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## South China Protection and Indemnity Insurance- Version 2

109.12.17(109)華產企字第370號函備查

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## § 1 Subject of Insurance

- 1.1. The Insurer provides P&I cover according to these General Insurance Conditions and in accordance with special agreements mentioned in the Policy, against costs and expenses and damages which the Assured has already paid to Third Parties.
- 1.2. The Insurance under these conditions is not to be considered as an all risks cover. The Cover only includes those perils which are named in these conditions, in so far as the policy does not state otherwise.
- 1.3. This insurance is "Seevericherung" ("Marine Insurance") according to § 209 VVG ("Versicherungsvertragsgesetz" which is "German Insurance Contract Act").

## § 2 Insurer

- 2.1. According to these conditions the Insurer is a Consortium of insurance companies as mentioned on the certificate of insurance.
- 2.2. These insurance companies are not jointly and severally liable, but only proportional to their share.
- 2.3. Messrs. Thomas Miller Specialty GmbH, Hamburg (TMS) have been appointed by the participating insurance companies as Managing General Agent (MGA).
- 2.4. Any notification and declaration the Assured has to make to the Insurer according to these terms and conditions, must be directed towards the MGA, and is deemed to be served to the Insurer as soon as received by the MGA.

## § 3 Co-insurance

- 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 Insurer's discretion. It can be made conditional upon payment of an additional premium.
- 3.2. The Co-Assured is covered on the same conditions as the Assured under whose contract he is co-insured. The insurance contract is limited to the extent of cover the Insurer would have granted the Assured under the contract of insurance if claims had not been made against the Co-Assured but against the Assured.
- 3.3. Any claim arising between Assureds and Co-Assureds is not covered.
- 3.4. The Assured and the Co-Assured are entitled to insurance cover for only once per claim occurrence of an insured event. The Assured's claim for cover has priority over that of the Co-Assured.
- 3.5. Whenever these terms and conditions refer to the conduct of the Assured the referral also applies to the conduct of the Co-Assureds. This is also applicable in cases where the Co-Assured is not considered a representative of the Assured.
- 3.6. Unless agreed otherwise, the discharge from all duties, obligations and liabilities is also comprising each Co-Assured under the policy.
- 3.7. Rescission or cancellation of the insurance contract are also including each Co-assured under the policy.

## § 4 Uberrima Fides

All parties concerned shall act in the utmost good faith.

## § 5 Obligation to Disclose precedent to the policy

- 5.1. Prior to conclusion of the insurance contract the Assured shall disclose to the Insurer all circumstances known to him and material for the Insurer's decision to give cover, 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 Insurer, must be passed on to the Insurer forthwith.
- 5.3. Failure to disclose a material circumstance or a misrepresentation of same shall discharge the Insurer from liability, furthermore the Insurer is entitled to cancel the insurance contract. The same applies to a failure to disclose a material circumstance because the Assured was not aware of it and this ignorance was due to gross negligence.
- 5.4. The Insurer remains liable if the Insurer was aware of the concealed circumstances or of the misrepresentation. The same applies if disclosure is not made without the Assured being at fault. In the latter case the Insurer is entitled to an additional premium.
- 5.5. Circumstances are deemed to be material if they were misrepresented by the Assured, where the Assured declared the statement to be correct; furthermore, such circumstances as were wilfully concealed or wilfully misrepresented; finally, as a rule, circumstances which were expressly inquired about by the Insurer.
- 5.6. In case of the insurance being effected by an agent of the Assured, it is not only the knowledge of the agent, or what he ought to have known, that is decisive for the discharge of the Insurer from liability, but also that of the principal.

## § 6 Provisional Cover

- 6.1. The Insurer may grant the applicant with a provisional cover prior to acceptance of the insurance application. The premium for the provisional cover is due immediately and must be received by the Manager within seven working days.
- 6.2. The provisional cover is valid until the conclusion of the main insurance contract. In the absence of an insurance contract, the provisional cover is valid for one week after receipt of the rejection.
- 6.3. The Insurer may terminate, without notice, the provisional cover if:
  - the premium for the provisional cover is not paid in due time, unless the Insured is not responsible for the delay.
  - the Insurer is not given the opportunity to carry out a technical inspection, by an expert appointed by the Insurer, within the agreed period of time. The cost of such an inspection is to be borne by the Assured.
- 6.4. The premium for provisional cover will be credited against the premium of the main insurance contract. The Assured is entitled to a pro rata premium refund only in the case of rescission or rejection by the Insurer.
- 6.5. The provisional cover is granted subject to the General Terms and Conditions of Insurance. There is no cover for cases which are based on deficiencies of the vessel ascertained in the course of a technical inspection of the vessel.

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- 6.6. The conclusion of an insurance contract granting provisional cover does not constitute any obligation to conclude a main insurance contract.

## § 7 Insurance Policy

The insurance policy contains 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 the General 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 Manager and is to be returned immediately if corrections become necessary.

## § 8 Aggravation of risk

- 8.1. After submitting his contractual acceptance, the Assured may not aggravate the risk insured or permit its aggravation by a third party without the consent of the Insurer. An aggravation of risk must be disclosed to the Insurer without undue delay by the Assured. If an aggravation of risk occurs notwithstanding the Assured's intention, he must disclose the aggravation to the Insurer without undue delay as soon as he learned thereof.
- 8.2. If an insured event occurs due to an aggravation of the risk insured, the Insurer is discharged from liability if the insurer has not given consent to the aggravation of the risk, unless the Assured is not responsible for the aggravation of the risk or, if the aggravation has been caused by a third party, the failure to disclose.
- 8.3. If an aggravation of risk occurs, the Insurer may terminate the contract subject to a 14-day notice period, beginning at reception of the notification. Furthermore, the Insurer is entitled to exclude insurance cover for the aggravated risk. In lieu of termination or the exclusion of the aggravated risk, the Insurer may consent to an appropriate premium commensurate.
- 8.4. Should the disclosure of an aggravation of risk be omitted, inaccurate or incomplete by the Assured's fault, the Insurer is discharged from liability from the time of its inception and is furthermore entitled to cancel the contract without notice, unless the insured is not responsible. The same applies if the disclosure of an aggravated risk was omitted by ignorance of the Assured due to negligence.

## § 9 Premium Payment

- 9.1. The premium is due upon conclusion of the insurance contract and is to be paid in four quarterly instalments. Co-Assureds and the Assured are jointly and severally liable for premium payment.
- 9.2. Terms of payment:  
The first premium instalment is to be received by the Manager within 14 days after inception of the insurance cover. The subsequent premium instalments are each to be received by the Manager, within 14 days after the start of the quarterly period.
- 9.3. Discharge from liability in the case of non-payment:

If an insurance premium instalment has not been paid in good time as stipulated in § 9.2, the Insurer is entitled to discharge from all duties, obligations and liabilities after granting a further deadline of at least two weeks and quoting legal consequences, unless the Insured is not responsible for the default.

- 9.4. Rescission in the case of non-payment:
- If the first insurance premium instalment has not been paid in good time as stipulated in § 9.2, the Insurer is entitled to rescind the contract after granting a further deadline of at least two weeks. The rescission can be linked to the setting of the payment deadline in such a way that it becomes effective once the deadline expires if the policyholder is in arrears at that point in time, unless the Insured is not responsible for the default.
- 9.5. Cancellation in the case of non-payment:
- If a subsequent insurance premium instalment has not been paid in good time as stipulated in § 9.2, the Insurer is entitled to cancel the contract after granting a further deadline of at least two weeks. The cancellation can be linked to the setting of the payment deadline in such a way that it becomes effective once the deadline expires if the policyholder is in arrears at that point in time, unless the Insured is not responsible for the default.
- 9.6. A premium commensurate due to aggravation of risk as stipulated in § 8 will become due with the next quarterly instalment.
- 9.7. The Insurer is entitled to offset damages against the next premium due. This applies to all vessels insured under the insurance policy irrespective of ownership.
- 9.8. If the insurance contract expires automatically or ceases by way of sale of the vessel or by rescission or cancellation by the Insurer, the Assured is entitled to a pro-rata refund of paid premium for the time from the premature cessation and/or termination of the insurance contract until the date of expiry stated in the policy.
- 9.9. Lay-up returns:
- If a vessel is laid up for more than 30 consecutive full days between arrival and departure, 50 % of the gross premium rate is to be returned pro rata, provided that:
- the vessel is laid up without being employed and without having cargo on board,
  - no works are carried out on or onboard the vessel,
  - the laid-up vessel is safely moored within the boundaries of a port inside the agreed trading areas,
  - the vessel is not damaged,
  - the vessel is manned according to the relevant regulations,
  - the vessel has a registered tonnage greater than 500 GT,
  - the vessel not a fishing, passenger or non-commercial vessel
  - the layup is not solely or partly caused by strike, riot, usurpation of power, armed insurrection, seizure or detention by authority or war.
- 9.9.1. The offset of premium changes due to a lay-up will be effected with the next premium instalment or, if no more instalments will become due, at the end of the insurance contract by the Insurer.
- 9.9.2. If a vessel is laid up, the Insurer must be informed within 14 days from that date on from which the lay-up conditions as stipulated in § 9.9 are fulfilled. Premium returns for non-timely lay-up declarations cannot be considered.
- 9.9.3. Should a laid-up vessel go out of lay-up, the Insurer must be informed within 14 days after the end of the layup. If this information is omitted or delayed, the Insurer is discharged from all duties, obligations and liabilities, unless the Insured is not responsible for the omission or delay or proves that the reactivation of the vessel has not been the cause for the insured event.
- 9.9.4. The duration of the lay-up, as well as evidence for the conditions stipulated in § 9.9 must be provided as requested by the Insurer including copies of the logbook and the ship's articles.
- 9.9.5. Should the vessel be in lay-up for more than 6 months, the Insurer is entitled to have the vessel

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surveyed as soon as the vessel is returned to active duty. These survey costs are to be borne by the Assured.

## § 10 Period of Insurance

- 10.1. 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 (CET/CEST). This also applies to a vessel which is en route at the time when the insurance expires.
- 10.2. The insurance contract ceases prior to the date stated in the insurance policy:
  - in the event of total loss of the insured vessel; should the vessel become a wreck and this wreck is to be removed, the contract of insurance ceases with completion of the wreck removal;
  - in the event of sale of the insured vessel;
  - through rescission of the insurance contract by the Insurer, when the Assured neglects the Obligation to Disclose precedent to the Policy pursuant to § 5.3;
  - through termination of the contract by the Insurer owing to Aggravation of Risk pursuant to § 8;
  - through rescission of the insurance contract by the Insurer due to non-payment of the first premium instalment pursuant to § 9.4;
  - through cancellation of the insurance contract by the Insurer due to non-payment of subsequent premium instalments pursuant to § 9.5.

## § 11 Cargo Liabilities

The insurance cover comprises:

- 11.1. Damage sustained as a result of third party claims for compensation based on the carrier's statutory liability for loss, damage, robbery, wrong delivery, mixing of or in connection with cargo carried or to be carried by the Assured's or Co-Assured's ship, from receipt until delivery of the goods, with the exception of live animals, valuables, precious metals, precious stones, jewellery, and luggage of passengers and family members.
- 11.2. Discharge costs incurred as a result of the above mentioned, 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.

## § 12 Liabilities in respect of Passengers

The insurance cover includes:

Personal injury and damage to luggage when sailing with passengers at sea.

If the contract of carriage is subject to German law, cover is provided within the scope of the provisions contained in the schedule to § 664 HGB [German Commercial Code]. If claims for personal injury or damage to luggage are made on the basis of a different legal regime reducing the Assured's liability, then cover is only provided within that scope. If on the basis of the other legal regime liability is extended, cover is provided on the basis of the Athens Convention of



1974 on the carriage of passengers and their luggage.

## § 13 Liability to Crew Members

The insurance cover includes:

- 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, officers or other members of the crew of the insured vessel.

In as much as contractual liability exceeds statutory liability or the liability under the applicable Collective Bargaining Agreement (CBA) of the ITF for the relevant vessel type by its merits or by its size, the insurance coverage is limited to the extent determined by the statutory liability or the relevant CBA applicable at the time of damage, whichever the greater.

Pursuant to these provisions, the above-mentioned 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 vessel to provide medical service or arrange for repatriation of a crew member; port dues, crew wages, victualling and the vessel'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, officers or another crew members in the event of sinking or loss of the vessel as well as a result of burglaries, in as much as the Assured is under a statutory or contractual duty to pay related compensation.

Effects include: clothing, documents, navigational and other technical instruments as well as tools. Excluded are: Cash, jewellery and valuables.

- 13.3. Costs and disbursements for repatriation of the crew of the insured vessel in the event of a total loss or wreckage of the vessel.

## § 14 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 §14.1. The costs of medical treatment and funeral expenses mentioned in §14.1 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 Insurers as



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customary.

## § 15 Liability for Collision and "Wash" Damage

### 15.1. 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 Insurers only cover the amount eventually payable to the other ship. In all other cases the Insurers cover the amount ascertained as the quantum of liability irrespective of possible offset.

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.

### 15.2. 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 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.

### 15.3. 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 Deserters, Stowaways and Refugees

The insurance cover includes:

### 16.1. 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 Insurers also cover the costs incurred for the employment of guards and/or imprisonment.

- 16.2. The costs incurred must be examined and declared appropriate by the Insurers' 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.
- 16.3. 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 Insurers.

## § 17 Costs of Life Salvage

The insurance cover includes:

- 17.1. Life-saving of persons on board the insured ship:  
The Insurers cover 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.
- 17.2. Life-saving in respect of other persons:  
The Insurers cover extra costs, incurred because the insured ship rendered life-saving services to persons or participated in attempts thereat. In these cases, the Insurers' liability is limited to the ship's costs in respect of crew wages, victualling, consumption and port dues, if applicable.
- 17.3. The Insurers are not liable for costs incurred in cases stated in §§ 17.1 and 17.2 for which the Assured is covered by other insurance or compensated for by third parties.

## § 18 Quarantine Expenses

The insurance cover includes:

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 Insurers cover the costs of crew wages, victualling of the crew, the consumption of the ship and port dues.

## § 19 Wreck Liabilities

The insurance cover includes:

- 19.1. the costs and expenses of marking and removing the insured ship which has sunk and become a wreck, including its cargo, in as much as marking and/or removal are the Assured's compulsory statutory duty, or imposed on the Assured by an order of authority.
- 19.2. 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.
- 19.3. Costs and expenses are only covered in as much as they exceed the value of the salvaged objects and the wreck.
- 19.4. If the Assured disposes of the wreck without the Insurers' written consent in a manner other than abandonment of ownership, the above insurance cover provision does not apply.

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## § 20 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 H&M policy of the insured ship.

## § 21 Cargo's Contributions to General Average

The insurance cover includes:

- 21.1. cargo's contributions to general average including all charges, if same are not legally recoverable by reason of breach of the contract of carriage.

Refunds to other interests determined in the general average statement, but not claimed by cargo interests, are to be deducted there from.

- 21.2. 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.

## § 22 Vessel's Contributions to General Average

The insurance cover comprises:

- 22.1. 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.

- 22.2. 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.
- 22.3. special payments in accordance with Article 14 of the International Convention on Salvage 1989 which are not covered under a hull and machinery policy.

## § 23 Pollution Liabilities

The insurance cover includes:

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

## § 24 Penalties and Fines

The insurance cover includes:

- 24.1. charges and costs imposed on the Assured and/or the ship 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 registration and/or 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;
- 24.2. penalties or fines imposed on the Assured and/or the ship for smuggling or violation of other customs regulations by persons other than the Assured to the extent that they are not covered under § 24.1.
- 24.3. penalties and/or fines imposed on the Assured and/or the ship for the violation of traffic regulations, in as much as the Assured's personal negligence is not involved.

## § 25 Confiscation for Violation of Customs or Other Import and Export Regulations

The insurance cover includes:

- 25.1. 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.
- 25.2. 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.

## § 26 Trading Warranties

- 26.1. 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 hull and machinery policy.
- Damages sustained outside the insured trading warranties do not give rise to claims against the Insurers.
- 26.2. The insured trading warranties are not deemed to have been exceeded if the Assured proves that this transgression was made in the interest of the Insurers, 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.

## § 27 Exclusions

- 27.1. The insurance does not cover damage or loss if caused by:
- 27.1.1. war, civil war, revolution, rebellion or hostile act by or against a belligerent power;
- 27.1.2. 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;
- 27.1.3. derelict mines, torpedoes, bombs or other derelict weapons of war;

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- 27.1.4. explosives or weapons of war used by people with malicious intent;
- 27.1.5. nuclear energy;
- 27.1.6. misuse of the vessel; this applies particularly if the vessel is employed out-side commercial shipping trade.
- 27.2. Insurance cover does not apply:
  - 27.2.1. 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;
  - 27.2.2. if no evidence is maintained / recorded for the vessel which is required to determine acceptance and delivery of the goods;
  - 27.2.3. 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 Council, Copenhagen;
  - 27.2.4. when issuing a pre-dated or post-dated bill of lading;
  - 27.2.5. when knowingly signing an incorrect bill of lading containing a description of goods and/or their condition, which is known to be incorrect;
  - 27.2.6. if cargo is delivered without presentation of the respective bill of lading;
  - 27.2.7. 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 vessel's officers knew about the deviation or, in the event of unawareness of the deviation, same was not due to negligence;
  - 27.2.8. if cargo is discharged at another port than the port of discharge stipulated in the contract of carriage, Bill of Lading, Sea Waybill or other document;
  - 27.2.9. 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.

## § 28 Negligence of the Assured

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

## § 29 Obligations prior to Occurrence of the Event Insured Against

- 29.1. The Assured is under an obligation:
  - 29.1.1. to maintain the insured ship(s) in every respect in a seaworthy 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 "See Berufsgenossenschaft" [Mutual Indemnity Association for Mariners in Germany] or, if the ship sails under a foreign flag, the corresponding certificate.

- 29.1.2. 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.
- 29.1.3. At all times the Insurers 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 Insurers reason to complain about the ship's condition, the Insurers bear the costs of the inspection. If the inspection gives reason for complaints which would lead to Insurers' discharge from liability the Assured bears the costs of the inspection including the costs of a subsequent inspection;
- 29.1.4. to observe all rules and usages for the prevention of accidents and damages, and all laws and regulations concerning the shipping trade;
- 29.1.5. when performing contracts to ensure that in the first place all customary evidences are secured which are or could become relevant for legal evaluation;
- 29.1.6. prior to the change to give notice to the Insurers 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 Insurers are entitled to terminate pursuant to § 8.3;
- 29.1.7. to notify the Insurers immediately of any change in the statements made by the Assured in the application for insurance cover and documented in the insurance policy;
- 29.1.8. 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;
- 29.1.9. not to disclose survey reports and other pieces of evidence to third persons without the prior consent of the Insurers;
- 29.1.10. to timely inform the Insurers and their correspondents of any surveys and other measures to be taken in case of claim and to safeguard the Insurers' interests and rights accordingly;
- 29.2. If the Insurers 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 Insurers and determination of Insurers' indemnification, the Insurers are discharged from all and any liability under this contract.

## § 30 Duties and Obligations after the Occurrence of the Event Insured Against

- 30.1. 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 duty:
  - 30.1.1. to notify the Insurers 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 its existence is in doubt;
  - 30.1.2. to arrange for all possible prevention and mitigation of damage and to ask for and comply with Insurers' instructions without delay;
  - 30.1.3. when abroad, to consult Insurers' local advisers and correspondents;
  - 30.1.4. to secure all pieces of evidence;
  - 30.1.5. to provide the Insurers and their correspondents with all relevant information required by them including relating documents; to conduct legal proceedings on demand of the Insurers and to arrange for necessary authorisations;



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- 30.1.6. not to declare a waiver or an acknowledgment, to settle or to otherwise terminate a legal dispute without prior consent of the Insurers;
- 30.1.7. to refrain from making declarations and statements regarding the damage and its causes to third parties unless statutorily required to do so;
- 30.1.8. to notify the Insurers immediately, if, at a later stage, circumstances arise which are or may become relevant for assessment of the claim and its consequences;
- 30.2. If the Insurers 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 Insurers and determination of Insurers' indemnification, the Insurers are discharged from all and any liability under this contract.

## § 31 Prohibition to Acknowledge Third Party Liability Claims

The Assured is not allowed, without prior consent of the Insurers, to acknowledge, to pay or to settle in total or in part a third-party claim and/or a claim for costs. In the event of a breach of this provision, the Insurers 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.

## § 32 Bails and Securities

In case of the occurrence of an event insured against, the Insurer may, at its own discretion, provide security in order to avoid imminent, or to lift existing, official sanctions against the vessel, an arrest, confiscation or attachment that are directed against the vessel. There is no legal obligation to arrange for such a security. Providing such security does not constitute any obligation of the insurer to provide indemnification.

## § 33 Claims Handling Provisions

- 33.1. Evidence of damage approved by the Insurers is also binding on the Assured unless it obviously deviates from the facts of a case.
- 33.2. The Assured is only entitled to reimbursement if and when he provides the Insurers with an exhaustive claim statement including all necessary receipts and replies to any queries the Insurers might have.
- 33.3. Subject to the provision of § 33.4 the Insurers are not liable for indemnification from third party claims. The Assured may only demand the payment of the insurance proceeds to himself. In as much as third party claims are concerned, a claim of the Assured against the Insurers implies that the Assured has paid the claim already. As between the Assured and the Insurers something different may be expressly or tacitly agreed. Such different agreements are only valid for the particular case and are not binding on the Insurers for other cases, even in case they are of similar nature.
- 33.4. The Insurers 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 Insurers make such declarations, they have to hold the Assured free from any obligations or liabilities which arise out of such declarations.



- 33.5. The Insurers will not compensate the Assured for payment of statutory input VAT if the Assured is entitled to deduct same.

## § 34 Sue and Labour and Legal Costs

The cover also includes the following supplements:

- 34.1. expenses incurred by the Assured in the event of a loss in order to prevent or mitigate Insurer obligations irrespective of the outcome, if justified under the prevailing circumstances or if they were incurred in accordance with Insurer instructions;
- 34.2. costs incurred to establish or to determine Insurer's obligations if justified under the prevailing circumstances. This includes costs for foreign representatives (P&I correspondents), surveyors, other persons appointed in accordance with Insurer' instructions;
- 34.3. court costs or costs incurred by the Insurer for an out of court settlement or justified under the prevailing circumstances, irrespective of the outcome.
- 34.4. The following are not covered under Sue and Labour under these rules:
- Expenses for measures which could be claimed under general average
  - Expenses for measures which could have been performed by the vessel and its crew
  - Expenses for measures to establish or re-establish initial sea- and cargo-worthiness
  - Expenses for loading and discharging surveys

## § 35 Subrogation

- 35.1. In the event of the Assured being entitled to claim damages from a third party such right shall pass over to Insurers as far as they indemnify the Assured for his loss. The Assured must furnish Insurers with all information necessary for the prosecution of the claim and surrender all documentary evidence in his possession.
- 35.2. Upon request the Assured must furnish Insurers with a document evidencing transfer of the rights in the form determined by the Insurers. The Insurers bear relating costs.
- 35.3. 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, Insurers are discharged from liability in so far as they would have been able to make a recovery on the grounds of the rights and remedies ceded to him. Failure to arrange for time extension to be granted is likewise deemed to be a waiver of claim.

## § 36 Limitation of Reimbursement

Damages pursuant to §§ 11 to 25 and expenses and costs incurred pursuant to § 34 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 Insurers per occurrence.

## § 37 Deductible and Franchise

In respect of damage sustained pursuant to §§ 11 to 25 and the costs and expenses pursuant to § 34 the Assured has to bear a deductible per insured claim as indicated in

the policy as well as a deductible of 15% per insured damage but limited to the maximum deductible as stated in the policy.

## § 38 Exclusion of Set-Off

The set-off of claims by the Assured against premium and other claims is not permissible

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unless the Insurers have acknowledged the claims against them or the claims cannot be contested with legal remedies.

## § 39 Exclusion of Assignment

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

## § 40 Limitation Period

All claims of the Assured against the Insurers become time barred after 2 years beginning with the end of the year in which payment under the policy can be claimed.

## § 41 Rejection to reimburse

The Insurers must notify the Assured of the rejection of an insurance claim and the reasons for rejection by a registered letter. The Insurers are discharged from liability if the claim for payment under the policy is not submitted to an arbitration tribunal appointed within 6 months according to § 42. The time limit only begins to run if the letter of rejection contains an express reference to the expiry of the time limit and ensuing legal consequences.

## § 42 Applicable Law, Arbitration Agreement and Jurisdiction

- 42.1. The insurance contract is exclusively subject to German law unless any policy issued hereunder states otherwise in which case such law and/or jurisdiction as agreed thereunder to be considered as the applicable law and/or jurisdiction in the event of any dispute arising; but notwithstanding the foregoing (or any agreement or decision as to law and jurisdiction otherwise arising or imposed by force of law), the meaning and effect of the original German language provision of these Conditions of which this is a translation only shall have priority and take precedence in terms of application and effect.
- 42.2. Subject to the provisions in § 42.3 disputes under this insurance contract are subject to arbitration proceedings before a Hamburg arbitration tribunal in accordance with the rules of the GMAA, under exclusion of the ordinary courts.
- 42.3. In variation to § 42.2, the Insurers are entitled to sue the Assured for premiums and other claims before the Hamburg courts or the courts at the actual seat of administration or the statutory seat of the Assured or a Co-Assured.

## § 43 Amendments to these Conditions

Amendments to these conditions require written confirmation.