



# QBE Asia P&I

# Terms and Conditions

Charterers Marine Liability, Protection and Legal Expenses







# QBE Asia P&I

## Charterers Marine Liability, Protection and Legal Expenses TERMS AND CONDITIONS

Assured .....

Address .....

.....

Facsimile .....

E-mail address .....

Insured Vessel(s) .....

Period            From [        ] hrs on ..... to [        ] hrs on .....

In consideration of the premium payable in respect of this insurance, the Insurer undertakes to indemnify the Assured for all liabilities, losses, costs and expenses that the Assured, in its capacity as a Charterer of an Insured Vessel(s) under the terms of a Charterparty declared to the Insurer, incurs in respect of the liabilities, risks or events referred to in Section A of this Policy, subject to the provisions in Sections B and C.

This insurance covers only liabilities, losses, costs or expenses which

- (a) arise out of an event which occurs during the Policy period,
- (b) in respect of the Assured's interest in an Insured Vessel(s) in the Assured's capacity as a Charterer of that Insured Vessel, and
- (c) only in connection with the operation of an Insured Vessel and the Assured's conduct as a Charterer of that Insured Vessel.

Liabilities covered under this Policy include liabilities to pay damages and/or to indemnify the Owner of an Insured Vessel(s) in respect of the liabilities, risks and events referred to in Section A.

## **SECTION A – RISKS COVERED**

### **SECTION A.I – PROTECTION AND INDEMNITY**

#### **1. Damage to Property**

Liabilities, costs and expenses arising in respect of loss of or damage to any fixed or movable property or object (other than any other Vessel(s) or craft, or property on any other Vessel(s) or craft), including but not limited to any dock, pier, harbour, jetty, buoy, lighthouse, breakwater, beacon or cable, caused by the Insured Vessel(s), or the impairment or infringement of any rights of any third party caused by the Insured Vessel(s).

Where such loss, damage, impairment or infringement occurs, the Assured shall also be covered under the Clauses referred to below in respect of:

- 1.1 accidental death or injury under Clause A.I.4
- 1.2 medical and funerary costs and expenses under Clause A.I.6.
- 1.3 repatriation under Clause A.I.7.
- 1.4 Crew substitution under Clause A.I.9.
- 1.5 Wreck removal under Clause A.I.17.
- 1.6 loss of or damage to Cargo on the Insured Vessel(s) under Clause A.I.2 or Clause A.I.3.
- 1.7 pollution under Clause A.I.19.
- 1.8 towage by or of the Insured Vessel(s) under Clause A.I.29.

#### **2. Cargo – Liability to Cargo Interests**

Liabilities, costs and expenses incurred by the Assured in respect of Cargo intended to be carried, which is carried or which has been carried on board the Insured Vessel(s), which arise by reason of a breach by the Assured of its duties or obligations as carrier, whether in contract or otherwise, where such liability is incurred and/or due to the Owner of the said Cargo, whether directly or through the acts or omissions of a party for whom the Assured is responsible, or by reason of the unseaworthiness of the Insured Vessel(s) (always subject to Clauses A.I.2.10 – A.I.2.20) in respect of:

- 2.1 loss of or damage to Cargo.
- 2.2 shortage of Cargo on discharge.
- 2.3 delay, save where the Assured's liability arises under an express term of a contract of carriage requiring delivery on or before a specified date or time or within a specified period, or save where liability arises by a failure to maintain a contractual rate of discharge.

In particular the Assured shall be covered in respect of:

- 2.4 additional costs of discharging, restowage and resecuring of damaged Cargo, over and above the costs which would have been incurred by the Assured in the normal course of the performance of the contract of carriage, and save insofar as such costs are recoverable from any third party.
- 2.5 costs of disposal of damaged Cargo, save insofar as such costs are recoverable from any third party.
- 2.6 additional costs of discharging, restowage and resecuring of Cargo on board the Insured Vessel(s) following a casualty, which are necessarily incurred to complete the intended voyage, which do not constitute General Average expenditure, save insofar as such costs are recoverable from any third party.
- 2.7 default of a consignee or receiver in failing to take delivery of, rejecting or failing to collect Cargo on board, or which has been carried on board, the Insured Vessel(s), save insofar as the liabilities, costs and expenses incurred are recoverable through the sale of the Cargo or from any third party. Such liabilities, costs and expenses are covered under this Clause irrespective of whether or not the Assured is in breach of its duties and obligations as carrier.
- 2.8 loss of or damage to Cargo, or other property on board the Insured Vessel(s) by reason of a collision.

- 2.9 liabilities directly caused by loss of, damage to, or shortage of Cargo for:
  - 2.9.1 loss of market.
  - 2.9.2 idle time or depletion in output of any plant or factory for which the Cargo in respect of which a claim is made, was or is destined.
  - 2.9.3 contamination of Cargo belonging to any third party.

**There shall be no cover under this Policy in respect of the following:**

- 2.10 **Terms of Carriage:** Liabilities incurred by reason of the carriage of goods on terms and subject to exclusions and limitations of liability less favourable to the Assured than those which would have applied had the goods been carried subject to the Hague Rules or Hague-Visby Rules or the Hamburg Rules where the Hamburg Rules are compulsorily applicable to such carriage.
- 2.11 **Combined Transport:** Liabilities for:
  - 2.11.1 loss of or damage to Cargo.
  - 2.11.2 shortage of Cargo on discharge.
  - 2.11.3 delay, save where the Assured's liability arises under an express term of a contract of carriage requiring delivery on or before a specified date or time or within a specified period.  
  
incurred by reason of the carriage of goods under a contract of carriage or bill of lading providing for through transport or transshipment, unless the Insurers have given their prior written agreement to cover such liabilities, costs and expenses.
- 2.12 **Failure to Load:** Liabilities, costs or expenses incurred by reason of the failure by the Assured to load a particular Cargo on board the Insured Vessel(s), save where such failure is caused by an accident, casualty or breakdown suffered by the Insured Vessel(s) after its arrival at the berth where such Cargo is to be loaded.
- 2.13 **Non-Arrival and Late Arrival:** Liabilities, costs and expenses incurred by reason of a delay in the arrival or the non-arrival of the Insured Vessel(s) at any load port.
- 2.14 **Misdelivery:** Liabilities for misdelivery where Cargo which is carried on board the Insured Vessel(s):
  - 2.14.1 under a negotiable bill of lading or other document of title, is delivered to any Person without production by that Person of the original negotiable bill of lading or other document of title duly endorsed to that person.
  - 2.14.2 under a non-negotiable bill of lading or other non-negotiable document, is delivered to a person other than the Person entitled to receive the Cargo under its terms.
- 2.15 **Non-Contractual Discharge:** Liabilities, costs or expenses incurred by reason of the discharge of Cargo on board the Insured Vessel(s) at a port or location other than that provided for under the contract of carriage.
- 2.16 **Incorrect Statements:** Liabilities, costs or expenses incurred in circumstances where a bill of lading or other document evidencing the terms of a contract of carriage is issued which, to the knowledge of the Assured or the Master, misstates:
  - 2.16.1 the date of issue of such bill of lading or other document, the date of shipment of the Cargo, or the date when the Cargo was received for shipment.
  - 2.16.2 the description of the Cargo.
  - 2.16.3 the quality or condition of the Cargo.
  - 2.16.4 the quantity of Cargo.
  - 2.16.5 the port or place of loading.
  - 2.16.6 the location of Cargo as being under deck, when it is carried on deck.
- 2.17 **Ad Valorem Bills of Lading:** Liabilities arising in respect of Cargo carried under an ad valorem bill of lading.

- 2.18 **Deviation:** Liabilities, costs or expenses which result from or as a consequence of a deviation from the voyage required to be performed under a contract of carriage by the Insured Vessel(s), where such deviation would operate to prevent the Assured from relying on defences, exclusions or limitations under that contract of carriage, save where such deviation is made with the prior approval in Writing of the Insurer.
- 2.19 **Livestock:** Liabilities arising in respect of any contract for the carriage of live animals.
- 2.20 **High Value and Documentary Cargo:** Liabilities, costs or expenses in respect of:
- 2.20.1 bullion, precious metals or minerals, diamonds, precious or semi-precious stones or coinage.
  - 2.20.2 artworks, antiques, jewellery or rare or precious artefacts.
  - 2.20.3 documents of value including but not limited to, currency notes, bonds, bearer documents, negotiable instruments, bank drafts, cheques or payment orders.

### **3. Cargo – Liability to Owners, Disponent Owners or Sub-Charterers**

Liabilities, costs and expenses incurred and/or due to the Owner or Sub-Charterer, as defined in this Policy of any Insured Vessel(s) or by the Assured by reason of a breach of Charterparty and/or pursuant to an obligation under an express or implied indemnity arising under a Charterparty in respect of loss of or damage to Cargo, to be carried, which is being carried or which has been carried aboard an Insured Vessel.

Cover under this Clause is subject to the same limitations, restrictions or exclusions as are provided for under Clauses A.1.2.10 – A.1.2.20, if such liability arose under Clause 2 in respect of a claim against the Assured as carrier.

### **4. Accidental Death or Injury**

Liability to pay compensation or damages for loss of life or personal injury caused by an accident in respect of:

- 4.1 A member of the Crew.
- 4.2 A Supernumerary.
- 4.3 A Passenger.
- 4.4 A Stevedore, where such liability arises:
  - 4.4.1 on board the Insured Vessel(s), or
  - 4.4.2 in the course of handling Cargo from the time of receipt of the Cargo from the consignor or shipper at the port of loading until the time of delivery of that Cargo to the consignee at the port or place of discharge
- 4.5 Any Third Person, together with any person not on board the Insured Vessel(s) who suffers loss of life or personal injury caused by an accident in connection with the operation of the Insured Vessel(s).

### **5. Illness and Disease**

Liability to pay compensation or damages for loss of life caused by illness or disease or for any illness or disease contracted by:

- 5.1 A member of the Crew.
- 5.2 A Supernumerary.
- 5.3 A Passenger.
- 5.4 A Stevedore, where such liability arises:
  - 5.4.1 on board the Insured Vessel(s), or
  - 5.4.2 in the course of handling Cargo from the time of receipt of the Cargo from the consignor or shipper at the port of loading until the time of delivery of that Cargo to the consignee at the port or place of discharge.

Save where such liability arises solely under the terms of a contract between the Assured and any other party.
- 5.5 Any Third Person.

## **6. Medical and Funerary Expenses**

Liability to pay for the cost of medical or hospital treatment and ancillary expenses necessarily incurred in relation to any injury, illness or disease, and of funeral arrangements and the repatriation of remains necessarily incurred, in respect of:

- 6.1 Any member of the Crew.
- 6.2 A Supernumerary, unless employed as a member of the Assured's staff.
- 6.3 A Passenger.

## **7. Repatriation by Reason of Illness, Injury or Disease**

Liability for maintenance and repatriation costs and expenses necessarily incurred, by reason of illness, disease, personal injury or death giving rise to a claim covered under Clause A.I.4, A.I.5 or A.I.6 of this Policy in respect of:

- 7.1 Any member of the Crew.
- 7.2 A Supernumerary, unless employed as a member of the Assured's staff.
- 7.3 A Passenger.
- 7.4 Any Third Person.
- 7.5 Any person on a Vessel(s) which is in collision with the Insured Vessel(s) or which is damaged by the Insured Vessel(s) other than by collision, or on any property or object damaged by the Insured Vessel(s).

## **8. Obligatory Repatriation**

Liability for repatriation costs and expenses in respect of any member of the Crew necessarily incurred under the terms of any contract of service or employment, or Collective Agreement, or pursuant to any statutory obligation or any order or decree issued by a governmental agency or authority, except where such expense is payable by reason of:

- 8.1 the end of a member of the Crew's contractual term of service, under such a contract or Collective Agreement, or by agreement.
- 8.2 the sale or disposal of the Insured Vessel(s).
- 8.3 the default of the Assured.
- 8.4 the laying up of the Insured Vessel(s).

## **9. Crew Substitution**

Costs and expenses necessarily incurred to substitute a member of the Crew when the Assured is deprived of the services of that member of the Crew, by reason of:

- 9.1 the death of or repatriation of that member of the Crew pursuant to Clause A.I.7 of this Policy.
- 9.2 death, injury or illness of that member of the Crew, not giving rise to repatriation.

## **10. Casualty Indemnity for Crew**

Liability for wages or compensation payable to any member of the Crew for a maximum period of 60 days, following the actual or constructive or compromised total loss of the Insured Vessel(s) which necessitates the termination of the employment of any member of the Crew under the terms of any contract of service or employment or Collective Agreement, or other legal obligation.

## **11. Stowaways, Refugees and Persons Rescued at Sea**

Liability, costs and expenses other than the costs of diversion of the Insured Vessel(s), necessarily incurred by the Assured in meeting its legal obligations in respect of stowaways, persons rescued at sea, or refugees, including the cost of maintaining, landing and where necessary repatriating such persons. Costs and expenses incurred shall only be covered to the extent that they cannot be recovered from any other party.

There shall be no cover under this Clause in respect of any liability pursuant to the terms of any Charterparty to the extent that such liability is wider than that provided for under the BIMCO Stowaways Clause for Time Charters (01.07.93 Form).

There shall be no cover under this Clause in respect of any liability for demurrage, damages for detention or hire payable in respect of any period during which the service of the Insured Vessel is interrupted or delayed by reason of the presence of a stowaway(s) on board the Insured Vessel (including any period of arrest or detention after the disembarkation of such stowaway) or the recovery or rescue of refugees or other persons at sea.

Any claim for costs and expenses in respect of bunkers, stores and port charges shall be limited to the Assured's Net Loss.

## **12. Diversion**

Costs and expenses necessarily incurred by reason of the diversion or delay of the Insured Vessel(s) solely:

- 12.1 for the provision of medical treatment ashore of an ill or injured member of the Crew, or any other person on board the Insured Vessel(s).
- 12.2 in awaiting a substitute for a member of the Crew who has died or for an ill or injured member of the Crew who has been landed for medical treatment or repatriated.
- 12.3 for the purpose only of landing stowaways, persons rescued at sea or refugees.

Any claim for costs and expenses in respect of bunkers, stores, Crew wages, insurance and port charges shall be limited to the Assured's Net Loss.

## **13. Life Salvage**

Liability to the Owner of an Insured Vessel arising by reason of the saving or attempted saving by that third party of any member of the Crew or other person on or from the Insured Vessel(s), save to the extent that payment in respect of such a liability is recoverable under the Insured Vessel(s)'s Hull and Machinery insurance or from Cargo interests.

## **14. Quarantine**

Liabilities for and costs and expenses of disinfection, fumigation or quarantine in respect of the Insured Vessel(s) or Cargo or persons on board the Insured Vessel(s), incurred by the Assured directly by reason of the outbreak of, or presence on board the Insured Vessel(s) of, an infectious human disease or any measures taken to control or eliminate such disease. Such costs and expenses shall be limited to those incurred specifically in respect of the measures taken to eliminate or control such disease and the Assured's Net Loss in respect of bunkers, stores, Crew wages, insurance and port charges.

## **15. Collision Liabilities**

Liabilities, costs and expenses arising as a result of a collision between the Insured Vessel(s) and any other Vessel(s) in respect of:

- 15.1 claims other than those set out at Clause A.I.15.2 – A.I.15.10 below, and which are not covered by the Insured Vessel(s)'s Hull and Machinery insurance.
- 15.2 accidental death or injury under Clause A.I.4.
- 15.3 medical and funerary costs and expenses under Clause A.I.6.
- 15.4 repatriation under Clause A.I.7.
- 15.5 Crew substitution under Clause A.I.9.
- 15.6 loss of or damage to property under Clause A.I.1.
- 15.7 Wreck removal under Clause A.I.17.
- 15.8 loss of or damage to Cargo on the Insured Vessel(s) under Clause A.I.2 or Clause A.I.3.
- 15.9 pollution under Clause A.I.19.
- 15.10 general average or salvage paid by those interested in Cargo carried on board the Insured Vessel(s) or in property on board the Insured Vessel(s).



## 16. Damage to Vessel(s) other than by Collision

Liabilities, costs and expenses in respect of loss of or damage to any other Vessel(s) or craft, or to property on board such other Vessel(s) or craft, not caused by a collision with the Insured Vessel(s), and the impairment or infringement of any rights of any third party caused by such loss or damage.

Where such loss or damage, impairment or infringement occurs, the Assured shall also be covered under the Clauses referred to below in respect of:

- 16.1 accidental death or injury under Clause A.I.4.
- 16.2 medical and funerary costs and expenses under Clause A.I.6.
- 16.3 repatriation under Clause A.I.7.
- 16.4 substitution under Clause A.I.9.
- 16.5 damage to property under Clause A.I.1.
- 16.6 Wreck removal under Clause A.I.17.
- 16.7 loss of or damage to Cargo on the Insured Vessel(s) under Clause A.I.2 or Clause A.I.3.
- 16.8 pollution under Clause A.I.19.
- 16.9 towage by or of the Insured Vessel(s) under Clause A.I.29.

## 17. Wreck Removal and Liabilities

- 17.1 Liabilities, costs and expenses in respect of the removal or disposal of, or the lighting or marking of:
  - 17.1.1 the Wreck of the Insured Vessel(s).
  - 17.1.2 Cargo, property or goods on board or which were carried on board the Insured Vessel(s) (other than oil or any other polluting substance).
  - 17.1.3 the wreck of any Vessel damaged by the Insured Vessel(s), by collision or otherwise, or Cargo on board such a Wreck.

where such removal or disposal, or lighting or marking, is either required by law, or by any order or decree issued by any governmental agency or authority, or the cost of such removal or disposal, or lighting or marking is legally recoverable from the Assured, or is performed under the terms of a contract which the Insurer, in their absolute discretion, agree in Writing.

Any claim in respect of such liabilities, costs and expenses shall be subject to the following:

- 17.1.4 the salvaged value of the Wreck, Cargo, property or goods shall be deducted from any claim under this section.
- 17.2 Liabilities incurred by the Assured:
  - 17.2.1 by reason of the attempted or actual removal or disposal of the Wreck of the Insured Vessel(s) or property on board the Insured Vessel(s).
  - 17.2.2 in respect of the Wreck of the Insured Vessel(s) including in respect of the release or escape of oil or any other polluting substance, or any failure to remove or dispose of, or light or mark the said Wreck.

## 18. Personal Effects

Liability to pay compensation or damages for loss of or damage to property belonging to:

- 18.1 a member of the Crew.
- 18.2 a Supernumerary.
- 18.3 a Passenger.
- 18.4 any Third Person.

except in respect of:

- 18.5 bullion, precious metals or minerals, diamonds, precious or semi-precious stones or coinage.
- 18.6 artworks, antiques, jewellery or rare or precious artefacts.
- 18.7 documents of value including but not limited to currency notes, bonds, bearer documents, negotiable instruments, bank drafts, cheques or payment orders.
- 18.8 any item with a value in excess of US\$2,500 or such other sum agreed in Writing.

unless cover in respect of such goods or items has the prior approval in Writing of the Insurer. Where such liabilities, costs or expenses are incurred pursuant to a contract between the Assured and persons referred to at Clauses 18.1 to 18.4 above, there shall be no cover in respect of such liabilities, costs or expenses unless the terms of that contract have the prior approval in Writing of the Insurer.

## 19. Pollution

Liabilities, costs and expenses incurred by reason of or in consequence of the actual or threatened accidental release or escape of oil or any other polluting substance from the Insured Vessel(s) including:

- 19.1 **Loss or Damage:** Loss of or damage to property belonging to any third party, or loss sustained by any third party by reason of contamination.
- 19.2 **Death or Personal Injury:** Death, injury or illness suffered by any person.
- 19.3 **Containment:** Measures reasonably taken to avert or minimise the risk of an imminent release or escape of oil or other polluting substance from the Insured Vessel(s), together with any liability for loss or damage to property caused by measures so taken.
- 19.4 **Environmental Purposes:** Measures reasonably taken after the accidental release or escape of oil or any other polluting substance from the Insured Vessel(s), in containing the spread of and cleaning up such oil or any other polluting substance, in order to minimise any resulting loss, damage or contamination.
- 19.5 **Governmental Intervention:** Compliance with any direction, decree or order made by any governmental agency or authority to avert or minimise the threat of pollution, or following such accidental release or escape, save where such liabilities, costs or expenses:
  - 19.5.1 are recoverable under the Insured Vessel(s)'s Hull and Machinery insurance, or
  - 19.5.2 would be incurred in any event in the course of the ordinary operation of the Vessel(s) or in the ordinary course of the performance of repair work or salvage services.
- 19.6 There shall be no recovery in respect of any liability loss, damage, costs, fines and expenses arising as a consequence of the discharge or escape or the presence of any substance, material or product or waste determined or deemed to be hazardous in any dump, site, storage or disposal facility whether or not such substance, material, product or waste was previously carried on board the Insured Vessel(s) as Cargo, fuel, slops or stores.

## **20. Pollution following Collision or Damage other than by Collision**

Liabilities incurred by reason of the actual or threatened accidental release or escape of oil or any other polluting substance from any Vessel with which the Insured Vessel(s) is in collision, or which suffers damage caused by the Insured Vessel(s) other than by collision, falling within the scope of Clause A.I.15, save that references to the Insured Vessel(s) shall be treated as references to any Vessel(s) with which the Insured Vessel(s) is in collision, or which suffers damage caused by the Insured Vessel(s) other than by collision.

## **21. Special Compensation for Salvors**

Liability to pay special compensation to a salvor in respect of the Insured Vessel(s), to avert, limit or prevent damage to the environment under the provisions of Article 14 of the International Convention on Salvage 1989, or under a Lloyd's Open Form, 1980, 1990 or 1995 editions, or any standard form salvage agreement incorporating the effect of Article 14 of the said Convention, save insofar as such special compensation is payable by any third party also interested in property which is the subject of salvage services.

## **22. Pollution Control Indemnities**

Liabilities, costs or expenses incurred by the Assured for death or injury of any person or for loss of or damage to property belonging to any person by reason of the granting of an indemnity by the Assured to, or the conclusion of a contract by the Assured with, any party in connection with the provision of services covered under Clause 19.3 and 19.4 above, provided the terms of such indemnity or contract have the prior approval in Writing of the Insurer.

## **23. Fines and Penalties**

A fine or monetary penalty levied in respect of the Insured Vessel(s) or any member of the Crew, for which either the Assured is legally liable, or in respect of which the Insurer agrees in Writing that reimbursement for such fine or monetary penalty should be given, which is levied by any Court or other judicial body, tribunal, or by any governmental agency or authority for:

- 23.1 breach of an administrative, governmental or customs requirement in relation to the administration of Cargo documentation or for short delivery or over-delivery of Cargo, including any sum for which the Assured is liable to the Owner of the Insured Vessel(s) in respect of such fine or monetary penalty levied against such Owner, under the terms of a Charterparty to which the Assured is party.
- 23.2 the accidental release or escape of oil or any other polluting substance from the Insured Vessel(s).
- 23.3 any breach of customs laws, regulations or requirements, or smuggling, other than in respect of Cargo carried under a contract of carriage to which the Assured is party.
- 23.4 breach of any laws, regulations or requirements in respect of immigration.

There shall however be no cover under this Policy for a fine or monetary penalty levied in respect of:

- 23.5 any overloading of the Insured Vessel(s), or the presence on board the Insured Vessel(s) of a greater number of Passengers than is legally permitted.
- 23.6 contravention of any law, regulation or requirement in respect of fishing.
- 23.7 criminal activity embarked on with the knowledge, connivance, complicity or reckless disregard of the Assured.

## **24. Legal Costs**

Legal costs necessarily incurred by the Assured after a casualty suffered by the Insured Vessel(s), or an event likely to give rise to a claim under this Policy, to avoid or limit liabilities, costs and expenses in respect of risks covered by this Policy, provided that such legal costs have been incurred with the prior approval of the Insurer.

## **25. Investigative Costs**

Costs, other than legal costs, necessarily incurred by the Assured after a casualty suffered by the Insured Vessel(s), or an event likely to give rise to a claim under this Policy, for the purpose of conducting an investigation into the circumstances of such a casualty or event, provided that such costs have been incurred with the prior approval of the Insurer.

## **26. Sue and Labour Costs**

Costs and expenses, other than those which would be incurred in the course of the ordinary operation or trading of the Insured Vessel(s), necessarily incurred by the Assured, after a casualty suffered by the Insured Vessel(s), or an event likely to give rise to a claim under this Policy, solely to avoid or limit liabilities, costs or expenses in respect of risks covered by this Policy, provided that such costs and expenses have been incurred with the prior approval of the Insurer.

## **27. Inquiry Expenses**

Costs and expenses necessarily incurred by the Assured following a casualty suffered by the Insured Vessel(s) to protect the interests of the Assured or any member of the Crew, before any inquiry or tribunal constituted to investigate that casualty, provided that such costs and expenses have been incurred with the prior approval of the Insurer.

## **28. Insurer's Interest**

Costs and expenses incurred by the Assured at the request or direction of the Insurer for the purpose of protecting or advancing the interests of the Insurer.

## **29. Towing of the Insured Vessel(s)**

Liabilities, incurred by the Assured by reason of the towing of the Insured Vessel(s), under the terms of a contract (save in respect of payment for the tow itself) for:

- 29.1 entering and leaving port for the purpose of the Insured Vessel's ordinary trading.
- 29.2 shifting the Insured Vessel(s) in port or between places, and securing the Insured Vessel(s) in port, for the purpose of the Insured Vessel(s)'s ordinary trading.
- 29.3 any other purpose, provided that any contract for towing of the Insured Vessel(s), is on the Towcon or Towhire standard forms, all in unamended form, or any other standard form towing contract which affords the Assured equivalent or better protection than the said standard forms, or to which the Insurer may, on such terms as they require, agree in Writing.

save insofar as such liabilities are covered under the Insured Vessel(s)'s Hull and Machinery insurance.

## **30. Third Party General Average Contributions**

A sum equivalent to the proportion of General Average, salvage or special compensation payable to salvors, due to the Assured from any third party including but not limited to Cargo interests, but which cannot be recovered through legal process or through negotiation, solely by reason of a breach by the Assured of the Assured's obligations as carrier under a contract of carriage with that third party.

Cover under this Clause is subject to the provisions at Clauses A.I.2.10 – A.I.2.20 of this Policy.

## SECTION A.II – WAR RISKS

### 1. War Risks

The Assured may, on such terms as the Insurer may agree in Writing, be covered for liabilities, costs and expenses caused by:

- 1.1 war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or for any hostile act by or against a belligerent power or any act of terrorism.
- 1.2 capture, seizure, arrest, restraint or detention (barratry and piracy excepted) and the consequences thereof or any attempt thereat.
- 1.3 Mines, torpedoes, bombs or other weapons of war.

provided such liabilities, costs and expenses are not covered under the terms of any other insurance in respect of the Insured Vessel(s) or the Assured. This Clause shall only cover such liabilities, costs and expenses insofar as they exceed amounts recoverable under any such other insurance including but not limited to the Insured Vessel(s)'s Hull and Machinery insurance and insurance in respect of Crew or war risks.

Cover under this Clause shall be subject to the following:

- 1.4 **Cancellation:** The Insurers may, on giving 7 days notice in Writing:
  - 1.4.1 Cancel the cover provided under this Clause, or
  - 1.4.2 vary or restrict the terms on which cover under this Clause is provided.
- 1.5 **Automatic Termination:** Cover under this Clause shall cease automatically without notice:
  - 1.5.1 on the outbreak of war, whether declared or not, between any of the following: the United Kingdom, The United State of America, the People's Republic of China, France or the Russian Federation.
  - 1.5.2 the requisitioning for any purpose of any Insured Vessel(s) covered under this Policy
  - 1.5.3 the hostile detonation by any party anywhere, of a weapon of war employing atomic or nuclear fission and/or fusion or other similar reaction or radioactive force or matter.
- 1.6 **Five Powers War:** There shall be no cover under this Policy for any loss, damage, liability or expenses arising from or in connection with:
  - 1.6.1 the outbreak of war whether declared or not, between any of the following: the United Kingdom, the United States of America, the People's Republic of China, France or the Russian Federation.
  - 1.6.2 the requisition for any purpose of any Insured Vessel(s) covered under this Policy.
- 1.7 **Chemical, Biological, Bio-chemical, Electromagnetic Weapons and Cyber Attack Risks:** Cover under this Clause is subject always to Clauses C.9 and C.14 of this Policy.
- 1.8 **Pre-attachment Events:** There shall be no cover under this Clause if an event which would give rise to cover ceasing automatically without notice under Clause A.II.5 occurs after the agreement of the Insurers in Writing has been provided to the Assured, but before the date and time for the attachment of the cover so agreed.

## SECTION A.III – LEGAL COSTS COVER

### 1. Legal Costs Cover

Legal costs and expenses necessarily incurred by the Assured (including the costs of an opposing party where such costs are ordered to be paid by a court or tribunal, or are to be paid pursuant to the terms of any settlement concluded with the approval in Writing of the Insurer and always subject to the provisions at Clause B.18) in pursuing or defending claims, or in seeking to resolve disputes, on such terms as the Insurer may agree in Writing, arising in respect of the following:

- 1.1 any Charterparty, contract of carriage, bill of lading or contract of affreightment, to which the Assured is party in respect of the Insured Vessel(s) and disputes as to the conclusion or legal effect of any such Charterparty, contract of carriage, bill of lading or contract of affreightment.
- 1.2 any contract for operational services provided to or in respect of the Insured Vessel(s), including but not limited to agency, stevedoring, towage or salvage, or harbour authority services.
- 1.3 any contract for administrative services provided to or in respect of the Insured Vessel(s) for insurance broking or ship broking services, management services or the provision of technical advice in connection with the loading, stowage, carriage and discharge of Cargo or the provision of bunkers, lubricating oil to an Insured Vessel(s).
- 1.4 any contract in respect of goods or materials, necessaries and stores including bunkers and lubricating oil provided to the Insured Vessel(s).
- 1.5 any contract of marine insurance in respect of the Insured Vessel(s), or which the Assured contends covers the Insured Vessel(s), other than that evidenced by this Policy.
- 1.6 any damage to the Insured Vessel(s), detention of the Insured Vessel(s), or the impairment of any rights of the Assured to the use of or service by the Insured Vessel(s), caused by any third party.
- 1.7 General Average contributions.
- 1.8 the presence on board the Vessel(s) of stowaways, refugees or persons rescued at sea.
- 1.9 the handling, loading, stowing, lashing and discharge of Cargo which is to be carried, which is carried or which has been carried on board the Insured Vessel(s).

Provided that the Assured has reasonable prospects of successfully pursuing or defending any such claim, or resolving any such dispute, through the incurring of legal costs and expenses, and provided that such costs and expenses are incurred with the prior written approval of the Insurer.

Approval by the Insurer of a contract under Clause A.III.1.1 or A.III.1.2 shall not connote acceptance or approval of the terms and conditions of such a contract. There shall be no cover under this Clause in respect of any claim by a Joint Assured against another Joint Assured, nor in respect of disputes between Joint Assureds.

**2.** The following shall be taken into account in assessing the prospects of successfully pursuing or defending any such claim or resolving any such dispute:

- 2.1 the applicable law and jurisdiction.
- 2.2 the value of the claim or sum in issue or the significance of the dispute.
- 2.3 the level of the legal costs and expenses likely to be incurred.
- 2.4 the legal merit of the Assured's position.
- 2.5 any alternative means for pursuing or defending the claim or resolving the dispute.
- 2.6 the prospect of enforcement of any claim by or against the Assured.
- 2.7 the conduct of the Assured.
- 2.8 the importance of any issues that arise to the shipping community generally.

**3.** Subject always to the provisions at Clause B.18, if it is proposed that a claim is to be settled or compromised in respect of which legal costs and expenses falling within the scope of this Clause A.III have been or will be incurred, the Assured shall, before agreeing to such a compromised settlement, obtain the prior written consent of the Insurer to do so. The Assured shall provide to the Insurer such information as the Insurer shall reasonably require to facilitate such agreement. Subject to the provisions of Clause B.21, the Insurer shall be entitled to any legal costs and expenses which the Assured recovers pursuant to an award, judgment or compromised settlement. If compromised settlement does not include provision for legal costs and expenses, the proportion which shall be attributable to legal costs and expenses will be determined by the Insurer in its sole discretion and shall be binding upon the Assured.

**4.** The conduct of any claim or handling of any dispute under this Clause shall be governed by the procedure provided for at Clauses B.17, B.18, B.19 and B.20 of this Policy. Any dispute or disagreement between the Insurer and the Assured as to the prospects of successfully defending or pursuing any such claim, or resolving any such dispute, shall be submitted to arbitration in London in accordance with the procedure provided for under this Clause.

The arbitration shall be conducted before three arbitrators, one to be appointed by each of the parties and a third by the arbitrators so appointed. The arbitrators shall be English barristers who are not Queen's Counsel. The arbitration shall be on the basis of written submissions and supporting documentation alone and, save as expressly provided in this Clause and in Clause B.24.3, shall be subject to the provisions of the English Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force. All other disputes shall be determined pursuant to the provisions of Clause B.24.

## **SECTION A.IV – DAMAGE TO HULL**

### **1. Damage to Hull**

Liability to an Owner of an Insured Vessel in respect of

- 1.1 Physical loss of or damage to the Insured Vessel
- 1.2 Damages for detention or loss of use, loss of earnings or demurrage or hire payable in respect of any period during which the Insured Vessel is unavailable for service by reason of physical loss or damage covered under Clause A.IV.1.1.
- 1.3 Costs incurred by the Owner of an Insured Vessel to determine whether physical damage has occurred, where that Owner has reasonable grounds for believing that damage may have occurred, but it is ultimately found that no such damage has been sustained.



## **SECTION A.V – SPECIAL OPERATIONS**

### **1. Special Operations**

Where the Insured Vessel(s) is a vessel which carries out the special operations set out at 1.1 to 1.13 below, the Assured may, on such terms as the Insurer may agree in writing, also be covered in respect of liabilities, costs and expenses covered under Section A.I Clauses 1 to 30 incurred by reason of the Insured Vessel(s) carrying out such special operations:

- 1.1 Salvage.
- 1.2 Firefighting.
- 1.3 Exploration, surveying, drilling, production, and associated services in respect of oil, gas or minerals.
- 1.4 Oil storage.
- 1.5 Underwater operations by a submarine or other submersible, commercial diving and underwater surveying.
- 1.6 Construction, including pile driving, blasting, and the transport and construction of offshore installations.
- 1.7 Dredging, and the removal and discharge of dredging or other spoil.
- 1.8 Cable or pipeline laying or recovery, including preparatory surveying, laying or recovery operations and maintenance.
- 1.9 Waste incineration or disposal.
- 1.10 Pollution control.
- 1.11 Search and rescue at sea.
- 1.12 Research at sea.
- 1.13 Leisure, accommodation and catering services on board a permanently moored vessel.

**2.** Save as specifically agreed by the Insurer in writing there shall be no cover under this policy for liabilities, costs and expenses arising from or in connection with such special operations performed by the Insured Vessel(s) provided that this exclusion shall not apply to liabilities, costs and expenses incurred by the Vessel(s) in respect of:

- 2.1 Loss of life, injury or illness of crew and other personnel on board the insured Vessel(s), and
- 2.2 The wreck removal of the insured Vessel(s), and
- 2.3 Oil pollution emanating from the insured Vessel(s)

but only to the extent that such liabilities and expenses are otherwise covered by the Insurer in accordance with the Terms and Conditions of cover.

## **SECTION B – GENERAL CONDITIONS**

### **1. Hull and Machinery Cover**

The Assured warrants that any Charterparty concluded or in place in respect of an Insured Vessel(s) shall include a contractual requirement that the Insured Vessel(s) shall be, throughout the Policy period, insured in respect of Hull and Machinery.

#### **1A. Breach of warranty**

In the event of a failure by the Assured to comply with any of the warranties under Clauses B.2-B.5 in respect of the Insured Vessel(s), then in accordance with Clause B.24.5 the remedies provided for under the Marine Insurance Act 1906 shall apply instead of those provided under the Insurance Act 2015.

In addition, the Insurer may:

- 1A.1 terminate cover provided under this policy from the date any of these warranties are breached and shall provide written notice to the Assured that cover has been terminated from the date of breach, or
- 1A.2 vary or restrict the terms on which cover under this policy is provided and shall provide the Assured with written notice as to how the terms of this policy have been changed.

### **2. Classification**

The Assured warrants that any Charterparty concluded or in place in respect of an Insured Vessel shall include a contractual requirement that the Insured Vessel(s) is classed with a classification society or statutory body approved by the Insurer, and shall remain so classed throughout the duration of the Charterparty.

It is a condition precedent to liability under this Policy that the Assured has complied with the requirements of this Clause.

### **3. Flag State**

The Assured warrants that any Charterparty concluded or in place in respect of an Insured Vessel shall include a contractual requirement that the Insured Vessel(s) complies with all requirements of the Insured Vessel(s)'s flag state and continues to so comply throughout the duration of the Charterparty including those relating to:

- 3.1 the construction, condition, manning and equipping of the Insured Vessel(s).
- 3.2 the maintenance of valid statutory certificates issued by or on behalf of the Insured Vessel(s)'s flag state.

It is a condition precedent to liability under this Policy that the Assured has complied with the requirements of this Clause.

### **4. Survey by Insurer**

The Assured warrants that it shall use its best endeavours to permit and/or procure permission for the inspection by a surveyor appointed on behalf of the Insurer of any:-

- 4.1 Loading Feasibility Study
- 4.2 Load Plan or Stowage Plan
- 4.3 Towage Plan

and shall permit the attendance of such surveyor at any pre-loading survey or inspection and at any time during and after completion of the loading and securing of Cargo aboard the Insured Vessel.

It is a condition precedent to liability under this Policy that the Assured has complied with the requirements of this Clause.

### **5. ISM Code**

If the Insured Vessel(s) is required to comply with the International Safety Management Code by the International Maritime Organisation the Assured warrants that any Charterparty concluded or in place in respect of an Insured Vessel shall include a contractual requirement:

- 5.1 that the Insured Vessel(s) has a valid Safety Management Certificate.
- 5.2 that the Assured, Owner or Manager of the Insured Vessel(s) has a valid Document of Compliance.

- 5.3 that the Assured, Owner or Manager of the Insured Vessel(s) has implemented and continues to maintain and operate a Safety Management System in accordance with the International Safety Management Code

in accordance with the requirements of the said Code, and that they shall be maintained in accordance with such requirements throughout the Policy period.

It is a condition precedent to liability under this Policy that the Assured has complied with the requirements of this Clause.

## **6. Declaration Requirements**

The Assured warrants that it shall declare to the Insurer

- 6.1 all Charterparties to which the Assured becomes party as Charterer within 30 days of the conclusion of a final, binding contract, and
- 6.2 all nominations made pursuant to the terms of any contract of affreightment to which the Assured is party as Charterer, within 30 days of such nomination being received, and within 30 days of the receipt of any substitution of a Vessel which is the subject of such a nomination.

save that where it is agreed in Writing between the Assured and the Insurer that only a specified category of Charterparties or nominations under the terms of any contract of affreightment are to be covered under this Policy, the effect of this Clause shall be limited to such Charterparties or such nominations under contracts of affreightment as fall within that specified category.

In the event of a failure by the Assured to comply with any warranty provided for under this Clause in respect of the Insured Vessel(s), the remedies provided for under the Marine Insurance Act 1906 shall apply and, in addition, the Insurer may:

- 6.3 cancel cover provided under this Policy by notice in Writing to the Assured. Such cancellation shall take effect from the date of such notice, or
- 6.4 vary or restrict the terms on which cover under this Policy is provided.

It is a condition precedent to liability under this Policy that the Assured has complied with the requirements of this Clause.

## **7. Charter Form Approval**

There shall be no cover under this Policy in respect of any liability, cost or expense that arises under or in connection with any Charterparty for an Insured Vessel unless the pro-forma terms of such Charterparty has been approved by the Insurer in Writing.

## **8. Mitigation and Sue and Labour**

The Assured shall, on the occurrence of an event likely to give rise to a claim under this Policy, take all reasonable steps to avert or minimise any liabilities, costs and expenses which might be covered under this Policy.

## **9. Assignment**

Neither this Policy, nor any interest under this Policy, may be assigned by the Assured, unless the Insurer in their absolute discretion consent in Writing to such an assignment and on such terms as the Insurer shall impose.

## **10. Set Off**

The Insurer shall be entitled to set off any sum due from the Assured against any sum due to the Assured under this Policy in respect of any Insured Vessel(s). The Assured shall not be entitled to set off any amount payable by the Insurer against any sum due from the Assured under this Policy.

## **11. Termination of Insurance**

This Policy of insurance shall terminate automatically without notice in the following circumstances:

- 11.1 the Assured, being an individual:
- 11.1.1 14 days after he dies.
  - 11.1.2 he becomes bankrupt.
  - 11.1.3 he is the subject of a receiving order or of a scheme of arrangement or composition with his creditors.
  - 11.1.4 ceases to be able to manage his business by reason of mental illness or incapacity.

- 11.2 the Assured, being a corporation:
  - 11.2.1 it is the subject of a compulsory winding up order or resolution for its voluntary winding up.
  - 11.2.2 it is dissolved.
  - 11.2.3 it is the subject of the appointment of a receiver, administrator or manager or analogous person in respect of all or part of its business.
  - 11.2.4 it initiates any proceedings to achieve legal protection from its creditors.

The Assured (or in the case of an individual Assured who dies, his personal representative) shall notify the Insurer in Writing forthwith on the occurrence of an event referred to in this Clause.

### 11.3 Termination of Insurance by notice:

The Insurer may, at any time and without giving reasons, terminate the Insurance of an Insured Vessel(s) by not less than 14 days written notice of termination, effective from the expiry thereof.

## **12. Termination of Cover in respect of an Insured Vessel(s)**

Cover in respect of an Insured Vessel(s) shall cease without notice on the occurrence of any of the following:

- 12.1 total loss of the Insured Vessel(s) whether
  - 12.1.1 actual.
  - 12.1.2 constructive, on tender by the Assured of notice of abandonment to the Insured Vessel(s)'s Hull and Machinery Insurer(s).
  - 12.1.3 compromised or agreed with the Insured Vessel(s)'s Hull and Machinery Insurer(s).
  - 12.1.4 in circumstances where the Insurer concludes that the Insured Vessel(s) is a total loss and notifies the Assured in Writing accordingly.
- 12.2 the Insured Vessel(s) cannot be located or contacted for a consecutive period of ten days, unless the Insurer agrees in Writing to maintain or reinstate cover in respect of the Insured Vessel(s), on the same or on varied or restricted terms.

The Assured shall notify the Insurer in Writing forthwith on the occurrence of a circumstance or event referred to in this Clause.

Where cover ceases pursuant to this Clause the Insurer shall be liable only in respect of any claim arising prior to the time when cover ceases, except that, where cover ceases by virtue of Clause B.12.1, the Insurer shall also be liable in respect of any claims which arise directly by reason of the casualty giving rise to the Insured Vessel(s) becoming a total loss.

## **13. Premium**

Premium payable in respect of this Policy shall be paid on such terms as the Insurer shall agree in Writing.

In the event of failure by the Assured to pay premium or any installment of premium due under the said terms or any other sum or sums debited by the Insurers, the Insurer may:

- 13.1 cancel this Policy giving a minimum notice period of 7 days.
- 13.2 vary or restrict the terms on which cover under this Policy is provided.

In the event of the cancellation of this Policy by the Insurer under this Clause, the Insurer shall not be liable in respect of any claim whatsoever, whether arising before or after such cancellation.

The Insurer shall be entitled to interest at a rate of 2% over the LIBOR rate for any premium or part of the premium which is due and unpaid.

Where the Assured has paid the premium due under this Policy and:

- 13.3 termination of the Policy takes effect pursuant to Clause B.11, premium under the Policy shall be returned to the Assured on a pro rata per day basis.
- 13.4 termination of cover in respect of an Insured Vessel(s) takes effect pursuant to Clause B.12, premium paid in respect of that Insured Vessel shall be returned to the Assured on a pro rata per day basis.

#### **14. Waiver**

No representation, act or omission, conduct or forbearance by the Insurer nor any agreement or acquiescence to the conduct of the Assured, shall amount to a waiver of any right of the Insurer under this Policy, nor shall it give rise to an estoppel in respect of any such right, nor any affirmation in respect of the Policy unless expressed in Writing and addressed by the Insurer to the Assured.

#### **15. Joint Assureds and Co-Assureds**

Joint Assureds and/or Co-Assureds shall not be covered in respect of any claims or liabilities between such Joint Assureds and/or Co-Assureds.

Such Joint Assureds and Co-Assureds shall:

- 15.1 be bound by the default of any one of the said Joint Assureds or Co-Assureds in failing to disclose or misrepresenting material information to the Insurer.
- 15.2 be bound by the conduct of any one of the said Joint Assureds or Co-Assureds which would give rise to:
  - 15.2.1 the termination of this Policy.
  - 15.2.2 the termination of cover in respect of an Insured Vessel(s).
  - 15.2.3 the cancellation by the Insurer of cover provided under this Policy.
  - 15.2.4 the variation or restriction by the Insurer of the terms on which cover under this Policy is provided.
- 15.3 be deemed to have received any notice or communication sent by the Insurer to any one of the said Joint Assureds or Co-Assureds or the Assured.
- 15.4 be deemed to have sent any notice or communication sent by any one of the said Joint Assureds or Co-Assureds to the Insurer.

Joint Assureds shall be jointly and severally liable to pay premium due under this Policy.

The deductibles and limits provided for in this Policy shall apply to any claim by any one of such Joint Assureds or Co-Assureds, as if the Joint Assureds or Co-Assureds were a single Assured. Receipt by any Joint Assured or Co-Assured of any sum payable by the Insurer shall be deemed to be receipt on behalf of all the Joint Assureds and Co-Assureds, and shall discharge the Insurer of their liability for any claim in respect of which such payment is made.

#### **16. Notices**

Any notice:

- 16.1 by the Assured to the Insurer shall be sent to:

QBE Asia P&I, c/o QBE Insurance (Singapore) Pte Ltd, 1 Raffles Quay #29-01 South Tower Singapore 048583  
Telephone: +65 6224 6633 Fax: +65 6438 3239 Email: qbeasiapni@qbe.com

Or to such other address or by such other means of communication as the Insurer shall notify to the Assured from time to time:

- 16.2 by the Insurer to the Assured shall be sent to the address, facsimile number or e-mail address shown after the Assured's name on the first page of this Policy. Proceedings issued by the Insurer against the Assured shall be deemed to have been duly served if delivered to such address.

#### **17. Claims Notification and Provision of Information**

- 17.1 It is a condition precedent to liability of the Insurer under this Policy that the Assured shall:

- 17.1.1 notify the Insurer in Writing as soon as reasonably practicable of any event or circumstance which may give rise to a claim under this Policy.
- 17.1.2 notify the Insurer in Writing forthwith of any legal or other proceedings brought against the Assured or in respect of the Insured Vessel(s).

- 17.1.3 provide to the Insurer or to any party nominated by the Insurer as soon as reasonably practicable all material, including documents, photographs or reports in the possession of the Assured or its agents, and any information known to the Assured or its agents, relating to any event or circumstance which may give rise to a claim under this Policy, and continue to keep the Insurer advised of all material developments in respect of such an event or claim.
  - 17.1.4 notify the Insurer as soon as practicable of any opportunity to obtain information, relating to an event or circumstance which may give rise to a claim under this Policy, including but not limited to an opportunity to conduct medical examinations, surveys in respect of any Cargo, Vessel(s) or any other object.
  - 17.1.5 give full co-operation to the Insurer in any investigation conducted by or on behalf of the Insurer into any event or circumstance which may give rise to a claim under this Policy.
  - 17.1.6 not make any admission of liability, responsibility or blame to any third party in respect of any event or circumstance which may give rise to a claim under this Policy.
- 17.2 unless the Insurer in its discretion decides otherwise, it is a condition precedent to the Assured's right to recover under the Policy in respect of any liabilities, costs or expenses that he shall first have discharged or paid the same out of funds belonging to him unconditionally and not by way of a loan or otherwise.

## **18. Claims Handling**

The Insurer shall be entitled on such terms as they may require to assume control of the conduct of any claim, legal proceedings, arbitration or participation by the Assured in any inquiry or investigation, in respect of any event or matter which may give rise to a claim under this Policy.

The Insurer may direct the Assured to take any step in connection with the conduct of such a claim, legal proceedings, arbitration, inquiry or investigation, including the conclusion of a settlement or compromise agreement.

In the event of a failure by the Assured to act as directed by the Insurer, any claim under this Policy shall be limited to the amount of the claim which would have been recoverable had the Assured acted as directed by the Insurer.

## **19. Assistance in Handling Claims**

The Insurer may, subject to the terms of this Policy, appoint on behalf of the Assured any Person to assist in or advise on the conduct of any investigation, claim or legal or other proceedings, in respect of any event that may give rise to a claim under this Policy.

Any Person so appointed, or appointed by the Assured with the Insurer's consent, will act for and on the instructions of the Assured as principal, but shall, without reference to the Assured, disclose all material, documents or information relating to such investigation, claim or legal or other proceedings to the Insurer, as if the Insurer were his principals.

## **20. The Provision of Security**

The Insurer is under no obligation, but may, provided all sums due to the Insurer from the Assured are paid and otherwise on such terms as the Insurer shall agree, provide security in respect of any claim against the Assured by any party in respect of any of the risks referred to at Section A. The Insurer shall not provide security in respect of risks covered under Section A.III, except by way of security provided to an opponent party for the costs of the Assured ordered to be provided by a Court or Tribunal, or pursuant to the terms of an agreement with such opponent party as the Insurer may agree in Writing. The Assured shall indemnify the Insurer for the costs of, or liability incurred to any Third Party under the security so provided, save to the extent that such costs or liability are recoverable under this Policy.

## **21. Recoveries and Subrogation**

Where the Insurer has made a payment to or on behalf of the Assured in respect of a claim or for legal costs and expenses pursuant to Clause A.III under this Policy, and the Assured, or any person on the Assured's behalf, obtains the recovery or reimbursement of any sum representing all or part of the liability, loss, cost or expense which was the subject of the claim or legal costs and expenses pursuant to Clause A.III so paid, such sum shall be applied in favour of the Insurer and the Assured in the proportions of their respective contributions to such payment.

The Insurer shall be subrogated to all rights which the Assured may have against any third party in respect of any payment made under the policy, to the extent of such payment, and the Assured shall, at the request on the Insurer, execute forthwith any document required by the Insurer for the purpose of the exercising of such rights.

## 22. Limitation of Liability

Cover under this Policy for a liability incurred by the Assured or in respect of the Insured Vessel(s) shall be limited to such liability as may be established under the applicable law, or as may be agreed to in Writing by the Insurer, and shall be limited in particular by reference to any legal provision under the applicable law providing for the limitation of liability in respect of the Assured, in its capacity as Charterer of the Insured Vessel(s).

## 23. Duties of the Assured

- 23.1 The Assured must make a fair presentation of the risk (as set out in the Insurance Act 2015 or successor or amending legislation) in proposing for, or proposing to vary, this insurance.
- 23.2 Section 8 of the Insurance Act 2015 which sets out the remedies for breach of the duty of fair presentation does not apply to this policy. Any breach of the duty of fair presentation shall entitle the Insurer to avoid this policy, regardless of whether such breach is deliberate, reckless or otherwise.
- 23.3 Section 14 of the Insurance Act 2015 which abolishes the remedy of avoidance of this policy on the grounds that the duty of utmost good faith has not been observed does not apply to this policy. This policy shall be deemed to be a contract of utmost good faith, and any breach of that duty shall entitle the Insurer to avoid this policy.

## 24. Disputes and Governing Law

Save where Clauses A.III.1 to A.III.4 apply:

- 24.1 The Assured hereby submits to the jurisdiction of a competent court in the country in which the Insurer issues the policy in respect of any action brought by the Insurer to recover sums which the Insurer may consider to be due to it from the Assured. Without prejudice to the foregoing, the Insurer shall be entitled to commence and maintain in any jurisdiction any action to recover sums which the Insurer may consider to be due to it from the Assured.
- 24.2 Any other dispute or difference arising between the Insurer and the Assured under this Policy shall in the first instance be referred to the Claims Committee for consideration and adjudication. Such reference shall be on written submissions only.
- 24.3 If the Assured does not accept the decision of the Claims Committee, such difference or dispute shall be referred to the arbitration in Singapore of two arbitrators (one appointed by the Insurer and the other by the Assured) and an Umpire to be appointed by the Arbitrators, and the submission to arbitration and the proceedings therein shall be subject to the provisions of the Arbitration Act 1996, and any statutory modification or re-enactment thereof for the time being in force.
- 24.4 This Policy shall be governed by and construed in accordance with English law.
- 24.5 Unless expressly stated to the contrary in this policy the Insurance Act 2015 and any applicable subordinate, amending or successor legislation or regulation in force from time to time applies to this policy. Where the Insurance Act 2015 is not applicable, the Marine Insurance Act 1906 shall govern this policy.
- 24.6 In addition to the provisions of Clause B.23 above, the following provisions of the Insurance Act 2015 are excluded from this policy:
  - 24.6.1 Section 10 of the Insurance Act 2015 which abolishes the discharge of the Insurer's liability under the policy where the Assured has breached a warranty does not apply to this policy. All warranties in this policy must strictly be complied with and if any of the Assured, Joint Assured or Co-Assured fails to comply with any warranty the Insurer shall be discharged from liability from the date of the breach, regardless of whether the breach is subsequently remedied.
  - 24.6.2 Section 11 of the Insurance Act 2015 which abolishes the right of the Insurer to discharge its liability under the policy where the Assured has breached a term of this policy that is not relevant to the actual loss which occurred does not apply to this policy. All the terms of this policy (including any terms subsequently endorsed) and terms which tend to reduce the risk of loss of a particular kind, loss at a particular location and/or loss at a particular time, must be strictly complied with and if any of the Assured, Joint Assured or Co-Assured fails to comply with any such term, the Insurer's liability may be excluded, limited or discharged in accordance with this policy notwithstanding that the breach could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

24.6.3 Section 13 of the Insurance Act 2015 which prohibits the Insurer from terminating a group insurance policy from the date of a fraudulent act committed by or on behalf of one Assured, Joint Assured or Co-Assured does not apply to this policy. The Insurer shall be entitled to exercise its right to terminate this policy in the event that a fraudulent claim is submitted.

For the avoidance of doubt Section 12 of the Insurance Act 2015 which entitles the Insurer to deny any fraudulent claims, recover sums paid in respect of such fraudulent claims and treat this policy as having been terminated as a result of fraudulent claims made by any of the Assured, Joint Assured or Co-Assured does apply to this policy and remains in full force and effect.

24.6.4 Section 13A of the Insurance Act 2015 which implies a term in this policy that where the Assured makes a claim under this policy, the Insurer must pay any sums due in respect of that claim within a reasonable time does not apply to this policy. This policy shall not be subject to nor shall the Insurer be in breach of any implied term that it will pay any sums due in respect of any claim within a reasonable time save where the breach is deliberate or reckless.

24.7 The Insurance provided by the Insurer shall not nor is intended to confer any right or benefit on any third party under the Contracts (Rights of Third Parties) Act 1999 or any similar provision, enactment or principle of law contained in the laws of any State which purports to do so.

## 25. Definitions and Construction

25.1 For the purpose of this Policy the terms set out below shall be defined as stated:

*Assured* – The Person insured under the Policy of Insurance and who is stated as being the Assured in the Policy of Insurance. Where the context permits, Assured shall also mean Joint Assured.

*Claims Committee* – A committee constituted periodically by the Insurer to consider claims issues and disputes that may arise from time to time.

*Cargo* – Goods which are the subject of a contract of carriage to which the Assured or the Owner of the Insured Vessel is party including packaging or securing materials, other than containers supplied by or on behalf of the Assured.

*Charterer* – A party to a contract for the use of or service by an Insured Vessel on the basis of a voyage between ports or places, or for a designated trip or period, or for use of part of an Insured Vessel for the carriage of Cargo between ports, or for the carriage of a specified quantity of Cargo between ports or places.

*Charterparty* – A contract for the use of Vessel for a designated period, or between ports and places, other than a bareboat charter or charter by demise, or a contract for the use of a Vessel for an identified period, or for the use of part of a Vessel's Cargo carrying capacity between ports or places, or for the carriage of a specified quantity of Cargo between ports and places.

*CMR Convention* – The Convention on the Contract for the International Carriage of Goods by Road of 19th May 1956, as amended by the CMR Protocol of 5th July 1978.

*Co-Assured* – A Person named as a Co-Assured in the Policy of Insurance.

*Combined Single Limit* – The maximum figure for which the Insurer is liable in respect of any claim or claims under this Policy arising out of any one event, accident or occurrence, or any series of accidents or occurrences arising out of one event.

*Crew* – Any person (including the Master) employed or engaged to serve on board the Insured Vessel(s) under Articles of Agreement or other crew agreement or contract of service of or employment, including a substitute for such a person.



*Date Recognition Problem* – Any failure or anticipated failure of or inability of any computer system, software, hardware, integrated circuit, microchip, operating system and/or any other electronic device or component correctly, unambiguously or completely to assign, exchange, interpret, manipulate, process, recognise, sequence or transfer any time, year, date or date-like code, data or information.

*Hague Rules* – The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading of Brussels, 25th August 1924.

*Hague-Visby Rules* – The International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25th August 1924, as amended by the Protocol signed at Brussels on 23rd February 1968 and The Protocol signed at Brussels on 21st December 1979.

*Hamburg Rules* – The United Nations Convention on the Carriage of Goods by Sea signed at Hamburg on 31st March 1978.

*Hull and Machinery insurance* – Insurance in respect of the Insured Vessel(s)'s Hull and Machinery, increased value and excess liability.

*Insured Vessel* – A Vessel (including its hull, machinery and equipment, including bunkers and stores and supplies belonging to the Owner) employed or part of which is employed under the terms of the Charterparty as defined in this Policy for the use of a Vessel for the carriage of Cargo, where that Charterparty has been declared under this Policy and accepted by the Insurer.

*Insurer* – The Insurer in any of the following countries which issues the policy.

Singapore – QBE Insurance (Singapore) Pte Ltd

Hong Kong – QBE Hongkong & Shanghai Insurance Ltd

Malaysia – QBE Insurance (Malaysia) Berhad

Indonesia – PT QBE General Insurance Indonesia

Philippines – QBE Seaboard Insurance Philippines, Inc.

Vietnam – QBE Insurance (Vietnam) Company Limited

*Joint Assured* – A Person insured under the Policy of Insurance and who is stated to be the Joint Assured in the Policy of Insurance.

*Net Loss* – Loss suffered after deductions are made in respect of costs and expenses which would have been incurred in the ordinary course of the trading or operation of the Insured Vessel(s) in respect of bunkers, stores, Crew wages, insurance and port charges.

*Occupational Disease* – Any disease caused or aggravated by the conditions in which a person works which is both caused by that person's occupational environment or a disease inducing agent or agents present in that occupational environment, and has resulted in that person becoming disabled, or requiring medical treatment or dying.

*Cumulative Injury* – Any injury which is suffered by any person and which is both not traceable solely to a single accident or series of accidents arising out of one event which occurred during that person's occupation, and has occurred by reason of or has been aggravated by a repetitive occupational activity.

*Owner* – The Owner of an Insured Vessel or a Disponent Owner under the terms of a Charterparty, as defined in this Policy of an Insured Vessel to which the Assured is party as Charterer.

*Passenger* – A person on board the Insured Vessel(s) by virtue of their holding a ticket and making a payment of money for passage on board the Insured Vessel(s).

*Person* – A natural person, an incorporated or unincorporated body or a combination of both.

*Policy Period* – The period of insurance under this Policy agreed by the Insurer and shown on the Policy.

*Special Operations* – Any operation other than the carriage of Cargo or provision of Passenger services, including but not limited to: salvage; firefighting; exploration, surveying, drilling, production, and associated services in respect of oil, gas or minerals; oil storage; underwater operations by a submarine or other submersible, commercial diving and underwater surveying; construction, including pile driving, blasting, and the transport and construction of offshore installations; dredging, and the removal and discharge of dredging or other spoil; cable or pipeline laying or recovery, including preparatory surveying, laying or recovery operations and maintenance; waste incineration or disposal; pollution control; search and rescue at sea; research at sea; leisure, accommodation and catering services on board a permanently moored Vessel.

*Stevedore* – Any Person engaged to handle Cargo of the Insured Vessel(s) including but not limited to linesman, longshoreman, crane or forklift drivers and tally clerks.

*Sub-Charterer* – the Charterer of an Insured Vessel under the terms of a Charterparty to which the Assured is party as a Disponent Owner.

*Supernumerary* – Any person, not being a member of the Crew, whom the Assured directs to go on board the Insured Vessel(s) whilst, and only whilst such person is on board the Insured Vessel(s), including but not limited to a port captain, superintendent or person employed by or on behalf of the Assured to carry out repairs or maintenance on the Insured Vessel(s).

*Third Person* – Any person on board the Insured Vessel(s), with or without the approval or agreement of the Assured, not being a member of the Crew, Passenger, Supernumerary or Stevedore. A Third Person shall include but shall not be limited to a Surveyor, Inspector, Pilot, Customs Officer and a SuperCargo nominated by any Charterer of the Insured Vessel(s).

*Towcon* – The BIMCO standard form for International Ocean Towage for lump sum payment.

*Towhire* – The BIMCO standard form for International Ocean Towage for payment by way of daily hire.

*Vessel* – Any ship, boat, hovercraft or other description of vessel or structure (including any ship, boat, hovercraft or other vessel or structure under construction) used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water or any part thereof or any proportion of the tonnage thereof or any share therein.

*Wreck* – Any vessel or craft which is disabled, and is stranded or has sunk, and which is not the subject of a contract for the provision of salvage services.

*Writing* – Text in English communicated by letter, notice, facsimile or e-mail

- 25.2 Words importing the singular shall include the plural and vice versa.
- 25.3 Words importing the masculine shall include the feminine.
- 25.4 Words importing natural persons shall include individuals and any legal entity including corporations or partnerships.
- 25.5 The headings and sub-headings in this Policy are for guidance only and are not to be taken into account in its construction or interpretation.

## **SECTION C – EXCLUSIONS AND RESTRICTIONS AND LIMITATIONS**

### **1. Time Bar**

There shall be no cover under this Policy in respect of any claim unless:

- 1.1 the Assured gives notice of the event or casualty within 12 months of the Assured having notice of or gaining knowledge of that event or casualty, or
- 1.2 requests reimbursement of any costs or expenses covered under the terms of this Policy within 12 months of that cost or expense being incurred.

If such notice or request is not given within the period required the claim shall be treated as extinguished and any liability of the Insurer discharged.

### **2. Double Insurance**

There shall be no cover under this Policy in respect of any claim:

- 2.1 which falls within the scope of cover provided under any other insurance in respect of the Assured, or
- 2.2 which would be so covered but for a provision in that other insurance which seeks or purports to exclude or limit liability on the basis of double insurance.

### **3. Commercial Losses**

There shall be no cover under this Policy for loss, suffered by the Assured, or non-payment to the Assured, of:

- 3.1 freight or hire payable in respect of the Insured Vessel(s) to the Assured in its capacity as a Disponent Owner under any sub-charterparty, contract of carriage or other contract for the employment of the Insured Vessel(s) to which it is party.
- 3.2 any sum by reason of the cancellation or termination of any such charterparty, contract of carriage or other contract for the employment of the Insured Vessel(s) to which the Assured is party as a Disponent Owner.
- 3.3 any delay in or suspension or cessation of the service or employment of the Insured Vessel(s) under any sub-charterparty, contract of service or other contract for the employment of the Insured Vessel(s) to which the Assured is party as a Disponent Owner in respect of the Insured Vessel(s).

### **4. Financial Default and Fraud**

There shall be no cover under this Policy in respect of any liabilities, costs, expenses or losses which arise by reason of:

- 4.1 any debt or claim being unrecoverable from any party by reason of insolvency, financial default or impecuniosity of any party except:
- 4.2 fraud perpetrated against the Assured or the misappropriation of monies belonging to the Assured or held on the Assured's behalf

### **5. Illegal and Reckless Trading**

There shall be no cover under this Policy in respect of any liabilities, costs or expenses which arise by reason of the use of the Insured Vessel(s), by or on behalf of the Assured, or with the knowledge, connivance, complicity or reckless disregard of the Assured for:

- 5.1 the carriage of contraband.
- 5.2 trade in breach of sanctions imposed by a competent authority or the running of any blockade.
- 5.3 any illegal or unlawful trade.
- 5.4 any employment or trade which exposes the Insured Vessel(s) or the Assured to unreasonable or unnecessary risk or hazard.

## **6. Occupational Disease or Cumulative Injury**

There shall be no cover under this Policy in respect of any liabilities, costs or expenses which arise by reason of or in connection with:

- 6.1 Occupational Disease suffered by any person.
- 6.2 Cumulative Injury suffered by any person.
- 6.3 Death of any person caused by or contributed to by Occupational Disease or Cumulative Injury.

## **7. Punitive or Exemplary Damages**

There shall be no cover under this Policy in respect of liability for or exposure to:

- 7.1 punitive or exemplary damages.
- 7.2 any amount payable under any judgment or award of any Court or tribunal in favour of any third party which is not compensatory in nature or which is not payable in respect of loss or damage sustained by that third party except as provided under Clause A.I.23.

## **8. Third Party Benefit**

This Policy or any Endorsement hereto is evidence only of the contract of indemnity insurance between the Assured(s) and the Insurer and shall not be construed as evidence of any undertaking, financial or otherwise, on the part of the Insurer to any other party.

This Policy does not confer on any party other than the Assured(s) any benefit, right, entitlement or interest.

In particular, in the event that an Assured tenders this Policy/Endorsement as evidence of insurance under any applicable law relating to financial responsibility, including but not limited to the Oil Pollution Act 1990 or any similar Federal or State Laws, or otherwise shows or offers it to any other party as evidence of insurance, such use of the Policy/Endorsement by the Assured is not to be taken as any indication that the Insurer thereby consents to act as guarantor or to be sued directly in any jurisdiction whatsoever. The Insurer does not so consent.

## **9. Radioactive, Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion**

This Clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

- 9.1 In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from:
  - 9.1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.
  - 9.1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof.
  - 9.1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
  - 9.1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.
  - 9.1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

## 10. War Risks

There shall be no cover under this Policy for loss, damage, liability or expense caused by:

- 10.1 war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power or any act of terrorism.
- 10.2 capture, seizure, arrest, restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat.
- 10.3 mines, torpedoes bombs or other weapons of war,

except as provided under Section A.II.

## 11. General Exclusions

For the avoidance of doubt, there shall be no cover in respect of liability, costs or expenses arising in connection with the following except in so far as specifically provided for under the Clauses referred to:

- 11.1 Pollution - except as provided under Clause A.I.19 and Clause A.I.20.
- 11.2 Salvage - except in respect of a claim for salvage which forms part of a claim for:
  - 11.2.1 Special Compensation under Clause A.I.21.
  - 11.2.2 Third Party General Average Contributions under Clause A.I.30.
  - 11.2.3 Life Salvage under Clause A.I.13.
- 11.3 Towage, except as provided under Clause A.I.29.
- 11.4 In connection with a Special Operation(s) undertaken, or to be undertaken, by an Insured Vessel(s).
- 11.5 Passengers - except as provided under Clauses A.I.4, A.I.5, A.I.6, A.I.7, A.I.12, A.I.13 and A.I.18.
- 11.6 In any event liability to a Passenger shall be limited to the extent that the Assured would be liable had any contract with that Passenger provided the Assured with the maximum protection by way of the limitation or exclusion of liability permitted in accordance with the applicable law.

## 12. Electronic Date Recognition

The cover provided under this Policy shall not be prejudiced by reason of a loss being caused or contributed to by a Date Recognition Problem provided always that this insurance will not cover any loss, damage, liability, or expense which has resulted from a want of due diligence by the Assured, Owners or Managers in respect of a Date Recognition Problem.

This insurance shall not cover:

- 12.1 any expense incurred in respect of testing for, discovering, rectifying, correcting, averting or minimizing any Date Recognition Problem.
- 12.2 the cost of reprogramming or correcting any computer hardware, microchip, software, operating system, code or data.
- 12.3 the cost of repairing or replacing any computer hardware, microchip software, operating system, code or data that has broken down or malfunctioned as a consequence of any Electronic Date Recognition Problem.

## 13. Indemnities and Contractual Liabilities

Any claim in respect of liabilities, costs, expenses, compensation or wages under this Policy which arise by reason of an indemnity granted by the Assured or under the terms of a contract to which the Assured is party shall only be covered under this Policy if the terms of such indemnity or contract have the prior approval in Writing of the Insurer.

#### **14. Cyber Attack Exclusion**

- 14.1 Subject only to Clause C.14.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
- 14.2 Where this Clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any Person acting from a political motive, Clause C.14.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system, computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

#### **15. Trading Losses**

This insurance shall not cover liabilities, costs or expense incurred by the Assured in a capacity as an Owner of any Cargo, or an intermediary or broker in any transaction relating to any Cargo, including but not limited to liabilities, costs or expense in respect of :

- 15.1 any loss of or damage to Cargo not sustained on board an Insured Vessel(s) or in the course of loading or discharge.
- 15.2 any failure by Cargo to comply with contractual specifications under any contract of sale except where such failure is due to loss or damage sustained on board an Insured Vessel(s) or in the course of loading or discharge.
- 15.3 loss of market or trading losses, except where such loss is due to loss or damage sustained on board an Insured Vessel(s) or in the course of loading or discharge.

#### **16. Storage of Cargo**

This insurance shall not cover any liabilities, costs or expense incurred, any Charterparty or other contract for storage of Cargo, other than storage which is directly incidental to the carriage of Cargo between ports or places.

#### **17. Sanctions Limitation and Exclusion**

There shall be no cover under this policy and the Insurer shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer or any member of the Insurer's group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

There shall be no entitlement under any circumstances for the Assured to recover under this policy that part of any liability, cost or expense which is not recovered or recoverable by the Insurer from any reinsurer because of a shortfall in recovery or non-recovery from such reinsurer by reason of any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

The terms 'shortfall' or 'non-recovery' include, but are not limited to, any failure or delay in payment to the Insurer by such reinsurer, and/or payment to an account other than an account of, or for the benefit of, the Insurer, in compliance with a requirement imposed by any recognised authority of competent jurisdiction to enforce any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

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