receive a larger sum than they have paid.

### 13 DUTY OF ASSURED (SUE AND LABOUR)

- 13.1 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.
- 13.2 Subject to the provisions below and to Clause 12 the Underwriters will 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 13.5) and collision defence or attack costs are not recoverable under this Clause 13.
- 13.3 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.
- 13.4 When expenses are incurred pursuant to this Clause 13 the liability under this insurance shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the 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.

- 13.5 When a claim for total loss of the Vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the Vessel and any 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; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.
- 13.6 The sum recoverable under this Clause 13 shall be in addition to the loss otherwise recoverable under this insurance but shall in no circumstances exceed the amount insured under this insurance in respect of the Vessel.

#### 14 NEW FOR OLD

Claims payable without deduction new for old.

#### 15 BOTTOM TREATMENT

In no case shall a claim be allowed in respect of scraping gritblasting and/or other surface preparation or painting of the Vessel's bottom except that

- 15.1 gritblasting and/or other surface preparation of new bottom plates ashore and supplying and applying any "shop" primer thereto,
- 15.2 gritblasting and/or other surface preparation of:  
the butts or area of plating immediately adjacent to any renewed or refitted plating damaged during the course of welding and/or repairs,  
areas of plating damaged during the course of fairing, either in place or ashore,
- 15.3 supplying and applying the first coat of primer/anti-corrosive to those particular areas mentioned in 15.1 and 15.2 above,  
shall be allowed as part of the reasonable cost of repairs in respect of bottom plating damaged by an insured peril.

#### 16 WAGES AND MAINTENANCE

No claim shall be allowed, other than in general average, 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.

## 17 AGENCY COMMISSION

In no case shall any sum be allowed 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.

## 18 UNREPAIRED DAMAGE

- 18.1 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.
- 18.2 In no case shall the Underwriters be liable for unrepaired damage in the event of a subsequent total loss (whether or not covered under this insurance) sustained during the period covered by this insurance or any extension thereof.
- 18.3 The Underwriters shall not be liable in respect of unrepaired damage for more than the insured value at the time this insurance terminates.

## 19 CONSTRUCTIVE TOTAL LOSS

- 19.1 In ascertaining whether the Vessel is a constructive total loss, the insured value 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.
- 19.2 No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed the insured value. 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.

## 20 FREIGHT WAIVER

In the event of total or constructive total loss no claim to be made by the Underwriters for freight whether notice of abandonment has been given or not.

## 21 DISBURSEMENTS WARRANTY

- 21.1 Additional insurances as follows are permitted:
- 21.1.1 *Disbursements, Managers' Commissions, Profits or Excess or Increased*

*Value of Hull and Machinery.* A sum not exceeding 25% of the value stated herein.

- 21.1.2 *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 21.1.1.
- 21.1.3 *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 21.1.2 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.
- 21.1.4 *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 21.1.2 to be taken into account and only the excess thereof may be insured.
- 21.1.5 *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 21.1.2 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 21.1.2 and 21.1.5 does not exceed 50% of the gross hire still to be earned under the charter. An insurance under this Section may begin on the signing of the charter.
- 21.1.6 *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.
- 21.1.7 *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 insured perils or otherwise.
- 21.1.8 *Insurance irrespective of amount against:*

Any risks excluded by Clauses 23, 24, 25 and 26 below.

21.2 Warranted that no insurance on any interests enumerated in the foregoing 21.1.1 to 21.1.7 in excess of the amounts permitted therein and no other insurance which includes the 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 currency of this insurance 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.

## 22 RETURNS FOR LAY-UP AND CANCELLATION

22.1 To return as follows:

22.1.1 pro rata monthly net for each uncommenced month if this insurance be cancelled by agreement,

22.1.2 for each period of 30 consecutive days the Vessel may be laid-up in a port or in a lay-up area provided such port or lay-up area is approved by the Underwriters (with special liberties as hereinafter allowed)

(a) ..... per cent net not under repair

(b) ..... per cent net under repair

If the Vessel is under repair during part only of a period for which a return is claimable, the return shall be calculated pro rata to the number of days under (a) and (b) respectively.

### 22.2 Provided Always That

22.2.1 a total loss of the Vessel, whether by insured perils or otherwise, has not occurred during the period covered by this insurance or any extension thereof

22.2.2 in no case shall a return 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 but, provided the Underwriters agree that such non-approved lay-up area is deemed to be within the vicinity of the approved port or lay-up area, days during which the Vessel is laid up in such non-approved lay-up area may be added to days in the approved port or lay-up area to calculate a period of 30 consecutive days and a return shall be allowed for

the proportion of such period during which the Vessel is actually laid up in the approved port or lay-up area

- 22.2.3 loading or discharging operations or the presence of cargo on board shall not debar returns 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
- 22.2.4 in the event of any amendment of the annual rate, the above rates of return shall be adjusted accordingly
- 22.2.5 in the event of any return recoverable under this Clause 22 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 period rates 22.1.2(a) and/or (b) above 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 on the first day of a period of 30 consecutive days as provided under 22.1.2(a) or (b), or 22.2.2 above.

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

## 23 WAR EXCLUSION

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

- 23.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
- 23.2 capture seizure arrest restraint or detention (barratry and piracy excepted), and the consequences thereof or any attempt thereat
- 23.3 derelict mines torpedoes bombs or other derelict weapons of war.

## 24 STRIKES EXCLUSION

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

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

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

25 **MALICIOUS ACTS EXCLUSION**

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

25.1 the detonation of an explosive

25.2 any weapon of war

and caused by any person acting maliciously or from a political motive.

26 **NUCLEAR EXCLUSION**

In no case shall this insurance cover loss damage liability or expense arising from any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

1/10/83

## INSTITUTE TIME CLAUSES-HULLS DISBURSEMENTS AND INCREASED VALUE

(Total Loss only, Including Excess Liabilities)

This insurance is subject to English law and practice

### 1 NAVIGATION

- 1.1 The subject-matter insured is covered subject to the provisions of this insurance at all times and the Vessel has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but it is warranted that the Vessel shall not be towed, except as is customary 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 Charterers. This Clause 1.1 shall not exclude customary towage in connection with loading and discharging.
- 1.2 In the event of the Vessel being employed in trading operations which entail cargo loading or discharging at sea from or into another vessel (not being a harbour or inshore craft) no claim shall be recoverable under this insurance in respect of loss of or damage to the subject-matter insured or for liability to any other vessel arising from such loading or discharging operations, including whilst approaching, lying alongside and leaving, unless previous notice that the Vessel is to be employed in such operations has been given to the Underwriters and any amended terms of cover and any additional premium required by them have been agreed.
- 1.3 In the event of the Vessel sailing (with or without cargo) with an intention of being (a) broken up, or (b) sold for breaking up, no claim shall be recoverable under this insurance in respect of loss or damage to the Vessel occurring subsequent to such sailing unless previous notice has been given to the Underwriters and any amendments to the terms of cover, amount insured and premium required by them have been agreed.

### 2 CONTINUATION

Should the Vessel at the expiration of this insurance be at sea or in distress or at a port of refuge or of call, the subject-matter insured shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

### 3 BREACH OF WARRANTY

Held covered in case of any breach of warranty as to cargo, locality, trade, towage, salvage services or date of sailing, provided notice be given to the Underwriters immediately after receipt of advices and any amended terms of cover and any additional premium required by them be agreed.

### 4 TERMINATION

**This Clause 4 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent therewith.**

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

4.1 change of the Classification Society of the Vessel, or change, suspension, discontinuance, withdrawal or expiry of her Class therein, provided that if the Vessel is at sea such automatic termination shall be deferred until arrival at her next port. However, where such change, suspension, discontinuance or withdrawal of her Class has resulted from loss or damage which would be covered by an insurance of the Vessel subject to current Institute Time Clauses Hulls or 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,

4.2 any change, voluntary or otherwise, in the ownership or flag, transfer to new management, or charter on a bareboat basis, or requisition for title or use of the Vessel, 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.

A pro rata daily net return of premium shall be made.

### 5 ASSIGNMENT

No assignment of or interest in this insurance or in any moneys which may be or become payable thereunder 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 thereunder.

## 6 PERILS

- 6.1 This insurance covers total loss (actual or constructive) of the subject-matter insured caused by
  - 6.1.1 perils of the seas rivers lakes or other navigable waters
  - 6.1.2 fire, explosion
  - 6.1.3 violent theft by persons from outside the Vessel
  - 6.1.4 jettison
  - 6.1.5 piracy
  - 6.1.6 breakdown of or accident to nuclear installations or reactors
  - 6.1.7 contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or installation
  - 6.1.8 earthquake volcanic eruption or lightning.
- 6.2 This insurance covers total loss (actual or constructive) of the subject-matter insured caused by
  - 6.2.1 accidents in loading discharging or shifting cargo or fuel
  - 6.2.2 bursting of boilers breakage of shafts or any latent defect in the machinery or hull
  - 6.2.3 negligence of Master Officers Crew or Pilots
  - 6.2.4 negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder
  - 6.2.5 barratry of Master Officers or Crew
    - provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.
- 6.3 Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause 6 should they hold shares in the Vessel.
- 6.4 This insurance covers:
  - 6.4.1 **General Average, Salvage and Salvage Charges** not recoverable in full under the insurances on hull and machinery by reason of the difference between the insured value of the Vessel as stated therein (or any reduced value arising from the deduction therefrom in process of adjustment of any claim which law or practice or the terms of the insurances covering hull and machinery may have required) and the value of the Vessel adopted for the purpose of contribution to general average, salvage or salvage charges, the liability under this insurances being for such proportion of the amount not recoverable as the amount insured hereunder bears to the said difference or to the total sum insured against excess liabilities if it exceed such difference.

- 6.4.2 **Sue and Labour Charges** not recoverable in full under the insurances on hull and machinery by reason of the difference between the insured value of the Vessel as stated therein and the value of the Vessel adopted for the purpose of ascertaining the amount recoverable under the insurances on hull and machinery, the liability under this insurance being for such proportion of the amount not recoverable as the amount insured hereunder bears to the said difference or to the total sum insured against excess liabilities if it exceed such difference.
- 6.4.3 **Collision Liability (three-fourths)** not recoverable in full under the Institute 3/4ths Collision Liability and Sistership Clauses in the insurances on hull and machinery by reason of such three-fourths liability exceeding three-fourths of the insured value of the Vessel as stated therein, in which case the amount recoverable under this insurance shall be such proportion of the difference so arising as the amount insured hereunder bears to the total sum insured against excess liabilities.
- 6.5 The Underwriters' liability under 6.4.1, 6.4.2 and 6.4.3 separately, in respect of any one claim, shall not exceed the amount insured hereunder.

## 7 POLLUTION HAZARD

This insurance covers total loss (actual or constructive) of the Vessel caused by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from damage to the Vessel caused by a peril covered by this insurance, provided such act of governmental authority has not resulted from want of due diligence by the Assured, the Owners, or Managers of the Vessel or any of them to prevent or mitigate such hazard or threat. Master, Officers, Crew or Pilots not to be considered Owners within the meaning of this Clause 7 should they hold shares in the Vessel.

## 8 NOTICE OF CLAIM

In the event of accident whereby loss or damage may result in a claim under this insurance, notice shall be given to the Underwriters prior to survey and also, if the Vessel is abroad, to the nearest Lloyd's Agent so that a surveyor may be appointed to represent the Underwriters should they so desire.

## 9 CONSTRUCTIVE TOTAL LOSS

- 9.1 In ascertaining whether the Vessel is a constructive total loss, the insured value in the insurances on hull and machinery 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.
- 9.2 No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed the insured value in the insurances on hull and machinery. 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.
- 9.3 Provided that the Constructive Total Loss Clause in the current Institute Time Clauses Hulls or a clause having a similar effect is contained in the insurances on hull and machinery, the settlement of a claim for constructive total loss thereunder shall be accepted as proof of the constructive total loss of the Vessel.
- 9.4 Should the Vessel be a constructive total loss but the claim on the insurances on hull and machinery be settled as a claim for partial loss, no payment shall be due under this Clause 9.

## 10 COMPROMISED TOTAL LOSS

In the event of a claim for total loss or constructive total loss being settled on the insurances on hull and machinery as a compromised total loss the amount payable hereunder shall be the same percentage of the amount insured as is paid on the said insurances.

## 11 RETURNS FOR LAY-UP AND CANCELLATION

- 11.1 To return as follows:
- 11.1.1 pro rata monthly net for each uncommenced month if this insurance be cancelled by agreement
- 11.1.2 for each period of 30 consecutive days the Vessel may be laid up in a port or in a lay-up area provided such port or lay-up area is approved by the Underwriters (with special liberties as hereinafter allowed)
- (a) ..... per cent net not under repair
- (b) ..... per cent net under repair.

If the Vessel is under repair during part only of a period for which a return is claimable, the return shall be calculated pro rata to the number of days under (a) and (b) respectively.

## 11.2 Provided Always That

- 11.2.1 a total loss of the Vessel, whether by insured perils or otherwise, has not occurred during the period covered by this insurance or any extension thereof
- 11.2.2 in no case shall a return 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 but, provided the Underwriters agree that such non-approved lay-up area is deemed to be within the vicinity of the approved port or lay-up area, days during which the Vessel is laid up in such non-approved lay-up area may be added to days in the approved port or lay-up area to calculate a period of 30 consecutive days and a return shall be allowed for the proportion of such period during which the Vessel is actually laid up in the approved port or lay-up area
- 11.2.3 loading or discharging operations or the presence of cargo on board shall not debar returns 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
- 11.2.4 in the event of any amendment of the annual rate, the above rates of return shall be adjusted accordingly
- 11.2.5 in the event of any return recoverable under this Clause 11 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 period rates 11.1.2(a) and/or (b) above 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 11.1.2(a) or (b), or 11.2.2 above.

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

## 12 WAR EXCLUSION

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

- 12.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or for any hostile act by or against a belligerent power
- 12.2 capture seizure arrest restraint or detention (barratry and piracy excepted), and the consequences thereof or any attempt thereat
- 12.3 derelict mines torpedoes bombs or other derelict weapons of war.

## 13 STRIKES EXCLUSION

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

- 13.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- 13.2 any terrorist or any person acting from a political motive.

## 14 MALICIOUS ACTS EXCLUSION

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

- 14.1 the detonation of an explosive
- 14.2 any weapon of war  
and caused by any person acting maliciously or from a political motive.

## 15 NUCLEAR EXCLUSION

In no case shall this insurance cover loss damage liability or expense arising from any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

1/7/76

## INSTITUTE WARRANTIES

- 1 Warranted no:-
  - (a) Atlantic Coast of North America, its rivers or adjacent islands,
    - (i) north of 52° 10' N. Lat. and west of 50° W. Long.;
    - (ii) 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 21st December and 30th April both days inclusive,
    - (iii) west of Baie Comeau/Matane (but not west of Montreal) between 1st December and 30th April both days inclusive.
  - (b) Great Lakes or St. Lawrence Seaway west of Montreal.
  - (c) Greenland Waters.
  - (d) Pacific Coast of North America its rivers or adjacent islands north of 54° 30' N. Lat., or west of 130° 50' W. Long.
- 2 Warranted no Baltic Sea or adjacent waters east of 15° E. Long.
  - (a) North of a line between Mo (63° 24' N. Lat.) and Vasa (63° 06' N. Lat.) between 10th December and 25th May b.d.i.
  - (b) East of a line between Viipuri (Vyborg) (28° 47' E. Long.) and Narva (28° 12' E. Long.) between 15th December and 15th May b.d.i.
  - (c) North of a line between Stockholm (59° 20' N. Lat.) and Tallinn (59° 24' N. Lat.) between 8th January and 5th May b.d.i.
  - (d) East of 22° E. Long. and south of 59° N. Lat. between 28th December and 5th May b.d.i.
- 3 Warranted not North of 70° N. Lat. other than voyages direct to or from any port or place in Norway or Kola Bay.
- 4 Warranted no Behring Sea, no East Asian waters north of 46° N. Lat. and not to enter or sail from any port or place in Siberia except Nakhodka and/or Vladivostock.
- 5 Warranted not to proceed to Kerguelen and/or Croset 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 water south of 50° S. Lat. if en-route to or from ports and/or places not excluded by this warranty.
- 6 Warranted not to sail with Indian Coal as cargo:-
  - (a) between 1st March and 30th June b.d.i.
  - (b) between 1st July and 30th September, b.d.i. except to ports in Asia, not West of Aden or East of or beyond Singapore.

1/10/83

## INSTITUTE ADDITIONAL PERILS CLAUSES - HULLS

(For use only with the Institute Time Clauses - Hulls 1/10/83)

- 1 In consideration of an additional premium this insurance is extended to cover
  - 1.1 the cost of repairing or replacing
    - 1.1.1 any boiler which bursts or shaft which breaks
    - 1.1.2 any defective part which has caused loss or damage to the Vessel covered by Clause 6.2.2 of the Institute Time Clauses - Hulls 1/10/83.
  - 1.2 loss of or damage to the Vessel caused by any accident or by negligence, incompetence or error of judgement of any person whatsoever.
- 2 Except as provided in 1.1.1 and 1.1.2, nothing in these Additional Perils Clauses shall allow any claim for the cost of repairing or replacing any part found to be defective as a result of a fault or error in design or construction and which has not caused loss of or damage to the Vessel.
- 3 The cover provided in Clause 1 is subject to all other terms, conditions and exclusions contained in this insurance and subject to the proviso that the loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers. Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause should they hold shares in the Vessel.

### ADDITIONAL PERILS CLAUSE (TOTAL LOSS INTERESTS)

This insurance is extended to cover total loss (actual or constructive) of the subject-matter insured caused by any accident or negligence, incompetence or error of judgement of any person whatsoever, provided that such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

Masters Officers Crew or Pilots not to be considered Owners within the meaning of this Clause should they hold shares in the Entered Ship.

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## NOTES

