



**DGS**  
**MARINE GROUP**

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## **THE BRITISH EUROPEAN & OVERSEAS P&I FACILITY**

### **GENERAL TERMS & CONDITIONS FOR SHIP OWNER'S AND CHARTERER'S LIABILITY (THE "RULES")**

**Version three, November 2009**



**DGS**  
**MARINE GROUP**

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**P&I / CHARTERER'S LIABILITY and FD&D**

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## **General Conditions of the British European & Overseas P&I Facility**

### **Clause 1 Subject of the Insurance**

- 1.1 The Underwriter/s provide P&I cover according to these General Conditions of Insurance and according to special agreements included in the policy against costs, expenses and damages which the Assured has paid to third parties.
- 1.2 The Insurance under these conditions is not to be considered as an all risks cover. The cover only includes those perils which are named in these conditions, in so far as the policy does not state something different to a limit of liability as specified in the cover note.

### **Clause 2 Consortium**

- 2.1 According to these conditions 'Underwriter/s' are companies participating in the Charterer's Liability consortium or P&I Facility as applicable.
- 2.2 The companies participating in the Charterer's Liability consortium or P&I Facility as applicable are not jointly and severally liable, but only in proportion to their share.
- 2.3 DGS Marine Management Services, have been appointed by the participating Underwriter/s as Managers ("the Managers") of the P&I Facility or in the case of Charterer's Liability by the companies as Managers of Charterer's Liability.
- 2.4 Any notification and declaration the Assured has to make to the Underwriter/s according to these "Rules" must be directed only towards the Managers and is deemed to be served to the Underwriter/s as soon as the Managers receives the same.

### **Clause 3 Co-Assureds**

- 3.1 The Assured can apply for the inclusion of third parties in the insurance contract as Co-Assureds. The inclusion of Co-Assureds in the insurance contract is at the P&I Managers' sole discretion. It can be made conditional upon payment of an additional premium.

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- 3.2 Unless agreed otherwise the Co-Assured is covered on the same conditions as the Assured under whose contract he is co-insured. If the insurance contract refers to third party liability risks, the extent of the cover is limited to the cover the Underwriters would have granted the Assured under the contract of insurance if claims had not been made against the Co-Assured but against the Assured.
- 3.3 Whenever these terms and conditions refer to conduct of the Assured the referral also applies to the conduct of the Co-Assured. It also applies in case the Co-Assured is not to be considered a representative of the Assured.
- 3.4 The Assured and the Co-Assured are entitled to cover for only once per occurrence of an insured event as described in provision of the cover note. Subject to payment of an additional premium a different agreement can be concluded. In the absence of such an agreement the Assured's claim for cover has priority over that of the Co-Assured.

#### **Clause 4 Good Faith**

All parties concerned shall act in the utmost good faith.

#### **Clause 5 Obligation to disclose precedent to the policy**

- 5.1 Before the conclusion of the insurance contract the Assured shall disclose to the Managers every circumstance known to him and material for the decision to give cover. With regard to Charterer's Liability insurance and in the case of a frame contract with each notification and in the case of an open cover with each declaration, unless the circumstances are common knowledge.
- 5.2 Such circumstances as may come to the knowledge of the Assured before the acceptance of his application by the Managers must be passed on to them forthwith.
- 5.3 Unless otherwise provided a failure to disclose a material circumstance or a misrepresentation of same, shall discharge Insurers from liability. The same applies to the failure to disclose a material circumstance because the Assured was not aware of it and his ignorance was due to negligence or wilful misconduct.
- 5.4 Underwriter/s will remain liable if they were aware of the concealed circumstances or of the misrepresentation. This principle also applies if the disclosure was not made without the Assured being at fault. In the latter case the Underwriter/s are entitled to an additional premium.

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- 5.5 Circumstances are deemed to be material particularly if, they were misrepresented by the Assured, and he had declared his statement to be correct; furthermore such circumstances as were wilfully concealed or wilfully misrepresented; finally, as a rule circumstances expressly inquired about by Underwriter/s.
- 5.6 In case of the insurance being effected by an agent of the Assured it is not only the knowledge of the agent, or what he ought to have known, that is decisive for the discharge of the Underwriter/s from liability, but also that of his principal.
- 5.7 If and when Co-Assureds are provided for in the contract of insurance, in case of discharge from liability the Underwriter/s are also released from any obligation to perform in respect of the Co-Assureds.
- 5.8 If and when Co-Assureds are provided for in the contract of insurance, then the Co-Assureds have the same obligation to disclose circumstances as described at 5.1 to 5.6 aforesaid.

## **Clause 6 Temporary Cover**

- 6.1 The Underwriter/s may provide the applicant with a temporary cover note prior to acceptance of his application.
- 6.2 The temporary cover note can be terminated by the Underwriter/s without notice, if the premium demanded in respect of the temporary cover note is not paid forthwith or in case the Managers were not given the opportunity for a technical inspection by an expert appointed by the Managers within the agreed period of time. The cost of such an inspection is borne by the Assured.
- 6.3 Upon conclusion of the insurance contract the premium paid will be credited against the final determined premium amount. In case of refusal the Underwriters/s retain the amount for the temporary cover note provided.
- 6.4 The aforementioned cover remains in force until acceptance of the insurance application or in case of the proposal being rejected, cover is given for one week following notification of rejection. The one-week period commences on expiry of the third day following mailing of the notification.
- 6.5 The temporary cover note is granted subject to these terms and conditions of Insurance. There is no cover for cases, which are based on deficiencies of the ship ascertained in the course of a technical inspection of the ship.

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- 6.6 Confirmation of temporary cover does not constitute any obligation to conclude an insurance contract.

## **Clause 7 Ship Owners - Insurance Policy**

- 7.1 The insurance policy should contain the name and address of the Assured, the name of the ship covered under the policy, port of registry, the ship's registry number, the IMO number, the risks insured against with reference to the relevant stipulations in these terms and conditions of insurance, any additional agreements, the agreed deductibles and franchises and the commencement and expiry of the cover. The policy has to be signed by the Managers and is to be returned immediately if corrections become necessary.

### **7.2 Charterers Liability - Single Policy, Frame Contract and Open Cover**

In case the insurance only applies to one or more specified charter contracts, the Managers will issue a single policy which should comprise the name and address of the Assured, the name of the vessel which the Assured has chartered, the port of registry, the ship's register number, the IMO-Number, the insured perils in accordance with the corresponding Rules, any additional agreements, the agreed deductibles and franchises as well as the commencement and termination of the cover. The policy has to be signed by the Managers and must be returned immediately if corrections become necessary.

- 7.3 In case the insurance applies to an indefinite number of charter contracts, the parties may agree on a frame contract or an open cover.

### **7.4 Frame Contract**

The frame contract should comprise the name and the address of the Assured, the types of charter parties and the types of vessels to be insured under the frame contract as well as the notification form to be annexed to the frame contract, the insured perils in accordance with the corresponding Rules, any additional agreements, the agreed deductibles and franchises as well as the commencement and termination of the cover. It has to be signed by the Managers and must be returned immediately if corrections become necessary.

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The frame contract is not to be considered as a policy by law.

Under the frame contract the Assured is entitled, but not obliged, to tender for cover for several charters. In the sense of these Rules there is a tender for cover if and when the Application Form attached to the frame contract has been filled in and presented.

The contract of insurance materialises in relation to single charter in case the Underwriter/s do not refuse the conclusion of the contract within two working days after receipt of the application form.

In case the Underwriter/s does not refuse the conclusion of the contract the Managers issue a single policy, which refers to the terms of the frame contract and which includes any special agreements.

The single policy is not to be considered as a policy by law.

#### 7.5 **Open Cover**

The Underwriter/s will document the contents of the open cover in the open policy. The open policy should comprise the name and the address of the Assured, the types of charter parties and the types of vessels, which are insured under the open cover, as well as the declaration form attached to the open policy, the insured perils in accordance with the relevant Rules, any additional agreements, the agreed deductibles and franchises as well as the commencement and termination of the cover. It has to be signed by the Managers and must be returned immediately if corrections become necessary. The open policy is not to be considered as policy by law.

All charter parties concluded by the Assured are covered under the open policy. For each and any single charter the contract of insurance will become effective with the Delivery of the Vessel into the charter (time charter) or with the Notice of Readiness (voyage charter).

The Assured is obliged to notify the Managers of all charters falling under the open cover within 72 hours after conclusion at the latest. This is to be done by means of the declaration form attached to the open policy. In case the Assured fails to declare or submits incorrect declaration, no action shall lie against the Underwriter/s with the exception when the Assured is not in breach of due diligence and that after discovery of the mistake he presents the declaration without delay. In the situation that the Assured intentionally breaches the obligation to declare, the Underwriter/s are entitled to cancel the contract without previous notice.

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## **Clause 8 Payment of Premiums and Other Sums Due**

- 8.1 The Assured will pay the premium in accordance with the dates indicated in the premium invoice.
- 8.2 Additional premiums shall be paid together with the following due instalment.
- 8.3 The first premium instalment must be, received by the Managers within 10 days upon the attachment date, the following instalments must be, received by the Managers within 10 days upon commencement of each quarter. If the payment is effected through a broker, the premium must be received by him within the abovementioned period and be passed on immediately it must be, received by the Manager within a further seven days at the latest.
- 8.4 The Underwriter/Managers are entitled to offset any claims due against the next premium instalment or instalments payable.
- 8.5 If the first premium instalment is not received within the period stipulated in 8.3, and/or other sums due the Managers are entitled to allow the Assured an additional period of 5 days for payment and to rescind from the contract upon expiry of this additional time, unless the Assured is not responsible for the delay. If an event insured against occurs after the Managers' rescission and prior to payment of premium, the Underwriter is discharged from all duties, obligations and liabilities under this contract.
- 8.6 If any subsequent premium instalment/s and/or other sums due are not received within the determined period, the Managers has the right to terminate the cover within a period of 5 days. If the Assured defaults on the payment of a premium instalment/s, and fails to pay the amount within the period of grace of at least two weeks then, having been expressly referred to legal consequences, the Underwriters are discharged from all duties, obligations and liabilities.
- 8.7 All Co-Assureds and the Assured are jointly and severally liable for premium payment.
- 8.9 **Charterers Liability**
- If the chartered vessel is laid up in a safe port for more than 30 consecutive days, unless otherwise agreed, 65% of the gross premium rate may be returned, provided that the vessel is laid up unemployed, without cargo and not under repair.
- 8.9.1 The lay-up returns, if applicable, will be calculated quarterly.

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8.9.2 In general, no lay-up returns will be granted if the laying up takes place outside the trading warranties or if it is solely or partly caused by strikes, riots, war, seizure or detention by authority, usurpation of power or armed rebellion.

8.10 If the insurance contract expires automatically or by termination of the charter party or by rescission or termination by the Managers, the Assured is entitled to a refund of premium paid for the time from the premature cessation and/or termination of the insurance contract until the date of expiry stated in the policy.

## **Clause 9 Period of Insurance**

### **9.1 Ship Owners**

The insurance contract commences and expires on the dates indicated in the insurance policy. Unless agreed otherwise, cover commences at 00:00 hours of the first day and expires at 23:59:59 hours of the last day. This also applies to a ship, which is en route at the time when the insurance expires.

9.2 The insurance contract ceases prior to the date stated in the insurance policy.

9.2.1 In the event of total loss of the insured ship; should the ship become a wreck and this wreck is to be removed, the contract of insurance ceases by completion of the wreck removal;

9.2.2 In the event of sale of the insured ship;

9.2.3 By way of notice by the Managers within 14 days with a grace period of 14 days in case of change of the Classification Society or in the event of a transfer of manning, fitting-out and superintendence of the ship pursuant to 28.1.6;

9.2.4 Rescission of the contract by the Managers in the event of non-payment of the first premium instalment pursuant to 8.5 and/or other sums due;

9.2.5 Termination of the insurance contract by the Managers within 5 days in the case of non-payment of any subsequent premium instalment pursuant to 8.6 and/or other sums due.

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**9.3 Charterers Liability**

The insurance contract commences and expires on the dates indicated in the insurance policy. Unless agreed otherwise, cover commences at 00:00 hours of the first day and expires at 23:59:59 hours of the last day. Charters covered under a frame contract are insured up to 3 months after the expiry date agreed in the policy, under the condition that the Delivery of the Vessel into the charter (time charter) and the Notice of Readiness (voyage charter) is effected, before the termination date of the policy.

**9.4 The insurance contract ceases prior to the date stated in the insurance policy:**

- 9.4.1 In the event of total loss of the insured ship; should the ship become a wreck and this wreck is to be removed, the contract of insurance ceases on completion of the wreck removal;
- 9.4.2 With termination of the charter contract;
- 9.4.3 By way of notice by the Managers within 14 days with a grace period of 14 days in case of change of the Classification Society or in the event of transfer of manning, fitting-out and superintendence of the ship pursuant to 25.1.6;
- 9.4.4 Rescission of the insurance contract by the Managers in the event of non-payment of the first premium instalment and/or other sums due pursuant to 8.7;
- 9.4.5 Termination of the insurance contract by the Managers within 5 days in the case of non-payment of any subsequent premium instalment and/or other sums due pursuant to 8.8

**Clause 10 Charterers Liability - Liability for damage to or loss of the Chartered Vessel**

Liability includes claims of owners of the chartered vessel or charterer's subletting the vessel in respect of damage to or total loss of the vessel including consequential losses resulting therefrom as described in position 11 to 28 hereafter.

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## Clause 11 Cargo Liabilities

The insurance cover comprises:

- 11.1 Damage sustained as a result of third party claims for compensation on the basis of statutory stipulations of private law for loss, damage, robbery, wrong delivery, mixing of or in connection with cargo carried or to be carried by the chartered ship, from acceptance on board the chartered vessel in the port of loading until delivery in the port of discharge of the chartered vessel, with the exception of live animals, valuables, precious metals, precious stones, jewellery, and luggage of passengers and family members.
- 11.2 Discharging costs incurred as a result of the abovementioned, covered, damage are insured in as much as they exceed normal discharging costs.
- 11.3 Costs incurred by the Assured for the disposal of damaged cargo in respect of which he is not entitled to compensation by a third party.

## Clause 12 Liabilities in respect of Passengers

The insurance cover includes:

- 12.1 Personal injury and damage to luggage when sailing with passengers at sea.
- 12.2 If the contract of carriage is subject to English law, cover is provided within the scope of the provisions contained within English law. If claims for personal injury or damage to luggage are made on the basis of a different applicable law, thereby reducing the Assured's liability, then cover is only provided up to that lesser amount. If on the basis of the other applicable law liability is thereby increased, cover is only provided on the basis of the Athens Convention of 1974 on the carriage of passengers and their luggage.

## Clause 13 Ship Owners - Liability to Crew Members

The insurance cover comprises:

- 13.1 Costs and disbursements to be borne by the Assured on the basis of statutory or contractual provisions in the event of accident, illness or death of a master, officer or other member of the crew of the insured ship.

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In as much as contractual liability exceeds statutory liability on its merits or by the size or in as much as same increases during the validity of the insurance contract, cover is provided for the exceeding contractual liability only, if and from that moment onwards, when the Assured submits the contract of employment to the Managers. In this case, the Managers are entitled to an additional premium. If an additional premium cannot be agreed upon, cover only includes the Assureds' statutory liability or in the event of alterations during the validity of the insurance contract, cover is only provided for the contractual liability last notified to the Managers.

Pursuant to these provisions, the abovementioned costs and disbursements include:

- 13.1.1 Hospitalisation, medical treatment and funeral expenses as well as possible relating repatriation costs;
  - 13.1.2 Costs incurred by the diversion of the ship to provide medical service or arrange for repatriation of a crew member; port dues, crew wages, victualling and the ship's consumption are subject to cover;
  - 13.1.3 Travelling expenses of substitutes;
  - 13.1.4 Sick wages;
  - 13.1.5 Any other obligation of the Assured towards the master, officers and other members of the crew.
- 13.2 Costs and disbursements for loss of personal effects of a master, officer or another crew member in the event of sinking or loss of the ship as well as a result of Burglaries, in as much as the Assured is under a statutory or contractual duty to pay relating compensation.
- Effects include: clothing, documents, navigational and other technical instruments as well as tools. Cash, jewellery and valuables are excluded.
- 13.3 Costs and disbursements for repatriation of the crew of the insured ship in the event of a total loss or wreckage of the ship

#### **Clause 14 Ship Owners - Liability towards other Persons**

Insofar as the cover under 12 and 13 is not triggered the insurance cover comprises damages due to claims based on the owners' and carriers' statutory liability for death or injury of an individual not belonging to the crew;

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- 14.1 In the ship or on board the ship, or when boarding or leaving the ship, for which the Assured is liable due to errors of navigation or operation of the ship or negligent acts or omissions on board or in relation to the ship, including costs of hospitalisation, medical treatment and funeral costs;
- 14.2 In the vicinity of the ship, either ashore or afloat or on board another ship or elsewhere [in the vicinity], if the Assured is liable for the reasons stated in 13.1. The costs of medical treatment and funeral expenses mentioned in 13.1 are also included;
- 14.3 In the course of loading, stowing, securing, moving and discharging the ship's cargo during the period of acceptance of the cargo on the quay or berth until final delivery at the quay or berth at the port of discharge, also [if death or injury] is a consequence of fault on the part of persons injured during the abovementioned operations in as much as the Assured can be held liable; this equally applies if the liability is derived from an indemnity agreement between the Assured and his stevedores or other agents provided that this agreement is recognised by the Managers as customary.

#### **Clause 15 Charterers Liability - Liability to persons other than employees**

The insurance cover comprises damages asserted on the basis of statutory stipulations of private law in respect of death or injury of an individual;

- 15.1 In the ship or on board the ship, or when boarding or leaving the ship, for which the Assured is liable due to negligent acts or omissions on board or in relation to the ship, including costs of hospitalisation, medical treatment and funeral costs;
- 15.2 In the vicinity of the ship, either ashore or afloat or on board another ship or elsewhere, if the Assured is liable for the reasons stated in 15.1. The costs of medical treatment and funeral expenses mentioned in 15.1 are also included;
- 15.3 In the course of loading, stowing, securing, moving and discharging the ship's cargo during the period as from receipt of the cargo on the quay or berth until final delivery at the quay or berth at the port of discharge, also as a consequence of fault on the part of persons injured during the abovementioned operations in as much as the Assured can be held liable; this equally applies if the liability is derived from an indemnity agreement between the Assured and his stevedores or other agents provided that this agreement is recognised by the Managers as customary.

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## **Clause 16 Liability for Collision and “Wash” Damage**

### **16.1 Ship Owners Insurance**

#### **16.1.1 Collision Liability**

In the event of liability arising out of a collision, the insurance cover includes reimbursement of the amount not covered or exceeding the covered amount under the customary Lloyd’s Standard Hull Policy together with  $\frac{3}{4}$  “RUNNING DOWN CLAUSE”, or, if the hull and machinery insurance covers less than  $\frac{1}{4}$ , the uninsured portion, provided that this liability, costs and expenses are not covered under the hull and machinery insurance of the insured ship and do not constitute a franchise or deductible provided for in the H&M policy.

If the hull and machinery insurance does not cover a larger portion than  $\frac{1}{4}$ , or does not cover any collision liability, this insurance only includes the collision liability in excess of  $\frac{1}{4}$  if expressly agreed at the conclusion of the insurance contract.

In the event of a collision caused by negligence of both ships concerned resulting in mutual claims against each other and if either of the ship’s liability is limited by statute or agreement the Underwriters only cover the amount eventually payable to the other ship. In all other cases the Underwriters cover the amount ascertained as the quantum of liability irrespective of possible off-set.

Reimbursement under the policy is subject to the condition that at the beginning of the insurance period the ship was entered into a Hull and Machinery Insurance Contract with at least its market value.

#### **16.1.2 Damage to Fixed and Floating Objects, with the Exception of Ships**

The insurance cover comprises compensation claims against the Assured due to loss of or damage to harbour installations, docks, landing places, piers or other fixed or floating objects of any kind provided that no other ship or its cargo or goods being carried, having been carried or about to be carried on the insured ship are involved, and if the Assureds’ liability is based on statutory provisions or the negligent navigation or operation of the ship or on other negligent acts on board or in connection with the insured ship.

In the above case, the cover is only provided to the extent that it is not available under the hull and machinery insurance of the insured ship.

#### **16.1.3 Damage to Ships or Other Property other than by Collision**

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The insurance cover comprises claims for damages against the Assured in respect of loss of or damage to another ship or goods carried therein including costs and disbursements that arise in connection therewith, in so far as such claims are not attributable to a collision with the insured ship but to neglect navigation or operation of the insured ship or other negligent acts or omissions on board or in connection with the insured ship.

In the above case, cover is only provided to the extent to which it is not available under the hull and machinery insurance of the insured ship.

## 16.2 Charterers Liability Insurance

### 16.2.1 Collision Liability

The insurance cover comprises liability for damages in case of a collision of the chartered vessel with another vessel.

### 16.2.2 Damage to Fixed and Floating Objects, with the Exception of Ships

The insurance cover comprises compensation claims against the Assured due to loss of or damage to harbour installations, docks, landing places, piers or other fixed or floating objects of any kind provided that no other ship or its cargo or goods being carried, having been carried or about to be carried on the insured ship are involved, and if the Assured's liability is based on statutory provisions.

Contractual liability in excess of statutory liability is covered only if and when the Managers consented to the terms of the contract prior to incident.

### 16.2.3 Damage to Ships or other Property other than by Collision

The insurance cover comprises claims for damages against the Assured in respect of loss of or damage to another ship or goods carried therein including costs and disbursements that arise in connection therewith, in so far as such claims are not attributable to a collision with the chartered ship.

Contractual liability in excess of statutory liability is only covered if and when the Managers have consented to the terms of the contract prior to incident.

## Clause 17 Stowaways and Refugees

### 17.1 Ship Owners Insurance

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The cover includes:

- 17.1.1 Penalties, administrative fines and costs of repatriation incurred by virtue of statutory provisions in respect of deserted crew members and/or stowaways and/or refugees as well as port dues and other dues and costs exclusively incurred to land/disembark stowaways and/or refugees. In this event the insurance covers crew wages, victualling and consumption of the ship.

In the event of a warrant of arrest issued against deserted crew members and/or stowaways and/or refugees, the Underwriter also covers the costs incurred for the employment of guards and/or imprisonment.

- 17.1.2 The costs incurred must be examined and declared appropriate by the Managers' local agent.

Fines and/or expenses arising out of deserted crew members' and/or stowaways' escape attributable to Assured's failure to follow the arrest warrant by arranging for guard personnel or imprisonment, are all excluded.

- 17.1.3 Wages to, which a deserted crew member may be entitled, must, to the extent it is legally permitted, be retained by the Assured and deducted from costs incurred by the Underwriter.

## 17.2 **Charterers Liability Insurance**

The cover includes:

- 17.2.1 Penalties, administrative fines and costs of repatriation incurred by virtue of statutory provisions in respect of stowaways and/or refugees as well as port dues and other dues and costs exclusively incurred to disembark stowaways and/or refugees in so far as the Assured is legally liable to bear such costs.

In the event of a warrant of arrest issued against stowaways and/or refugees, the Underwriter also covers the costs incurred for the employment of guards and/or imprisonment in so far as the Assured is legally liable to bear same.

- 17.2.2 The costs incurred must be examined and declared appropriate by the Managers' local agent.

Fines and/or expenses arising out of stowaways' escape attributable to Assured's failure to follow the arrest warrant by arranging for guard personnel or imprisonment are all excluded.

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## Clause 18 Costs of Life Salvage

The cover includes:

- 18.1 Life-saving of persons on board the insured ship; in which case

The Underwriter covers costs, which are owed by the Assured to those who saved the lives of persons on board the insured ship or who participated in attempts thereat.

- 18.2 Life-saving in respect of other persons; in which case

The Underwriter covers extra costs, incurred because the insured ship rendered life-saving services to persons or participated in attempts thereat, in so far as the Assured is legally liable to pay the same.

- 18.3 The Underwriter is not liable for costs incurred in cases stated in 18.1 and 18.2 for which the Assured is covered by other insurance or compensated for by third parties.

## Clause 19 Quarantine Expenses

Cover comprises:

The additional costs, such as costs for disinfection and guarding of the insured ship during quarantine as the result of the outbreak of a contagious disease on board the ship. For the duration of the quarantine the Underwriter covers the costs of crew wages, victualling of the crew, the consumption of the ship and part dues in so far as the Assured is legally liable to bear such costs.

## Clause 20 Wreck Liabilities

The insurance cover includes:

- 20.1 The costs and expenses of marking and removing the insured ship including its cargo which has sunk and become a wreck within the policy period, in as much as marking and/or removal are the Assured's compulsory statutory duty, or are imposed on the Assured by an order of authority

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20.2 The cover also includes costs and expenses incurred as a result of claims for expenses and/or damages against the Assured due to delayed removal or non-removal of the wreck in breach of statutory provisions.

20.3 **Ship Owners Insurance**

20.3.1 Costs and expenses are only covered in as much as they exceed the value of the salvaged objects and the wreck.

20.3.2 If the Assured disposes of the wreck without the Managers' written consent in a manner other than abandonment of ownership, the above insurance cover provision does not apply.

20.4 **Charterers Liability Insurance**

20.4.1 Costs and expenses are only covered in as much as they exceed the value of the salvaged objects and the wreck provided that they are to the benefit of the Assured or that the Assured has a claim against the owner of the vessel with regard to the salvaged objects or the wreck.

20.4.2 If the ship-owners dispose of the wreck without the Managers' written consent for the Assured in a manner other than abandonment of ownership, in accordance with this provision insurance cover does not apply.

**Clause 21 Liability under Towing Contracts**

The insurance cover includes:

Compensation claims against the Assured for loss or damage suffered whilst an insured ship is under tow and for which the Assured is liable according to the clauses of the towing contract but only to the extent to which such a liability is not covered under the H&M policy of the insured ship.

**Clause 22 Charterers Liability - Assured's Contribution to General Average and Salvage**

Insurance cover comprises:

22.1 The reimbursement of the Assureds' contribution with regard to freight and bunker.

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- 22.2 The special compensation in accordance with Art. 14 of the International Convention on Salvage 1989.

### **Clause 23 Ship Owners - Cargo's Contributions to General Average**

Insurance cover includes:

- 23.1 cargo's contributions to general average including all charges, if same are not legally recoverable by reason of breach of the contract of carriage.
- Refunds to other interests determined in the general average statement, but not claimed by cargo interests, are to be deducted therefrom.
- 23.2 Under no circumstances does the insurance cover the ship's contribution to general average or interest, costs and average statement charges calculated on the basis of the ship's contribution, if these are indemnifiable under a H&M policy.

### **Clause 24 Ship Owners - Ship's Contributions to General Average**

The insurance cover comprises:

- 24.1 The reimbursement of the ship's contribution to general average, special expenses, or salvage costs not indemnified under hull and machinery policy by reason of the sound value of the insured ship being assessed for the contribution to general average or salvage in excess of the insured value of the ship under the H&M policy.
- Payment under the policy is subject to the condition that at the beginning of the insurance period the ship was entered into a hull and machinery insurance with at least its market value.
- 24.2 Costs to be taken into account in general average for the prevention and minimisation of damage to the environment, which are not covered under a hull and machinery policy.
- 24.3 Special payments in accordance with Article 14 of the International Convention on Salvage 1989 which are not covered under a hull and machinery policy.

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## Clause 25 Pollution Liabilities

The insurance cover includes:

Compensation claims by third parties on the basis of the Assured's statutory liability for pollution of waters by oil or other contaminating substances in the course of ship's operation in as much as due to their nature these liabilities are not covered under the hull and machinery policy of the ship.

## Clause 26 Penalties and Fines

The insurance cover comprises:

- 26.1 Charges and costs imposed on the Assured by customs authorities, in as much as they are levied due to the short-landing or over-landing of cargo and/or breach of customs regulations in respect of declaration of the cargo or the ship's provisions as well as in respect of cargo or customs documents carried on the ship;

The cover does not apply, if Customs Regulations are violated due, to incorrect declaration by the Assured of the ship's provisions.

- 26.2 Penalties or fines imposed on the Assured for smuggling or violation of other customs regulations by persons other than the Assured.
- 26.3 Penalties and/or fines imposed on the Assured for the violation of traffic regulations, in as much as the Assured's personal negligence is not involved.

## Clause 27 Ship Owners - Confiscation for Violation of Customs or Other Import and Export Regulations

- 27.1 If the ship is confiscated on the basis of an order of the court or a public authority because of an infringement of customs regulations or any other import and/or export regulations, the insurance cover includes payment of the amount of the market value

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of the ship at the time of the confiscation, provided that the Assured took all appropriate steps to avoid the violation of the above regulations or to avoid confiscation and provided that cover is not already available under another policy.

- 27.2 Payment under the policy can only be claimed if the confiscation cannot be contested with legal remedies. If the Assured recovers the ship, payment received under the policy is to be repaid in the amount of the market value at that time.

## **Clause 28 Trading Warranties**

- 28.1 The insurance only covers damage sustained within the trading warranties for which the ship is classed, equipped and manned.

The cover is at all times restricted to the trading warranties for which the ship is covered under the hull and machinery policy.

Damages sustained outside the insured trading warranties do not give rise to claims against the Underwriter/s.

- 28.2 The insured trading warranties are not deemed to have been exceeded if the Assured proves that this was made in the interest of the Underwriter/s, on humanitarian grounds to save human lives or was an unavoidable consequence of a natural disaster or an incident or damage covered under the policy.

## **Clause 29 Exclusions**

- 29.1 The insurance does not cover damage or loss if caused by:

- 29.1.1 War, civil war, revolution, rebellion or hostile act by or against a belligerent power;
- 29.1.2 Capture, seizure, confiscation, arrest or legitimate or arrogated restraints of rulers and princes including all consequences resulting thereof and including any attempts thereat unless expressly covered elsewhere under these rules;
- 29.1.3 Derelict mines, torpedoes, bombs or other derelict weapons of war;
- 29.1.4 Explosives or weapons of war used by people with malicious intent;
- 29.1.5 Nuclear energy;

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29.1.6 Misuse of the ship; this applies particularly if the ship is employed outside commercial shipping trade.

29.2 Insurance cover does not apply:

29.2.1 In the case of deck cargo, if the bill of lading, or other contract of affreightment on which the claim is based does not clearly state that the cargo is to be shipped on deck and if the bill of lading and/or the contract of affreightment does not include the standard exemption from liability for deck cargo;

29.2.2 If no evidence is maintained / recorded for the ship which, is required to determine acceptance and delivery of the goods;

29.2.3 If carriage is subject to a contract which is not customary for the usual carriage at sea. A contract of affreightment is deemed to be customary when the wording is in accordance with the wording of contracts recognised by BIMCO – Baltic International Maritime Counsel, Copenhagen;

29.2.4 When, issuing a pre-dated or post-dated bill of lading.

29.2.5 When, knowingly signing an incorrect bill of lading containing a description of goods and/or their condition, which is known to be incorrect;

29.2.6 If cargo is delivered without presentation of the respective bill of lading;

29.2.7 In case of an unjustified deviation from the course of the voyage. Notwithstanding the aforesaid cover remains in place, if neither the Assured nor the ship's officers knew about the deviation or, in the event of unawareness of the deviation, same was not due to negligence;

29.2.8 To the extent that, the Assured is or would have been covered under another insurance in case such other insurance would not contain a secondary liability clause.

29.2.9 Any losses or liabilities whatsoever if caused by the gross negligence or wilful misconduct by the Assured and / or Co-Assured.

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### **Clause 30 Negligence of the Assured**

- 30.1 No action shall lie against the Underwriter/s if the Assured causes damage through wilful misconduct or gross negligence.
- 30.2 The Assured cannot be called to answer for acts or omissions committed by the vessel's crew.

### **Clause 31 Ship Owners - Obligations prior to Occurrence of the Event Insured Against**

- 31.1 The Assured is under a strict obligation:
- 31.1.1 To maintain the insured ship(s) in every respect in a seaworthy and cargoworthy condition for respective cargo and to equip and man it properly at all times and to provide the necessary documentation for the identification of ship, crew and cargo including the certification of the highest class from a recognised classification society and the certificate of sailing permit thereof or, if the ship sails under a foreign flag, the corresponding certificate.
- 31.1.2 To have available at all times the documents and certificates relating to the ISM Code and to execute the measures required in accordance with the Safety Management System.
- 31.1.3 At all times the Managers are to be given the opportunity to inspect the ships as long as this does not entail an unacceptable disruption in ship's operation and to demand an immediate repair of existing deficiencies. If the inspection does not give the Managers reason to complain about the ship's condition, the Underwriters bear the costs of the inspection. If the inspection gives reason for complaints which would lead to Underwriters' discharge from liability the Assured bears the costs of the inspection including the costs of a subsequent inspection;
- 31.1.4 To observe all rules and usages for the prevention of accidents and damages, and all laws and regulations concerning the shipping trade;
- 31.1.5 When performing contracts to ensure that in the first place all customary evidences are secured which are or could become relevant for legal evaluation;
- 31.1.6 Prior to the change to give notice to the Managers about the change of the Classification Society or the change of management comprising manning, fitting out

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and superintendence of the ship. In this event the Managers are entitled to terminate pursuant to 9.2.3;

- 31.1.7 To notify the Managers immediately of any change in the statements made by the Assured in the application for insurance cover and documented in the insurance policy;
- 31.1.8 When concluding contracts, to include all customary conditions, whereby Assured's liability becomes limited or excluded or whereby risks which are the subject matter insured, are transferred, reduced or counter-balanced by compensation claims;
- 31.1.9 Not to disclose survey reports and any other pieces of evidence to third persons without the prior consent of the Managers;
- 31.1.10 To timely inform the Managers and their correspondents of any surveys and other measures to be taken in case of claim and to safeguard the Underwriters' interests and rights accordingly;
- 31.2 If the Managers prove that the Assured is in breach of one of the abovementioned or another agreed obligation to be met prior to occurrence insured against and if the Assured fails to prove that this breach was not attributable to negligence or that same had no impact on the incident having occurred, findings in regard of this incident, the extent of indemnification by Underwriters and determination of Underwriters' indemnification, the Underwriters are discharged from all and any liability under this contract.

## **Clause 32 Charterers Liability - General Obligations prior to Occurrence of the Event insured against**

- 32.1 The Assured is under a strict obligation:
  - 32.1.1 To ensure that the chartered vessel(s) is (are) maintained in every respect in a sea and cargo worthy condition for respective cargo and to equip and man it properly at all times and to provide the necessary documentation for the identification of ship, crew and cargo including the certification of the highest class from a recognised classification society and the certificate of sailing permit from the ship flag state, the corresponding certificate must be provided to the Managers as and when required;
  - 32.1.2 To ensure that the documents and certificates relating to the ISM Code are available at all times and that the measures required in accordance to the Safe Management System are effected;

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- 32.1.3 At all times the Managers are to be given the opportunity to inspect the ship(s) as long as this does not entail an unacceptable disruption in ship's operation and to demand an immediate repair of existing deficiencies. If the inspection does not give the Managers reason to complain about the ship's condition, the Underwriters bear the costs of the inspection. If the inspection gives reason for complaints which would lead to Underwriters' discharge from liability the Assured bears the costs of the inspection including the costs of a subsequent inspection;
- 32.1.4 To observe all rules and usages for the prevention of accidents and damages, and all laws and regulations concerning the shipping trade.
- 32.1.5 When performing contracts to ensure that in the first place all customary evidences are secured which are or could become relevant for legal evaluation.
- 32.1.6 To give notice to the Managers about the change of the Classification Society or the change of management comprising manning, fitting out and superintendence of the ship as soon as he becomes aware of these changes. In this event the Managers are entitled to terminate the contract pursuant to 9.2.4 or 9.1.4, whichever section is appropriate;
- 32.1.7 To notify the Managers immediately of any change in the statements made by the Assured in the application for insurance cover and documented in the insurance policy;
- 32.1.8 When concluding contracts, to include all customary conditions, whereby Assured's liability becomes limited or excluded or whereby risks which are the subject matter insured, are transferred, reduced or counter-balanced by compensation claims;
- 32.1.9 Not to disclose survey reports and any other pieces of evidence to third persons without the prior consent of the Managers;
- 32.1.10 To timely inform the Managers and their correspondents of any surveys and other measures to be taken and, in case of claim, to safeguard Underwriters' interests and rights accordingly;
- 32.2 If the Managers prove that the Assured is in breach of one of the abovementioned or another agreed obligation to be met prior to occurrence insured against and if the Assured fails to prove that this breach was not attributable to negligence or that same had no impact on the incident having occurred, findings in regard of this incident, the extent of indemnification by Underwriters and determination of Underwriters' indemnification, the Underwriters are discharged from all and any liability under this contract.

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**Clause 33 Duties and Obligations after the Occurrence of the Event insured against**

- 33.1 On or after the occurrence of an event insured against or the occurrence of an event, which can lead to an event insured against, the Assured is under a strict duty:
- 33.1.1 To notify the Managers immediately and to provide them with a detailed and comprehensive report taking into account all relevant circumstances; the duty to notify also applies in the absence of insurance cover or if the insurance cover is not to be claimed or if the existence of cover is in doubt;
  - 33.1.2 To arrange for all possible prevention and mitigation of damage and to ask for and comply with Managers' instructions without delay;
  - 33.1.3 When abroad, to consult Managers' local advisers and correspondents;
  - 33.1.4 To obtain and secure all pieces of evidence which are or can become relevant for legal evaluation;
  - 33.1.5 To provide the Managers and their correspondents with all relevant information required by them including relating documents; to conduct legal proceedings on demand of the Managers and to arrange for necessary authorisations;
  - 33.1.6 Not to declare a waiver or an acknowledgment, to settle or to otherwise terminate a legal dispute without prior consent of the Managers;
  - 33.1.7 To refrain from making declarations and statements regarding the damage and its causes to third parties unless authorised by the Managers to do so;
  - 33.1.8 To notify the Managers immediately, if, at a later stage, circumstances arise which are or may become relevant for assessment of the claim and its consequences;
- 33.2 If the Managers prove that the Assured is in breach of one of the abovementioned or another agreed obligation to be met after an insurance occurrence and if the Assured fails to prove that this breach was not attributable to wilful misconduct or gross negligence or that same had no impact on the incident having occurred, findings in regard of this incident, the extent of indemnification by Underwriters and determination of Underwriters' indemnification, the Underwriters are discharged from all and any liability under this contract.

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### **Clause 34 Prohibition to Acknowledge Third Party Liability Claims**

The Assured is not permitted or not allowed, without prior consent of the Managers, to acknowledge, to pay or to settle in total or in part any third party claim and/or any claim for costs. In the event of a breach of this provision, the Underwriters are discharged from all liability, unless the Assured could not be expected under the prevailing circumstances to refuse payment or acknowledgment of the claim without suffering obvious inequity. The Assured is not excused by the erroneous assumption that a statutory liability exists or that the claim asserted or the alleged facts are true.

### **Clause 35 Bails and Securities**

The Underwriter shall be under no obligation whatsoever to provide bail or other security to obtain the release of, or prevent arrest or attachment of a vessel named herein or other property. Where the Managers agrees to provide such bail or other security it may do so on such terms as it may consider necessary or appropriate. Such terms will include:

- 35.1 The provision of collateral by the Insured in the terms specified by the Managers and,
- 35.2 Entitlement by the Managers to a commission of 2% (or a percentage amount as the Managers may consider appropriate) on the amount of any bail or other security provided where a risk or claim is only partly covered or uninsured and,
- 35.3 Entitlement by the Managers to all the costs and expenses incurred in securing the release from arrest of the vessel, and/or defending bail provided on behalf of the Insured or any other Insurer
- 35.4 The Managers will in no circumstances whatsoever provide cash deposits by way of bail or any other form of security.

### **Clause 36 Claims Handling Provisions**

- 36.1 Evidence of damage approved by the Managers is also binding on the Assured unless it obviously deviates from the facts of a case.

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- 36.2 The Assured is only entitled to reimbursement if and when he provides the Managers with an exhaustive claim statement including all necessary receipts and replies to any queries the Managers might have.
- 36.3 Subject to the provision of 33 the Underwriters are not liable for indemnification from third party claims. The Assured may only demand the payment of the insurance proceeds to himself. In as much as third party claims are concerned, a claim of the Assured against the Underwriters implies that the Assured has paid the claim already. As between the Assured and the Managers something different may be expressly or tacitly agreed. Such different agreements are only valid for the particular case and are not binding on the Underwriters for other cases, even in case they are of similar nature.
- All Policies issued by the Managers are ones of indemnity and this principle may only be varied at the sole discretion of and on terms to be decided by the Managers.**
- 36.4 The Managers are deemed to have authority to make all declarations on behalf of the Assured, which they consider reasonable for the settlement of or defence against third party claims. In case the Managers make such declarations, they have to hold the Assured free from any obligations or liabilities, which arise out of such declarations.
- 36.5 The Underwriters will not compensate the Assured for payment of statutory input VAT if the Assured is entitled to deduct the same.

### **Clause 37 Sue and Labour and Legal Costs**

The cover also includes the following supplements:

- 37.1 Expenses incurred by the Assured in the event of a loss to prevent or mitigate the Underwriters' obligations irrespective of the outcome, if justified under the prevailing circumstances or if they were incurred in accordance with the Managers' instructions;
- 37.2 Without prejudice to any other provisions of these terms & conditions and without waiving any of the Underwriter's rights hereunder, the Managers may at any and all times appoint and employ on behalf of an Assured upon such terms as they may think fit lawyers, surveyors or other persons (whether or not lawyers, surveyors or other persons have already been appointed or employed by the Assured) for the purpose of dealing with any matter liable to give rise to a claim by the Assured upon the Underwriter, including, but not limited to, investigating or advising upon any such

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matter and taking or defending legal or other proceedings in connection therewith. The Managers may also at any time discontinue such employment as they may think fit;

37.3 The costs and expenses incurred in connection with a particular case shall only be recoverable from the Underwriter on condition that all lawyers, surveyors and other persons employed in the case are appointed with the prior consent of the Managers.

37.4. All lawyers, surveyors and other persons appointed by the Managers on behalf of an Assured or appointed by an Assured with the prior consent of the Managers shall at all times be and be deemed to be appointed and employed on the terms:-

37.4.1 that (without prejudice to their right to retire from the matter on any other grounds) they shall be entitled to retire from the matter if either the Managers or the Assured so requests or if such person considers that a conflict of interest has arisen or may arise between the Assured and the Underwriter so that he ought to retire from the matter;

37.4.2 that they have been instructed by the Assured at all times (both while so acting and after having retired from the matter) to give advice and to report to the Managers in connection with the matter without prior reference to the Assured;

37.4.3 that they are to produce to the Managers without prior reference to the Assured any documents or information in their possession or power relating to such matter,

As if such person had been appointed to act and had at all times been acting on behalf of the Assured and notwithstanding that any such advice, reports, documents or information would otherwise be the subject of legal or any other form of privilege.

## **Clause 38 Subrogation**

38.1 In the event of the Assured being entitled to claim damages against a third party such right shall pass over to Underwriters as far as they indemnify the Assured for his loss. The Assured must furnish Managers with all information necessary for the prosecution of the claim and surrender all documentary evidence in his possession.

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- 38.2 Upon request the Assured must furnish Managers with a document evidencing transfer of the rights in the form determined by the Managers. The Underwriters shall bear the relating costs.
- 38.3 If the Assured waives a claim he has on a third party or if he fails to make use of a title securing his claim, Underwriters are discharged from liability in so far as they would have been able to make a recovery on the grounds of the rights and remedies ceded to him. Failure by the Assured to arrange for time extensions to be granted is likewise deemed to be a waiver of claim.

### **Clause 39 Limitation of Reimbursement**

- 39.1 Damages pursuant to 10 to 28 and expenses and costs incurred pursuant to 35 are subject to reimbursement up to the amount agreed in the policy for any one accident or occurrence. This amount is deemed to be the maximum liability of the Underwriters per occurrence.
- 39.2 In any case charterer's liability insurance of the Underwriters is limited to the amount to which the Assured could have limited his liability towards third parties, had he been the registered owners of the vessel, and if this limitation of liability could not have been broken with an unlimited liability as a consequence.

### **Clause 40 Deductibles**

In respect of damage sustained pursuant to 10 to 28 and the costs and expenses pursuant to 35 the Assured has to bear a deductible as indicated in the policy per insured claim.

In respect of Charterer's liability insurance the Assured has to bear a deductible as indicated in the policy per insured claim as well as a deductible per insured damage of 16% but limited to the maximum deductible as stated in the policy.

### **Clause 41 Exclusion of Set-Off**

The set-off of claims by the Assured against premium and other claims is not permissible unless the Managers have acknowledged the claims against them or the claims cannot be contested with legal remedies.

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#### **Clause 42 Exclusion of Assignment**

The Assured is not entitled to assign insurance claims to third parties without the express consent of the Managers as long as the claim is still appealable.

#### **Clause 43 Limitation Period**

All claims of the Assured against the Underwriters become waived and irrevocably time barred after 1 year beginning with the end of the year in which payment under the policy can be claimed.

Without prejudice to the duty of prompt notification contained within the terms and conditions, if an Assured:-

Fails to submit a claim to the Managers for reimbursement of any loss, damage, liabilities, costs or expenses within six (6) months after discharging the same (in the case of an agreed settlement, after he receives the Insurers' approval for the settlement in accordance with the Conditions hereof), the Assured's claim against the Underwriter shall be time barred and, the Underwriter shall be under no further liability in respect thereof.

#### **Clause 44 Rejection to Reimburse**

The Managers must notify the Assured of the rejection of an insurance claim and the reasons for rejection by letter, fax and/or E-Mail. The Underwriters are discharged from liability if the claim for payment under the policy is not submitted to an arbitration tribunal appointed according to Cl.43 within 6 months. The time limit will begin to run immediately on receipt of the letter, fax and/or E-Mail of rejection thereof.

#### **Clause 45 Applicable Law, Arbitration Agreement and Jurisdiction**

45.1 These Terms and Conditions and any Policy of Insurance between the Underwriter and the Assured shall be governed by and construed in accordance with English law, including the provisions of the Marine Insurance Act 1906. A person who is not a party to the Policy of Insurance has no rights under the Contracts (Rights of Third Parties Act) 1999 to enforce any term of the Policy of Insurance but this does not

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affect any right or remedy of a third party which exists or is available apart from that Act.

- 45.2 The Court or tribunal with jurisdiction to determine disputes arising out of or in connection with this Contract shall be determined as follows:

**Claims for premium or sums due to the Underwriter**

- 45.3 Any claim by the Underwriter against the Assured for premium or others sums due to the Underwriter may be commenced, at the Manager's sole discretion, in any of the following jurisdictions:

- (i) the English Courts; or
- (ii) the Courts of the Assured's place of domicile; or
- (iii) London Maritime Arbitrators Association (LMAA) arbitration in London as set out in paragraphs 45.5 - 45.7 below.

**All other claims**

- 45.4 All other claims or disputes arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

- 45.5 The arbitration shall be conducted in accordance with the LMAA Terms current at the time when the arbitration proceedings are commenced.

- 45.6 The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and give notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly.

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The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

- 45.7 Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

#### **Clause 46 Special Compensation for Salvors**

- 46.1 Liability to pay special compensation to a Salvor in respect of the Insured vessel, to avert, limit or prevent damage to the environment under the provisions of Article 14 of the International Convention on Salvage 1989, or under a Lloyd's Open Form 1995 or 2000 editions, or any standard form salvage agreement incorporating the effect of Article 14 of the said Convention.

- 46.2 Exclusions and Limitations.

46.2.1 No claim shall be recoverable under this section insofar as such special compensation is payable by any third party also interested in the property which is the subject of salvage services.

46.2.2 No claim shall be recoverable from the Underwriters if the Managers have not been notified in writing about the agreement or signing of the salvage agreement by the Assured or the vessel's Master within 12 hours after such occurrence.

46.2.3 In respect of any recovery from the Underwriters under this Section the value of the wreck or of any related appurtenances, equipment, cargo, bunkers and apparel in respect of which the Assured has obtained any proceeds of sale or any other financial recovery whatsoever shall be deducted from and set-off against the Underwriters' nett liability to pay.

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