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## South China Insurance Mortgagees' Additional Perils (Pollution) Clause

106.01.20 (106)華產企字第 034 號函備查

### 1. INSURING CLAUSE

- 1.1 Whereas the Assured has entered into a loan agreement, dated {Response}, commensurate with which the Assured holds "inter alia" a first mortgage on the mortgaged vessel(s) and endorsements of its interests on the owners' policies and club entries as collateral security.
- 1.2 Now this policy will indemnify the Assured in accordance with Clause 1.3 below against an insured peril directly resulting from an event during the currency of this policy which results in legal liabilities of the owner for amounts in excess of the limits of liability under the owners' policies and club entries, as warranted herein.
- 1.3 The indemnity payable hereunder shall be the amount of the Assured's net loss, not exceeding the sum insured on the responsible vessel. The indemnity shall be payable from the date that both proof of claim and the amount of the net loss are established.
- 1.4 All the above is subject to the Definitions, Exclusions, Conditions, and Warranties below.

### 2. DEFINITIONS

#### 2.1 Insured Perils - means:

- 2.1.1 expropriation or confiscation of the responsible vessel, or
- 2.1.2 sequestration of all the sale proceeds of the responsible vessel following judicial sale, or
- 2.1.3 The recognition of a lien, or encumbrance of any kind, on the responsible vessel as having priority to the mortgage, or
- 2.1.4 expropriation or sequestration of claim settlements for loss or damage under the owners' policies and club entries in respect of the responsible vessel and/or the imposition of a "Mareva" injunction, or other equivalent legal restraint, on such claim settlements otherwise payable to the Assured,

by a competent court or by a recognised authority under or by operation of any law, statute, government order or decree.

#### 2.2 Event - means discharge of oil from or caused by a responsible vessel liability for which is covered by owners' policies and club entries.

#### 2.3 Owners' Policies and Club Entries - means hull and machinery policies on terms equivalent to Institute Time Clauses Hull or American Institute Hull Clauses and where applicable

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increased value policies equivalent to Institute Time Clauses - Hulls Disbursements and Increased Value (Total Loss Only including Excess Liabilities) or American Institute Increased Value and Excess Liabilities Clauses, also War Risks - Time and Full Protection and Indemnity Insurance including cover for liability for damages, cleanup costs, expenses, and penalties arising from an event wherever the mortgaged vessel may be situated.

**2.4 Legal Liabilities of the Owner** - means the liability of the owners, charterers, managers, and operators of the responsible vessel or their servants for oil pollution damages and cleanup costs, including fines and penalties covered by the owners' policies and club entries.

**2.5 Proof of Claim** - means demonstration by the Assured that the amount of the legal liabilities of the owner exceeds the limits of liability insured for pollution under owners' policies and club entries as warranted in Clause 6.1.1 herein, irrespective of amounts actually paid or not paid.

Proof of Claim may be established by either 1) final court judgment (or final trial-level court judgment which in the opinion of a firm of lawyers as agreed by the Assured and Underwriters hereon is not commercially appealable, such lawyers' fees to be borne by the Assured) in a court of competent jurisdiction of the responsibility for and amount of legal liabilities of the owner as well as the ranking of relevant maritime liens on the responsible vessel vis a vis the mortgage, or 2) at such earlier date as agreed by Underwriters hereto on the evidence presented by the Assured.

**2.6 Net Loss** - means the Assured's loss under the loan agreement to the extent secured by mortgage on the responsible vessel net of any amounts recovered and deemed recoverable under all security arrangements contained in or collateral to the loan including but not limited to all mortgages (whether on vessels insured hereunder or on other vessels) any floating and fixed liens, security interests, guarantees, insurance policies and pledges.

The amount of the Assured's net loss may be established by an opinion from a firm of lawyers as agreed by the Assured and Underwriters hereon detailing the security arrangements, the amounts realised and realisable from such security and why any such security is not realisable and/or why the estimated cost of attempting to realise any such security is such as to render realisation uneconomic. Any lawyer's fees shall be borne by the Assured.

**2.7 Mortgaged Vessel** - means each vessel mortgaged to the Assured which is declared hereunder.

**2.8 Responsible Vessel** - means each mortgaged vessel which causes and is found responsible for an event.

### 3. EXCLUSIONS

In no case shall this policy cover:

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- 3.1 any loss from any default by the Assured (or any agent, sub or co-contractor of the Assured or to the extent that any rights or remedies are subject of an assignment in favour of the Assured, the owners, charterers, managers or operators of the responsible vessel) to pursue any possible right or remedy against any third party tortfeasor to mitigate the Assured's potential loss (where the cost of such pursuit and potential collectibility justifies such pursuit).
- 3.2 any loss in the event that the mortgaged vessel is not equipped or accredited with any required trading documentation and/or authorisations necessary to legitimise the entry of the mortgaged vessel into a jurisdiction that such a vessel comes to enter. Such trading documentation and authorisations to include, inter alia, valid certification under the International Convention on Civil Liability for Oil Pollution Damage as amended, a valid US Coast Guard Certificate of Financial Responsibility (Water Pollution) or certification from the Mineral Management Service as applicable, valid and full certification from any US state requiring a state equivalent of a Certificate of Financial Responsibility, vessel classification and such credentials as may be, or may come to be, required.
- 3.3 loss, damage, liability or expense arising directly or indirectly from:
  - 3.3.1 any of the owners' policies and club entries having been lawfully terminated by the Underwriters thereof,
  - 3.3.2 insolvency or financial default of any of the Underwriters of the owners' policies and club entries,
  - 3.3.3 inability of any party to transmit funds,
  - 3.3.4 any fluctuation in exchange rates,
  - 3.3.5 the operation of any franchise, deductible or provision for self-insurance.
- 3.4 loss, damage, liability, or expense covered, or which, but for amount, would be covered by the Institute Mortgagees Interest Clauses Hulls CL337 30/5/86.
- 3.5 any liability of the Assured including but not limited to any liability for cleanup costs, penalties, damages or expenses.

#### 4. WAR EXCLUSION

In no case shall this policy cover loss, damage, liability or expense caused by:

- 4.1 war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom or any hostile act by or against a belligerent power,
- 4.2 derelict mines torpedoes bombs or other derelict weapons of war.

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## 5. RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE

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

- 5.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from combustion of nuclear fuel,
- 5.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,
- 5.3 any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

## 6. WARRANTIES

6.1 It is warranted in respect of each mortgaged vessel that:

- 6.1.1 owners' policies and club entries have been taken out and shall be maintained throughout the currency of this policy for an insured value and limit of liability not less than the amount insured hereunder or the amount of the outstanding loan; and in respect of insurance covering liability for damages, cleanup costs, expenses and penalties arising from an event that such insurance has been taken out and shall be maintained for all waters in which the mortgaged vessel trades in an amount not less than {Response}
- 6.1.2 each of the owners' policies and club entries is endorsed to the extent of the Assured's interest and
- 6.1.3 the Assured has procured and registered a valid first mortgage in an amount not less than 80% of the amount insured hereunder.

## 7. CHANGE OF OWNERSHIP OR CONTROL

This policy will terminate automatically at the time of any change of class, ownership, management or control of a mortgaged vessel of which the Assured has knowledge or privity, unless the Assured gives prompt notice of such change in writing to the Underwriters hereon and agrees to pay an additional premium, if required.

## 8. NOTICE OF A CLAIM

It is a condition of this policy that the Assured shall report in writing to the Underwriters hereon any circumstances which may give rise to a claim under this policy within 30 days of the Assured's knowledge of such circumstances and shall thereafter keep the Underwriters fully informed of all developments.

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## 9. DUE DILIGENCE

Following notification of a claim hereunder the Assured shall do and concur in doing all things reasonably practical to minimise any claim hereunder.

## 10. PAYMENT OF CLAIMS

It is hereby expressly agreed that payment of a claim by the Underwriters discharges the Underwriters from all liability with respect to such claim whether or not the claims proceeds are received by the Assured or are subsequently confiscated from the Assured.

## 11. SUBROGATION

11.1 Underwriters shall be subrogated to all the rights and remedies of the Assured in respect of any claim paid hereunder, but such subrogation rights shall be subordinated and deferred to the termination of the period of the loan agreement.

11.2 It is a condition of this policy that any payment(s) by the Underwriters shall not be applied by the Assured in or towards discharge or satisfaction of the outstanding indebtedness until the final date that the Assured must report to appropriate tax authorities, a loss for tax purposes. Notwithstanding the foregoing, no interest due under the loan agreement after the date of proof of claim shall be payable hereunder.

## 12. OTHER INSURANCES

12.1 This policy does not cover any loss or damage which at the time of the happening of such loss or damage is insured by, or would be insured by any other existing policy or policies had this policy not been effected.

12.2 The aggregate of all claims payable under all policies of, or on terms similar to, Mortgagees' Additional Perils (Pollution) and Passive Investor's, Insurance - Pollution in respect of a responsible vessel shall not exceed the insured total loss value on the responsible vessel under owners' policies and club entries.

In the event that the aforementioned aggregate would, but for this clause, exceed the total loss only value, then the indemnity under all policies of Mortgagees' Additional Perils (Pollution) shall be paid in order of priority of the mortgages with the balance (if any) paid under the Passive Investor's Insurance - Pollution.

For the purpose of this clause, Passive Investor's Insurance - Pollution shall mean any insurance covering an investor in a vessel owning entity against loss of its interest as a result of an event.

## 13. EFFECT OF UNDER INSURANCE

If the loan amounts are not fully insured at the time of an event, the indemnity payable hereunder shall be reduced in proportion to the under-insurance.

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#### 14. EXTENSION OF COVER

In the event of new laws or amendments to existing laws (other than the Oil Pollution Act of 1990 and/or similar state laws) or in the event of new indemnity limitations imposed by the International Group of Protection and Indemnity Associations in addition to that for oil pollution, coverage will be extended hereunder only if prior to enactment, amendment or attachment respectively any such extension is agreed by Underwriters hereon and subject to adjustments of premium, terms, warranties, and conditions as may be agreed.

#### 15. GOVERNING LAW AND JURISDICTION

The construction, validity and performance of this policy and all matters arising therefrom shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

#### 16. PARAMOUNT CLAUSES

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

- 16.1 None of the owners, charterers, managers, operators, any parent or subsidiary corporation or affiliate of any thereof or directors and officers of any thereof or any other party other than the Assured shall have any property or other interest whatsoever in this policy or any proceeds or claims payments hereunder.
- 16.2 This policy does not constitute evidence of financial responsibility under the Oil Pollution Act of 1990 or any similar Federal or State Law and it is a condition of this policy that it shall not be submitted to the United States Coast Guard or any other federal or state agency as evidence of financial responsibility. The Underwriters do not consent to be guarantors.