



THE BRITISH EUROPEAN & OVERSEAS P&I FACILITY

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

Version five, November 2011

MANAGERS: DGS MARINE GROUP SA
Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

- Definitions -

Assured : An Assured by the BE&O P&I Club according to its Rules and Regulations .

Co-Assured: Any person who is insured pursuant to Clause 3.

BE&O P&I : Means, The British European & Overseas P&I

Bill of Lading : *Bill* of lading or similar document of title.

Cargo Goods : including anything used or intended to be used to pack or secure goods, in respect of which an Owner enters into a contract of carriage, but excluding containers or other equipment owned or leased by the Owner.

Certificate of Insurance : A document and any endorsement issued by the BE&O P&I Club in accordance with these Rules and the Articles of the Club which records the names of the Assured interested in, and evidences the contract of insurance in respect the Entered Ship.

Charterer's Insurance : Insurance which insures (inter alia) as an Assured a charterer (other than a demise charterer) not being a Charterer Jointly Insured under an Owner's Insurance .

Circular : A notice in writing , from the BE&O P&I Club, to the Assured .

Crew : Officers, including the master, and seamen contractually obliged to serve on board the Ship, including substitutes and including such persons while proceeding to or from the Ship.

Container : Any device or receptacle in or on which cargo is carried including trailer, flat, pallet, tank or similar receptacle which is owned by or leased to a Member, and which is either designed to be, or expected to be, carried in a ship.

Conditions : The risks covered as set out in Rule 19 are subject to all the conditions set out in other parts of these Rules and those risks may only be varied by special terms agreed in writing between the Assured and the Managers.

Day : The day of any occurrence means the day as computed according to the Greenwich Mean Time.

Defence Cover : The insurance by the BE&O FD&D Club for risks specified in Part V of the Rule book

Entered Ship : A Ship which has been entered for insurance in this Class of the BE&O P&I Club .

Fixed premium : A fixed premium payable to the BE&O P&I Club in respect of an entered ship pursuant to Rule 8.

Fixed premium entry : An insurance on terms that the Owner is bound to pay a fixed premium to the Club.

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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.

Hague Rules : The International Convention for the Unification of Certain Rules Relating to Bills of Lading signed at Brussels on 25th August, 1924.

Hague Visby Rules : The Hague Rules as amended by the Protocol signed at Brussels on 23rd February, 1968.

Hamburg Rules : The United Nations Convention on the Carriage of Goods by Sea 1978 done at Hamburg on 31st March, 1978.

Hull Policies : The insurance Policies effected on the hull and machinery of a ship including any excess liability policy.

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

Insured Parties: The Assured, joint assured, co-assured or affiliated or associated person in respect of an Entry.

ISPS Code : The International Ship and Port Facility Security Code.

ISM Code : The International Safety Management Code

Limitation Amount : The amount to which the registered owner of an Entered Ship could have limited its liability in respect of the relevant matter had it sought and not been denied the right to limit.

Managers : The Managers for the time being of the BE&O P&I Club including the Managing Director.

Owner's Entry : An entry which insures (inter alia) an owner, owner in partnership, owner holding separate shares in severalty, part owner, trustee, or demise charterer of an Entered Ship, or a manager or operator having control of the operation and employment of the Entered Ship (being such control as is customarily exercised by a shipowner) or any other person in possession and control of the Entered Ship.

Passenger : A person carried on board an Entered Ship pursuant to a passage contract.

Personal Effects : Personal property, documents, navigational or other technical instruments and tools brought on board, or being taken to or from the Entered Ship by a Seaman or Supernumerary but excluding cash, valuables, or any other article which in the opinion of the Managers is not an essential requirement for a Seaman.

Policy Year : A year from noon GMT on any date to noon GMT on the next anniversary of the day .

P&I cover and P&I entry : insurance by the BE&O P&I Club for risks specified in these Rules, and the entry of a Ship for such cover.

Rules : The Rules and Regulations for the time being in force concerning this Class of the BE&O P&I Club

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Seaman : A person (including the Master) engaged under articles of agreement or otherwise contractually obliged to serve on board an Entered Ship (except persons engaged only for nominal pay) including a substitute for such person and also including such persons while proceeding to or from such Ship.

Ship / vessel : A ship, boat, hovercraft or other description of vessel or structure (including any ship, boat, hovercraft or other 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

Standard terms of : The terms of contracts of carriage referred to in contracts of carriage

Statutory obligation : Any obligation, liability or direction imposed by any legislative enactment, decree order or regulation having the force of law in any country.

Supernumerary : A relative of a Seaman, or any other person whom the Assured has agreed to maintain or carry on board an Entered Ship (except a Passenger) and including persons engaged under articles of agreement for nominal pay.

The Club : Means, the BE&O P&I Facility

Towage : Any operation in connection with the holding pushing, pulling, moving, escorting, guiding of or standing by a ship.

Wilful Misconduct : Any act intentionally done, or a deliberate omission, or an act done or omitted by the Assured in such a way as to allow an inference of a reckless disregard of the probable consequences or will probably result in loss or damage.

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- INDEX -

	Page
CI 1 Subject of the Insurance	7
CI 2 The Managers	7
CI 3 Co-Assured	7
CI 4 Good Faith	8
CI 5 Obligation to disclose precedent to the policy	8
CI 6 Temporary Cover	9
CI 7 Insurance Policy	10
CI 8 Premium Payment	11
CI 9 Period of Insurance	13
CI 10 Charterers Liability - Liability for damage to or loss of the Chartered Vessel	14
CI 11 Cargo Liabilities	14
CI 12 Liabilities in respect of Passengers	15
CI 13 Ship Owners - Liability to Crew Members	16
CI 14 Ship Owners - Liability to persons other than employees	17
CI 15 Charterer's Liability - Liability to persons other than employees	17
CI 16 Liability for Collision and "Wash" Damage	18
16.1 Ship Owners	
16.2 Charterers Liability	
CI 17 Stowaways and Refugees	20
17.1 Ship Owners	
17.2 Charterers Liability	
CI 18 Costs of Life Salvage	21
CI 19 Quarantine Expenses	21
CI 20 Wreck Liabilities	21
20.3 Ship Owners	
20.4 Charterers Liability	
CI 21 Liability under Towage Contracts	22
CI 22 Charterer's Liability - Assured's Contribution to General Average and Salvage	22
CI 23 Ship Owners - Cargo Contribution to General Average	23
CI 24 Ship Owners - Ship's Contribution to General Average	23
CI 25 Pollution Liabilities	24
CI 26 Penalties and Fines	24
CI 27 Ship Owners - Confiscation for Violation of Customs or Other Import and Export Regulations	24
CI 28 Trading Warranties	25
CI 29 Exclusions	25
CI 30 Negligence of the Assured and/or Willful Misconduct	27

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

CI 31	Ship Owners - Obligations prior to Occurrence of the Event insured against	27
CI 32	Charterers Liability - Obligations prior to Occurrence of the Event insured against	28
CI 33	Duties and Obligations after the Occurrence of the Event insured against	30
CI 34	Prohibition to Acknowledge Third Party Liability Claims	31
CI 35	Bails and Securities	31
CI 36	Claims Handling Provisions	31
CI 37	Sue and Labour and Legal Costs	32
CI 38	Subrogation	33
CI 39	Limitation of Reimbursement	34
CI 40	Deductibles	34
CI 41	Exclusion of Set-Off	34
CI 42	Exclusion of Assignment	35
CI 43	Limitation Period	35
CI 44	Rejection to Reimburse	36
CI 45	Applicable Law, Arbitration Agreement and Jurisdiction	36
CI 46	Special Compensation for Salvors	37
CI 47	Omnibus Rule	38
CI 48	Pay to be Paid Rule	38
CI 49	Renewals / Ad Extremis Ratio Exitus	38

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Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
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EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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

Clause 1 Subject of the Insurance

- 1.1 The Club provides 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. Subject to the terms agreed in the Cover Note including but not limited to an agreed overall limit of liability.
- 1.3 The Managers reserve the right to amend the Rules at any time, during the Policy year, to comply with any changes in legislation or regulations.

Clause 2 The Managers

- 2.1 DGS Marine Management Services, have been appointed by BE&O P&I Facility, as exclusive Managers ("the Managers") of the P&I Facility or in the case of the Charterers' Liability by the BE&O as Managers of the Charterers' Liability.
- 2.2 Any notification and declaration the Assured has to make to the Club according to these "Rules" must be directed only towards the Managers and is deemed to be served to the Club 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.
- 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.

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Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

- 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 Where any vessel is entered in the names of/or on behalf of the Assured and Co-Assured (Joint Assured) any limits on the cover as set out in the cover note shall apply to the Assured and Co-Assured (Joint Assured) in the aggregate as if the ship had been entered by the Assured only.

Clause 4 Good Faith

All parties concerned shall act in the utmost good faith.

Clause 5 Obligation to disclose material facts a condition precedent to the policy of insurance

- 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 The Assured is obliged to promptly disclose to the Club, every change in material information which is or ought to be known to him and does or will relate to an Entry , including but not limited to, management, flag, classification society, nationality of crew, trading or operating area or nature of trade or operation and which alters the risk covered by the Club. It is at the absolute discretion of the Managers to re-adjust the Premium rates and or amend the terms of Entry.
- 5.5 The Club 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 Club are entitled to an additional premium.

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Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
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EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

- 5.6 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 the Club.
- 5.7 In the event the insurance is affected by an agent of the Assured, it is deemed to be effected by the Assured who shall be bound by the provisions of clause 5.
- 5.8 If and when Co-Assureds are provided for in the contract of insurance, in case of discharge from liability the Club is also released from any obligation to perform in respect of the Co-Assureds.
- 5.9 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 Club 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 Club 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.
- 6.6 Confirmation of temporary cover does not constitute any obligation to conclude an insurance contract.

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Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
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EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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.

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.

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Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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

In case the Club 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 Club 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 Club 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 Club are entitled to cancel the contract without previous notice.

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.

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Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
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EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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 **Payment of Premiums and other sums due**

Without prejudice to the rights and remedies of the Club under the Rules, if any premium or part thereof or any sum of whatsoever nature due from any Assured to the Club is not paid on or before the date specified for payment thereof, the assured shall pay interest on the amount not paid from and including the date so specified down to the date of payment at the rate prescribed in England to be charged on unsatisfied judgements, but the managers may in their discretion waive payment of such interest in whole or in part.

8.7 Where, for any reason, a return of premium is due, then unless the Assured notifies and submits his claim for reimbursement in writing within 3 (*more or less*) months, no allowances or return shall be made unless the Managers otherwise determine.

8.8 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, a pro rata return of premium according to the laid up period with maximum returns of 50% of the total premium, may be returned , provided that the vessel is laid up unemployed , without cargo, not under repair and subject to the Managers discretion.

8.9.1 The lay-up returns, if applicable, will be calculated quarterly.

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.

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Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
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- 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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Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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.

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

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Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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.
- 11.4 Hague & Hague Visby Rules .
- A) There shall be no recovery from the Club in relation to claims arising under Clause 11, if the contract of carriage under which any cargo is carried is not subject to the provisions of the Hague Rules or Hague-Visby Rules or to equally wide exemptions of the carrier from liability (save where the contract of carriage is on such terms solely by reason of the incorporation by operation of law of the Hamburg Rules, or parts thereof) unless;
- a) The terms of the contract of carriage have been considered reasonable and approved in advance by the Managers in their discretion ,
- b) the Managers have been notified by the Assured prior to any such carriage and the Assured has complied with any directions made by the Managers in relation thereto .
- B) Deviation : There shall be no recovery from the Club in respect of liabilities, costs and expenses which arise out of or as a consequence of a deviation, from a contractually agreed voyage by reason of which the Assured may be deprived of the right to rely on defences or rights of limitation which would otherwise have been available unless the Managers have agreed that the Cover may continue unprejudiced
- C) There shall be no recovery from the Club in respect of a Bill of Lading, way bill or other document containing or evidencing the contract of carriage issued with an incorrect description of the cargo, its quantity or condition, with the knowledge either of the Assured (or of any agent appointed by the Assured in which the Assured has substantial interest) or of the Master of the entered ship, subject to the terms of clause 47 (The Omnibus Rule) under which the Club may exercise its discretion.

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.

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Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

- 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.

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

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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;

- 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;

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973



- 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.

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

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973



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

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.

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973



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

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.

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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.

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

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

and/or removal are the Assured's compulsory statutory duty, or are imposed on the Assured by an order of authority

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 Towage 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 towage 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.

MANAGERS: DGS MARINE GROUP SA
Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

- 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 after all legal remedies to recover have been exhausted.

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.

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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 the environment 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 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.

MANAGERS: DGS MARINE GROUP SA
Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

- 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 Club.

- 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 Club, 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;

29.1.6 Imprudent trading; The Club shall not insure an Assured against any liabilities, costs or expenses arising out of or consequent upon an Entered Ship carrying contraband, blockade running, or performing any voyage or being employed in any trade if the Committee having regard to all the circumstances shall be of the opinion that the nature of the carriage, trade or voyage in which the Ship was engaged was imprudent, unsafe, unduly hazardous or improper.

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973



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 and if cargo is delivered at a port other than that stated in 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.
- 29.2.10 Loss arising out of the fraud of agents, or of an associated company or of the employees of the Assured acting as an agent unless the Club shall in its discretion otherwise determine.
- 29.2.11 Liability for contracts of indemnity or guarantee unless the contract has been approved by the Club and the Assured has paid or agreed to pay such additional call or premium as may be requested by the Club or the Club, in its discretion decides that the Assured should be reimbursed.

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

Clause 30 Negligence of the Assured and/or Wilful Misconduct

- 30.1 No action shall lie against the Club 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 may bear the costs of the inspection, however, this is at the sole discretion of the Managers. 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;

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

- 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 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;

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973



- 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.

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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.

MANAGERS: DGS MARINE GROUP SA
Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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% **per Annum** (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.
- 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

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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.
- 36.6 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 liability, loss or damage in respect whereof the Assured is or may be insured in whole or in part, and in particular to direct the Assured to use a particular lawyer, surveyor, or other person.
- 36.7 The Managers shall have the right, if they so decide, to require the Assured to settle, compromise or otherwise dispose of any claim or proceedings in such manner and upon such terms as the Managers see fit.
- 36.8 If the Assured fails to comply with any obligations under paragraphs 1, 2, 3, 4, 5, 6 and 7 above, the Club shall not be under any obligation to reimburse the Assured save at the sole discretion of the Managers.

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 Club's 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 Club'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

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

dealing with any matter liable to give rise to a claim by the Assured upon the Club, including, but not limited to, investigating or advising upon any such 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 Club 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 Club 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 Club 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.

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 Club shall bear the relating costs.

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

- 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, the Club is 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 Club per occurrence.
- 39.2 In any case charterer's liability insurance of the Club 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.

MANAGERS: DGS MARINE GROUP SA
Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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

Every Assured shall be bound to give prompt notice in writing to the Managers of every incident likely to give rise to a claim under these Rules and of any legal or arbitration proceedings commenced against him. The Assured shall furnish the Managers as soon as reasonably possible thereafter with all documents or information relevant thereto.

Upon the occurrence of any incident which may give rise to a claim under these Rules, the Assured shall take such steps as at the time shall appear proper for the purpose of averting or minimising any loss, damage, expense or liability in respect of which the Assured may be insured under these rules.

An Assured must at all times promptly notify the Managers of any information, documents or reports in his or his agent's possession or knowledge relevant to any incident. Further he shall, whenever so requested by the Managers, give the Club or its representative's free access to such information, documents or reports with liberty to inspect and copy the same. Such free access shall include the right to conduct as survey, or to interview any officer, servant or agent of the Assured who may in the opinion of the Club be in possession of information relevant to the said incident. Every claim against the Assured in respect of an incident referred to above, shall be notified to the Club as soon as possible, but in no case later than twelve months after the Assured has received notice that the claim is being, or may be, made against him in respect of such incident. The Assured shall give notice to the Club in writing of the commencement of any legal or arbitration proceedings against him as soon possible, but in no case later than 30 days after the Assured has received service of the said proceedings.

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 Managers' approval for the settlement in accordance with the Conditions hereof), the Assured's claim against the Club shall be time barred and, the Club shall be under no further liability in respect thereof.

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

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 Club is 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 Club 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 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 Club

45.3 Any claim by the Club against the Assured for premium or others sums due to the Club 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.

MANAGERS: DGS MARINE GROUP SA
Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

- 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. 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 Club 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 Club 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 Club's nett liability to pay.

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

Clause 47 Omnibus Rule

- 47.1 The Managers of the BE&O P&I Club may, in their absolute discretion cover, the Assureds' liability, loss, expense or costs which would not otherwise be covered under the Rules. Provided that such cover is considered appropriate and consistent with the purpose of the Club and in exercising its discretion under this Rule, may, in exceptional circumstances, cover liability, loss, expense or costs, which are otherwise expressly excluded.
- 47.2 The BE&O P&I Club in exercising its discretion under this or any other Rule may, if it wishes to do so, take into account the Rules of Clubs of the International Group of P&I Associations for the purpose of exercising such discretion. The BE&O P&I Club shall not be obliged to take into account any previous case in which the BE&O P&I Club or any other Club exercised its discretion in a particular manner.

Clause 48 Pay to be Paid Rule

Notwithstanding any reference in any other Rule, it shall be a condition precedence of the Assured's right to seek reimbursement from the Club in respect of any liabilities, losses, expenses and costs provided these have actually been paid by him or have been discharged pursuant to an approval of the Club.

Clause 49 Renewals / Ad Extremis Ratio Exitus

- 49.1 The Managers shall provide renewal terms to each Assured no later than [30] days prior to the expiration date indicated in the insurance policy. The Assured shall confirm its acceptance of such renewal terms within [15] days of the date of the renewal terms.
- 49.2 In the event that the Assured elects not to renew its insurance policy in accordance with the renewal terms proposed by the Managers further to [49.1], the Managers may, in their absolute discretion, levy an additional premium charge (the "Additional Premium") provided that such Additional Premium shall be based upon the claims record of the Assured and shall only be levied where the Claims Ratio exceeds [55%].
- 49.3 The Additional Premium must be received, without set off, by the Managers within 10 days of the date on which it is invoiced. If the payment is effected through a broker, the Additional Premium must be received by him within the abovementioned period

MANAGERS: DGS MARINE GROUP SA
Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973

and be passed on immediately and received by the Managers within a further 7 days at the latest.

49.4 If payment of the Additional Premium is not received within the period mentioned in [49.3]:

(a) interest at the rate of 1% per month shall be payable on such Additional Premium as from the due date of payment (or such later date as may be specified by the Managers); and

(b) unless and until the Additional Premium is paid to the Managers, the Assured shall not be entitled to recover from the Club any claims whatsoever and whensoever arising in respect of any Ship for whom a contract of insurance has been provided in accordance with the Rules.

49.5 For the purposes of this Clause [1], the "Claims Ratio" shall be calculated by reference to the claims paid or payable to an Assured as a percentage of the total premiums paid or payable by an Assured (excluding any Additional Premium levied pursuant to Clause [49.2]) during the period of insurance of an insurance policy. Where the amount of any claim has not been finally ascertained, the Claims Ratio shall be calculated by reference to the reserve provided in the books and records of the Club for such claim."

MANAGERS: DGS MARINE GROUP SA

Bahnhofstrasse 7, 9494 Schaan, Principality of Liechtenstein
Registered No. FL-0002.362.203-2

EMERGENCY 24 HOUR HOT-LINE 0044 (0) 7944020973