

Charterer's Liability Insurance Protection & Indemnity

Terms & Conditions
For Policies Issued in Hamburg

1 October 2020





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§ 1 Subject of Insurance

- 1.1. The Insurers provide P&I cover according to these General Conditions of Insurance and according to special agreements included in the policy against costs, expenses and damages which the Assured has paid to third parties.
- 1.2. The Insurance under these conditions is not to be considered as an all risks cover. The cover only includes those perils which are named in these conditions, in so far as the policy does not state something different.
- 1.3. This insurance is "Seeversicherung" ("marine insurance") according to §186 VVG (= "Versicherungsvertragsgesetz" = "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 the Insurers' 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 Insurers would have granted the Assured under the contract of insurance if claims had not been made against the Co-Assured but against the Assured.
- 3.3. Whenever these terms and conditions refer to conduct of the Assured the referral also applies to the conduct of the Co-Assured. It also applies in case the Co-Assured is not to be considered representative of the Assured.
- 3.4. The Assured and the Co-Assured are entitled to cover for only once per occurrence of an insured event. Subject to payment of an additional premium a different agreement can be concluded. In the absence of such an agreement the Assured's claim for cover has priority over that of the Co-Assured.

§ 4 Uberrima Fides

All parties concerned shall act in the utmost good faith.

§ 5 Obligation to Disclose precedent to the policy

- 5.1. Before the conclusion of the insurance contract the Assured shall disclose to Insurers every circumstance known to him and material for the decision to give cover, in the case of a frame contract (fig. 7.3) with each notification and in the case of an open cover (fig. 7.4) 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 Insurers 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 gross negligence.

Insurers 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 Insurers are entitled to an additional premium.

- 5.4. 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 Insurers.
- 5.5. 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 Insurers from liability, but also that of his principal.
- 5.6. If and when Co-Assureds are provided for in the contract of insurance, in case of discharge from liability the Insurers are also released from obligation to perform in respect of the Co-Assureds.

§ 6 Provisional Cover

- 6.1. The Insurers 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 Insurers without notice, if the premium demanded in respect of the temporary cover note is not paid forthwith or in case the Insurers were not given the opportunity for a technical inspection by an expert appointed by the Insurers within the agreed period of time. The cost of such an inspection is borne by the Assured.

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- 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 Insurers 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 the General 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.

§ 7 Single Policy, Frame Contract and Open Cover

- 7.1. In case the insurance only applies to one or more specified charter contracts, the Manager issues a single policy which comprises 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 Insurers and must be returned immediately if corrections become necessary.
- 7.2. In case the insurance applies to an indefinite number of charter contracts, the parties may agree on a frame contract or an open cover.
- 7.3. Frame Contract
 - 7.3.1. The frame contract comprises 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 (fig. 7.3.2) 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 Insurers and must be returned immediately if corrections become necessary. The frame contract is not to be considered as policy by law.
 - 7.3.2. Under the frame contract the Assured is entitled, but not obliged, to tender for cover for several charters. In the sense of these Rules there is a tender for cover if and when the Application Form attached to the frame contract has been filled in and presented.

The contract of insurance materialises in relation to single charter in case the Insurers do not refuse the conclusion of contract within two working days after receipt of the application form.
 - 7.3.3. In case the Insurers do not refuse the conclusion of the contract, they 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 policy by law.

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- 7.4. Open Cover
- 7.4.1. The Insurers document the contents of the open cover in the open policy. The open policy comprises 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 (fig. 7.4.3) 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 Insurers and must be returned immediately if corrections become necessary. The open policy is not to be considered as policy by law.
- 7.4.2. 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).
- 7.4.3. The Assured is obliged to notify the Insurers 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 Insurers 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 Insurers are entitled to cancel the contract without previous notice.

§ 8 Premium Payment

- 8.1. The Assured has to pay the premium in accordance with the dates indicated in the premium invoice.
- 8.2. Additional premiums shall be paid together with the following quarterly instalment.
- 8.3. The first premium instalment must be received by the Manager within 10 days upon attachment date; the following instalments must be received by the Manager 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 Insurers are entitled to offset any claims due against the next premium instalment payable. This is valid for all charters covered under the insurance policy.
- 8.5. If the chartered vessel is laid up in a safe port for more than 30 consecutive days, unless otherwise agreed, 75% of the gross premium rate are to be returned, provided that the vessel is laid up unemployed, without cargo and not under repair.
- 8.5.1. The lay-up returns will be calculated quarterly.
- 8.5.2. In general, no lay-up returns will be granted if the laying up takes place outside the trading warranties or if it is solely or partly caused by strikes, riots, war, seizure or detention by authority, usurpation of power or armed rebellion.
- 8.6. If the insurance contract expires automatically or by termination of the charter party or by rescission or termination by the Insurers, 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.

- 8.7. If the first premium instalment is not received within the period stipulated in §8.3, the Insurers 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 Insurers' rescission and prior to payment of premium, the Insurers are discharged from all duties, obligations and liabilities under this contract.
- 8.8. If any subsequent premium instalment is not received within the determined period, Insurers have the right to terminate the cover within a period of 5 days. If the Assured defaults on the payment of a premium instalment and fails to pay the amount within the period of grace of at least two weeks then, having been expressly referred to legal consequences, the Insurers are discharged from all duties, obligations and liabilities.
- 8.9. All Co-Assureds and the Assured are jointly and severally liable for premium payment.

§ 9 Period of Insurance

- 9.1. 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. Charters covered under a frame contract (fig. 7.3) 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.
- 9.2. 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. with termination of the charter contract;
 - 9.2.3. by way of notice by the Insurers 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;
 - 9.2.4. rescission of the insurance contract by the Insurers in the event of non-payment of the first premium instalment pursuant to §8.7;
 - 9.2.5. termination of the insurance contract by the Insurers within 5 days in the case of non-payment of any subsequent premium instalment pursuant to §8.8.

§ 10 Liability for damage to or loss of the Chartered Vessel

Liability includes claims of owners of the chartered vessel or charterers subletting the vessel in respect of damage to or total loss of the vessel including consequential losses resulting therefrom.

§ 11 Cargo Liabilities

The insurance cover comprises:

- 11.1. Damage sustained as a result of third party claims for compensation on the basis of statutory stipulations of private law for loss, damage, robbery, wrong delivery, mixing of or in connection with cargo carried or to be carried by the chartered ship, from acceptance on board the chartered vessel in the port of loading until delivery in the port of discharge of the chartered vessel, with the exception of live animals, valuables, precious metals, precious stones, jewellery, and luggage of passengers and family members.
- 11.2. Discharging costs incurred as a result of the 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 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;

- 13.1. 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;
- 13.2. 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 §13.1. The costs of medical treatment and funeral expenses mentioned in §13.1 are also included;
- 13.3. 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 Insurers as customary.

§ 14 Liability for Collision and "Wash" Damage

14.1. Collision Liability

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

14.2. 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 Insurers consented to the terms of the contract prior to incident.

14.3. Damage to Ships or other Property other than by Collision

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

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

§ 15 Deserters, Stowaways and Refugees

The insurance cover includes:

- 15.1. 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 Insurers also cover the costs incurred for the employment of guards and/or imprisonment in so far as the Assured is legally liable to bear same.

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

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

§ 16 Costs of Life Salvage

The insurance cover includes:

- 16.1. 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.

16.2. 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 so far as the Assured is legally liable to pay same.

16.3. The Insurers are not liable for costs incurred in cases stated in §§16.1 and 16.2 for which the Assured is covered by other insurance or compensated for by third parties.

§ 17 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 part dues in so far as the Assured is legally liable to bear such costs.

§ 18 Wreck Liabilities

The insurance cover includes:

- 18.1. the costs and expenses of marking and removing the insured ship including its cargo which has sunk and become a wreck within the policy period, in as much as marking and/or removal are the Assured's compulsory statutory duty, or are imposed on the Assured by an order of authority
- 18.2. 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.
- 18.3. 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.
- 18.4. If the shipowners dispose of the wreck without the Insurers' written consent for the Assured in a manner other than abandonment of ownership, in accordance with this provision insurance cover does not apply.

§ 19 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.

§ 20 Assured's Contribution to General Average and Salvage

Insurance cover comprises:

- 20.1. the reimbursement of the Assured's contribution with regard to freight and bunker.
- 20.2. the special compensation in accordance with Art. 14 International Convention on Salvage 1989.

§ 21 Pollution Liabilities

The insurance cover includes:

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

§ 22 Penalties and Fines

The insurance cover includes:

- 22.1. charges and costs imposed on the Assured by customs authorities, in as much as they are levied due to the shortlanding or overlanding 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;
- 22.2. penalties or fines imposed on the Assured for smuggling or violation of other customs regulations by persons other than the Assured.
- 22.3. 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.

§ 23 Trading Warranties

- 23.1. 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 Insurers.
- 23.2. The insured trading warranties are not deemed to have been exceeded if the Assured proves that this was made in the interest of the 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.

§ 24 Exclusions

- 24.1. The insurance does not cover damage or loss if caused by:
 - 24.1.1. war, civil war, revolution, rebellion or hostile act by or against a belligerent power;
 - 24.1.2. 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;
 - 24.1.3. derelict mines, torpedoes, bombs or other derelict weapons of war;
 - 24.1.4. explosives or weapons of war used by people with malicious intent;
 - 24.1.5. nuclear energy;
 - 24.1.6. misuse of the ship; this applies particularly if the ship is employed outside commercial shipping trade.
- 24.2. Insurance cover does not apply:
 - 24.2.1. 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;
 - 24.2.2. if no evidence is maintained / recorded for the ship which is required to determine acceptance and delivery of the goods;
 - 24.2.3. 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;
 - 24.2.4. when issuing a pre-dated or post-dated bill of lading;
 - 24.2.5. when knowingly signing an incorrect bill of lading containing a description of goods and/or their condition, which is known to be incorrect;
 - 24.2.6. if cargo is delivered without presentation of the respective bill of lading;
 - 24.2.7. 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;
 - 24.2.8. 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.

§ 25 Negligence of the Assured

- 25.1. No action shall lie against the Insurers if the Assured causes damage through wilful misconduct or gross negligence.

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- 25.2. The Assured cannot be called to answer for acts or omissions committed by the vessel's crew.

§ 26 Obligations prior to Occurrence of the Event Insured Against

- 26.1. The Assured is under an obligation:
- 26.1.1. 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 "See-Berufsgenossenschaft" (Mutual Indemnity Association for Mariners in Germany) or, if the ship sails under a foreign flag, the corresponding certificate;
 - 26.1.2. 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;
 - 26.1.3. At all times the Insurers 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 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;
 - 26.1.4. to observe all rules and usages for the prevention of accidents and damages, and all laws and regulations concerning the shipping trade;
 - 26.1.5. when performing contracts to ensure that in the first place all customary evidences are secured which are or could become relevant for legal evaluation;
 - 26.1.6. 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 as soon as he becomes aware of these changes. In this event the Insurers are entitled to terminate the contract pursuant to §9.2.3;
 - 26.1.7. 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;
 - 26.1.8. 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;
 - 26.1.9. not to disclose survey reports and other pieces of evidence to third persons without the prior consent of the Insurers;
 - 26.1.10. to timely inform the Insurers and their correspondents of any surveys and other measures to be taken and, in case of claim, to safeguard Insurers' interests and rights accordingly;

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- 26.2. 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.

§ 27 Duties and Obligations after the Occurrence of the Event Insured Against

- 27.1. 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:
- 27.1.1. 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 the existence of cover is in doubt;
 - 27.1.2. to arrange for all possible prevention and mitigation of damage and to ask for and comply with Insurers' instructions without delay;
 - 27.1.3. when abroad, to consult Insurers' local advisers and correspondents;
 - 27.1.4. to obtain and secure all pieces of evidence which are or can become relevant for legal evaluation;
 - 27.1.5. 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;
 - 27.1.6. not to declare a waiver or an acknowledgment, to settle or to otherwise terminate a legal dispute without prior consent of the Insurers;
 - 27.1.7. to refrain from making declarations and statements regarding the damage and its causes to third parties unless statutorily required to do so;
 - 27.1.8. 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;
- 27.2. 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.

§ 28 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.

§ 29 Bails and Securities

In case of the occurrence of an event insured against the Insurers may, at their own discretion, provide security in order to avoid imminent or to lift existing official sanctions against bunkers or other assets owned by the Assured, an arrest, confiscation or attachment subject to final claim calculation. There is no legal obligation to provide such a security.

§ 30 Claims Handling Provisions

- 30.1. Evidence of damage approved by the Insurers is also binding on the Assured unless it obviously deviates from the facts of a case.
- 30.2. 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.
- 30.3. Subject to the provision of §29.4 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.
- 30.4. 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.
- 30.5. The Insurers will not compensate the Assured for payment of statutory input VAT if the Assured is entitled to deduct same.

§ 31 Sue and Labour and Legal Costs

The cover also includes the following supplements:

- 31.1. expenses incurred by the Assured in the event of a loss to prevent or mitigate the Insurers' obligations irrespective of the outcome, if justified under the prevailing circumstances or if they were incurred in accordance with Insurers' instructions;
- 31.2. costs incurred to establish or determine Insurers' obligations if justified under the prevailing circumstances. This includes costs for foreign representatives (P&I correspondents), surveyors, or other persons appointed in accordance with Insurers' instructions;

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- 31.3. court costs or costs incurred by the Insurers for out of court settlements or justified under the prevailing circumstances, irrespective of the outcome. This includes costs for proceedings before the Maritime Board of Inquiry (Seeamt), sea protests or similar proceedings.

§ 32 Subrogation

- 32.1. In the event of the Assured being entitled to claim damages against 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.
- 32.2. 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.
- 32.3. 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 extensions to be granted is likewise deemed to be a waiver of claim.

§ 33 Limitation of Reimbursement

- 33.1. Damages pursuant to §§10 to 24 and expenses and costs incurred pursuant to §30 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.
- 33.2. In any case the liability of the Insurers 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.

§ 34 Deductible

In respect of damage sustained pursuant to §§10 to 24 and the costs and expenses pursuant to §3 the Assured has to bear a deductible as indicated in the policy per insured claim as well as a deductible per insured damage of 15% but limited to the maximum deductible as stated in the policy.

§ 35 Exclusion of Set-Off

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

§ 36 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.

§ 37 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.

§ 38 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 according to §39 within 6 months. 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.

§ 39 Applicable Law, Arbitration Agreement and Jurisdiction

- 39.1. 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.
- 39.2. Subject to the provisions in §39.3 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.
- 39.3. Deviant from §39.2, 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.

§ 40 Amendments to these Conditions

Amendments to these conditions require written confirmation.







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