

# **HANSEATIC DEFENCE POOL**

## **General Conditions of Insurance for Freight, Demurrage and Defence in respect of Maritime Risks**

### **§ 1 Assured and Co-Assured**

Unless the policy states otherwise, the insurance covers only the interest of the Assured. The interests of third parties are only insured in so far as this is stated in the policy. In this case all rules of these general terms and conditions, which apply to the Assured, also apply to Co-Assured.

### **§ 2 Risks Insured**

- 2.1. Unless otherwise agreed in the policy, the Insurer will afford cover, subject to the provisions of § 8, the exclusions of § 4 and on the basis of the following provisions, for maritime law disputes arising in connection with the seagoing vessel of the Assured named in the policy as follows:
- 2.1.1. Disputes under charter parties, bills of lading or other contracts of affreightment as well as contracts for hire of ships or ship leasing contracts.
  - 2.1.2. Disputes relating to contracts of passage.
  - 2.1.3. Disputes relating to the supply of ships with bunker, lube oil, provisions or equipment.
  - 2.1.4. Disputes relating to General Average.
  - 2.1.5. Disputes relating to Salvage.
  - 2.1.6. Disputes under towage and tug assistance contracts.
  - 2.1.7. Disputes under repair contracts and agreements with shipbuilding yards (other than newbuilding contracts – see § 2.2.1 below).
  - 2.1.8. Disputes under insurance contracts in connection with the vessel.
  - 2.1.9. Disputes under contracts with ship's agents, ship's brokers, stevedores and other port operators.
  - 2.1.10. Disputes with and representation at customs, port and other public authorities.
  - 2.1.11. Disputes under contracts relating to the operation, management or crewing of the vessel.

- 2.1.12. Disputes under employment contracts with masters or other crew members.
- 2.1.13. Disputes relating to statutory claims which are pursued by or against the Assured in connection with one of the contracts referred to in paragraphs 2.1.1 to 2.1.12 above.
- 2.2. By special agreement to be contained in the policy and in consideration for additional premium, the insurance cover can be extended to:
  - 2.2.1. Disputes relating to shipbuilding contracts, ship sale and purchase contracts, ship finance contracts or ships mortgage/hypothecation.
  - 2.2.2. Criminal and administrative and/or regulatory summary offence proceedings against the Assured relating to the vessel named in the policy unless the Assured is accused of intentional misconduct.

Unless otherwise agreed, it is a pre-condition for such extended cover that the insurance contract exists at the time the contracts under which the disputes arise are concluded or proceedings have been started against the Assured or that the contract of insurance is concluded at least at the same time of any such contracts or proceedings.

### **§ 3 Costs Insured**

- 3.1. In so far as not otherwise agreed on a case by case basis between the Assured and the Insurer, the Insurer will reimburse the Assured in respect of the costs set out below only in so far as the Assured has made prior payment of such costs (the 'Pay to be Paid' Rule).
- 3.2. The Insurer will reimburse up to the amount specified in the policy, as follows,
  - 3.2.1. in the case of litigation:
    - 3.2.1.1. The costs of the lawyer acting on behalf of the Assured in accordance with § 13.2, the costs of the lawyer acting for the opponents as well as court fees;
    - 3.2.1.2. Court within the meaning of these insurance conditions is every court of law or every arbitration tribunal, either institutional or established ad hoc; litigation within the meaning of these insurance conditions refers to every type of procedure in the so defined court.
    - 3.2.1.3. The court fees include all costs to be borne by the Assured by way of an enforceable decision of the court, tribunal or other entity entitled to issue such an enforceable decision including the costs for proceedings relating to the taking of evidence.
    - 3.2.1.4. The reimbursement in respect of costs will be made irrespective of the position of the Assured in the proceedings (plaintiff, defendant, joined voluntarily or involuntarily as third party); costs to be reimbursed also include counter claims and objection procedures of the Assured or his opponent.
    - 3.2.1.5. On request of the Assured, the Insurer will provide the Assured with security for costs as ordered by the court and arrange for advance payments of costs ordered by the court and will arrange for payment, in the appropriate amount, of on-account payments or retainer fees to lawyers acting for the Assured.

- 3.2.2. in the case of pre-litigation disputes:
- 3.2.2.1. The costs for the lawyers acting on behalf of the Assured in accordance with paragraph 13.2.
- 3.2.2.2. Pre-litigation dispute within the meaning of these terms and conditions is every dispute which has not yet reached the stage of court proceedings within the meaning of paragraph 3.2.1.2. Such pre-litigation disputes also include pre-trial administrative or conciliation procedures.
- 3.2.2.3. On request of the Assured, the Insurer will arrange at his discretion for the payment of a reasonable on-account payment or retainer fee to lawyers acting on behalf of the Assured.

## § 4 Exclusions

Excluded from the insurance are disputes relating to:

- 4.1. Claims involving amounts of less than US\$ 7,500 or the equivalent in any other currency, unless the Insurer specifically confirms cover;
- 4.2. Unless otherwise agreed, claims in respect of which the Assured has obtained cover under a Hull and Machinery insurance policy on the vessel or could have obtained cover under a Hull and Machinery insurance in accordance with Lloyd's Marine Policy MAR Form 1/1/82 or later version in connection with the Institute Time Clauses or under any other Hull and Machinery insurance with equivalent terms and conditions;
- 4.3. Unless otherwise agreed, claims in respect of which the Assured is covered under the P & I insurance of the vessel;
- 4.4. Claims arising in connection with war, war-like incidents or as a consequence thereof;
- 4.5. Tax or other public charges;
- 4.6. Claims in connection with radioactive substances;
- 4.7. Claims in connection with an illegal employment of the vessel;
- 4.8. Claims in connection with the carriage of contraband or the employment of the vessel as a blockade runner;
- 4.9. Claims in respect of which the Assured could have obtained reimbursement of costs under any other insurance contract in the event that the Assured had not concluded this insurance contract. This also applies where such other contract of insurance includes a subsidiary clause.
- 4.10. The Assured's inability to pay debts.

## **§ 5 Extension of Cover in Special Cases**

The Insurer, in his absolute and unfettered discretion, may grant cover for disputes not listed but similar to those listed in these terms and conditions and for costs not listed but similar to those listed in these terms and conditions, where covering the dispute appears appropriate to the Insurer in the circumstances of the particular case. There is no legal right of the Assured for such extension of cover. The Insurer does not have to give reasons for refusing such extended cover.

## **§ 6 Period of Cover and Duration of Insurance Contract**

6.1. Insurance cover exists only for disputes where:

6.1.1 The main cause of which has come into existence during the period specified in the policy **and**;

6.1.2 Unless it is a Charterer's Entry or the Vessel is sold, where the first claim under such dispute is pursued by or against the Assured during the period specified in the policy or during the period specified in any subsequent Hanseatic Defence policy.

6.2 A dispute is deemed to have arisen at the moment in which the main cause of the dispute has come into existence. Disputes, the main cause of which lies prior to or after the end of the time specified in the policy, do not give rise to a claim for insurance cover.

6.3 This insurance contract will automatically renew for a further year, unless the Assured or the Insurer gives written notice of termination of the contract of insurance at the latest three months prior to expiry of the current insurance period.

6.4 In case of more than one vessel being named in the policy, on sale of a vessel the insurance cover is reduced to cover only the remaining vessels.

6.5 The insurance contract will in any event terminate automatically without notice having been given:

6.6 On the application for the insolvency of the Assured, unless the Insurer and the trustee of the insolvency proceedings agree on the continuation of the insurance policy.

6.7 On the sale of the last vessel operated and insured hereunder by the Assured.

## **§ 7 Sum Insured**

The insurance cover is limited per incident and in respect of the total number of cases within the insurance period to the sum insured specified in the policy.

## **§ 8 Deductible**

Unless otherwise agreed the Assured will bear;

- 8.1. for each claim covered, subject to § 8.2, a deductible of 15%, subject to a minimum of US\$ 3,000 and limited, however, to a maximum of US\$ 50,000;
- 8.2. for claims resulting from disputes in the United States of America, a deductible of 25%, subject to a minimum of US\$ 10,000 and limited, however, to a maximum of US\$ 75,000.

## **§ 9 Examination of Merits**

- 9.1. The Insurer will examine the merits of the dispute. The examination of the merits and the decision of the insurer on the basis of this will be conducted
  - 9.1.1. separately for pre-litigation and litigation disputes;
  - 9.1.2. in the case of disputes subject to appeal, separately for each instance;
  - 9.1.3. separately for counter claims of the Assured as well as for counter claims of opponents.
- 9.2. Where the Insurer is of the view that the matter does not have a sufficiently good chance of success, cover can be denied. In the event that cover is denied, the Assured will be notified of this in writing without undue delay with reasons for the decision being given. The Insurer is entitled to examine the chances of success of a matter during all stages of the proceedings. If the Insurer is of the view that the matter no longer has a sufficiently good chance of success, the Insurer can withdraw cover for the future.
- 9.3. Where the Insurer is of the view that the legal costs likely to be incurred are disproportionate to the likely outcome of the matter, cover can be denied. In the event that cover is denied, the Assured will be notified of this in writing without undue delay with reasons for the decision being given. The Insurer is entitled to examine the legal costs incurred and likely to be incurred during all stages of proceedings. If the Insurer is of the view that the costs incurred are, or will become, disproportionate to the likely outcome of the matter, the Insurer can withdraw cover for the future.
- 9.4. Where the Insurer has denied or withdrawn cover in accordance with §§ 9.2 or 9.3 and where the Assured does not agree with the view taken by the Insurer, the Assured can request arbitration in accordance with §17.2. Where the arbitration tribunal confirms a sufficiently good chance of success, its opinion shall bind the Insurer. In this case the Insurer bears the costs of the arbitration tribunal. The arbitration proceedings must be commenced within a period of six months after the Assured has received the notice from the Insurer denying cover. This time limit will only begin to run, if the expiry of the time limit and the legal consequences thereof have been expressly pointed out to the Assured in said notice.

## **§ 10 Payment of Premium**

- 10.1. The insurance premium is to be paid annually in advance.
- 10.2. Where the Assured is in default on payment of the first premium instalment, the Insurer is entitled to rescind the contract of insurance.
- 10.3. Where the Assured fails to make timely payment of a subsequent insurance premium,
- 10.3.1 the Insurer is entitled to give written notice requiring payment of these costs within a minimum period of two weeks. Said notice must indicate the legal consequences resulting from the expiry of the payment deadline pursuant to §§10.3.2 and 10.3.3. A payment deadline which does not observe these requirements is without legal effect and invalid.
- 10.3.2 In the event that an insured event occurs after the expiry of the payment deadline and the Assured is in default on payment of the premium or in default of claims for interest or costs, the Insurer does not provide cover.
- 10.3.3 After the expiry of the payment deadline, if the Assured is in default on payment, the Insurer can terminate the insurance policy without observance of a termination period. The Assured is hereto expressly informed that termination can take effect simultaneously with expiry of the payment deadline, if the Assured is in default at this point in time. If the Assured makes payment within one month after the date of termination, or in the event that termination is connected to the payment deadline, then within one month from the expiry of said payment deadline, the termination will not take effect, provided that an insured event has not occurred.
- 10.4. In principle, the Insurer does not provide cover for claims arising during the time that the Assured is in default of making payment of premium.

## **§ 11 Obligations of the Assured**

The Assured is under a strict duty:

- 11.1. To provide the Insurer prior to conclusion of the insurance contract with all information relevant to the assessment of the risk and to answer all questions put to him fully and correctly.
- 11.2. To inform the Insurer in writing within 3 months of every incident which could give rise to a claim under this policy for reimbursement of costs, even where the Assured does not have the intention of claiming under the insurance cover.

The notice must include as much information as possible at the time of the notice and must be made at the latest three months after the Assured has obtained knowledge of said incident. Where applicable, the notice is to be supplemented as soon as the Assured receives new information that is or may be relevant to the assessment of the legal situation;

- 11.3. To provide the Insurer with all documents, or at least copies thereof, which are required for the assessment of the matter;

- 11.4. To waive or accept claims or to conclude a settlement or discontinue proceedings and/or an appeal in the course of any dispute only with prior written agreement of the Insurer.

The Insurer can require at any stage of the dispute that the dispute is to be resolved by waiver, acceptance, discontinuance, settlement or any other way. Where the Assured does not adhere to the requirement/instruction of the Insurer, the cover is limited to those costs, which the Insurer would have had to bear, if the dispute had been terminated as required/instructed by the Insurer.

## **§ 12 Consequences of Breach of Obligations**

- 12.1. Where the Assured is in breach of his obligations under § 10 and §11 or any other agreed obligation, the Insurer does not provide cover. The Insurer can terminate the policy within one month from the date on which he becomes aware of such a breach. If the Insurer does not terminate the policy within one month, then the Insurer can not rely on the agreed contractual right not to provide cover in such instances.
- 12.2. By breach of an obligation of the Assured towards the Insurer the purpose of which is to minimise the risk or mitigate the level of risk of the Insurer, the Insurer may not rely on the agreed contractual right not to provide cover, if the breach did not affect the onset of the insured event or the scope of cover that the Insurer is obliged to provide.
- 12.3. In the event that after an insured event has occurred the Assured breaches one of his obligations towards the Insurer and said breach results in an agreement not to provide cover, the agreed right to legal recourse will not apply, if the breach is neither intentional nor the result of gross negligence. In the case of gross negligence, the Insurer remains obligated to provide cover to the extent that said breach by the Assured does not influence the assessment of the insured event or the assessment or scope of the Insurer's obligation to provide cover.

## **§ 13 Conduct of matter and Appointment of Lawyers**

- 13.1. The Insurer has complete control and can direct the conduct of the matter taking into account the reasonable interests of the Assured.
- 13.2. Insurers may appoint and employ lawyers on behalf of the Assured, upon terms as they see fit, for the purpose of dealing with any matter which is covered by §3, subject to any applicable exclusion.
- 13.3. If the Insurer decides in favour for appointing a lawyer, then he selects, appoints and directs such lawyer on behalf of the Assured.
- 13.4. All costs for lawyers, which have arisen as a result of activities of lawyers prior to the appointment by Insurers are excluded from cover.
- 13.5. The retention and instruction of a lawyer by the Insurer is deemed to be confirmation of cover at that time.

- 13.6 The Assured herewith releases all lawyers acting for him from the duty of confidentiality vis-a-vis the Insurer to the extent that this is necessary to protect the rights of the Insurer. The Assured hereby agrees to instruct the lawyers to answer all questions raised by the Insurer without undue delay, correctly and in full. On request, the Assured will confirm this agreement separately in writing.

## **§ 14 Exclusion of Set-Off**

The right to set-off claims for premium and other claims against claims for reimbursement on the part of the Assured is excluded, unless such claims for reimbursement have been accepted by the Insurer or have been judicially ascertained without recourse to appeal.

## **§ 15 Assignment of Rights**

The Assured is not entitled to assign claims under this insurance contract to a third party prior to their final determination by way of a legally enforceable and unappealable decision without the express consent of the Insurer.

## **§ 16 Limitation Period**

All claims of the Assured against the Insurer are subject to a limitation period of two years, beginning with the end of the year in which the claim arose.

## **§ 17 Applicable Law, Arbitration Agreement and Jurisdiction**

- 17.1. The insurance contract is subject to German law exclusively.
- 17.2. Subject to the provision contained in § 17.3, any disputes under this insurance contract are to be referred exclusively to an arbitration tribunal in Hamburg under the rules of the German Maritime Arbitrators Association (GMAA). The arbitration proceedings will be conducted in Hamburg.
- 17.3. As an express exception from the rule contained in § 17.2, the Insurer is entitled to commence proceedings in respect of payment of premium and enforcement of other obligations against the Assured in the courts of Hamburg or the courts at the actual seat of administration or the registered domicile of the Assured.