



GARD ADDITIONAL COVERS

Terms and Conditions 2012

A supplement to standard P&I and Marine insurances

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PART I GENERAL PROVISIONS

Chapter 1 Introductory provisions

Section 1 Interpretation

- 1** In these Terms and Conditions the following words or expressions shall have the following meanings:

Affiliate

any person who is covered pursuant to Section 39.1.a.

Assured

any entity named as Assured in the Insurance Policy, including, where the context allows, any Co-Assured.

Co-Assured

any person who is covered pursuant to Section 39.1.b.

Cover

insurance by the Insurer in accordance with these Terms and Conditions on terms as agreed in the Insurance Policy.

Hull Policies

the insurance policies effected on the hull and machinery of the Ship, including any excess liability policy.

Insurance Policy

document issued by the Insurer pursuant to Section 5.1, including (where the context permits) any endorsement note issued pursuant to Section 5.3, which evidences the terms and conditions of the contract of insurance between the Insurer and the Assured.

Insurer

the insurer identified in the Insurance Policy.

Owner

an owner or bare-boat charterer of a Ship or Ships.

Period of Insurance

the duration of the Cover as set out in Section 4 of these Terms and Conditions and the Insurance Policy.

Premium

the agreed premium payable to the Insurer in respect of the Cover under the Insurance Policy.

Ship

the ship(s) or other floating structure(s) identified in the Insurance Policy

Standard P&I Cover

insurance with Gard P. & I. (Bermuda) Ltd or Assuranceforeningen Gard - gjensidig - on Rules for P&I insurance or such other terms approved by the Insurer

- 2** Words and expressions used in the Terms and Conditions which are not specifically defined herein shall be deemed to have the same meaning as in a Standard P&I Cover.
- 3** Headings and notes are for reference only, and shall not affect the construction of these Terms and Conditions.

- 4 Any reference to natural persons shall be deemed to include a reference to an individual or a body corporate or unincorporate, as the context requires.
- 5 Where any matter requires the agreement, approval or consent of the Insurer, agreement, approval or consent shall only be deemed given if in writing.

Section 2 The cover

- 1 An Assured shall be covered for such of the risks specified in Part II as are agreed between the Assured and the Insurer in accordance with these Terms and Conditions and as specified in the Insurance Policy.
- 2 If the Insurer is a mutual association the Additional Cover shall not give the Assured rights to membership with the Insurer.
- 3 The Assured is only covered in respect of liabilities, losses, costs and expenses incurred by him which arise out of events occurring during the Period of Insurance for the relevant risk.

Chapter 2 Application for Cover and the Period of Insurance

Section 3 Application for Cover

An application for Additional Cover shall be made in such form as may from time to time be required by the Insurer. The particulars given in any application form, together with any other particulars or information given in writing in the course of applying for Cover or negotiating changes in the terms of Cover, shall form the basis of the contract of insurance between the Assured and the Insurer.

Section 4 Period of Insurance

The Additional Cover shall commence and terminate at the time and date agreed by the Insurer, which shall be specified in the Insurance Policy. The time between commencement and termination shall be the Period of Insurance.

Section 5 Insurance Policy

1 When a contract of insurance has been concluded, the Insurer shall issue an Insurance Policy which shall evidence the terms and conditions of the contract of insurance.

2 The following provision will be deemed to be attached to all Insurance Policies:

"This Insurance Policy is evidence only of the contract of insurance between the above named 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.

In the event that an Assured tenders the Insurance Policy as evidence of insurance under any applicable law relating to financial responsibility, or otherwise shows or offers it to any other party as evidence of insurance, such use of the Insurance Policy 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."

3 If the Insurer and an Assured shall at any time agree a variation in the terms and conditions for the Cover, the Insurer shall issue an endorsement note to state and record the terms of such variation and the date from which the variation is to be effective.

Chapter 3 Conditions of Cover

Section 6 The Assured's duty of disclosure

- 1 The Assured shall prior to the conclusion of the contract of insurance make full disclosure to the Insurer of all circumstances which would be of relevance to the Insurer in deciding whether and on what conditions to accept the conditions of insurance. Should the Assured subsequently become aware of any such circumstances as are mentioned above, or of any change in such circumstances as previously disclosed, he must without undue delay inform the Insurer.
- 2 Where the Assured at the conclusion of the contract of insurance has neglected his duty of disclosure and the Insurer would not have accepted the conditions of insurance at the Premium agreed if the Assured had made such disclosure as it was his duty to make, the Insurer is free from liability. Where the Insurer would have accepted the conditions of insurance at the same Premium but on other conditions, the Insurer shall only be liable to the extent that it is proved that any liability, loss, cost or expense would have been covered under those conditions the Insurer would have accepted.
- 3 Where the Assured neglects his duty of disclosure subsequent to the conclusion of the contract of insurance and the Insurer would not have accepted the conditions of insurance at the same Premium had it known of the circumstances prior to the conclusion of the contract, the Insurer is free from liability. Where the Insurer would have accepted conditions of insurance at the same Premium but on other conditions, the Insurer shall only be liable to the extent that it is proved that any liability, loss, cost or expense would have been covered under those conditions the Insurer would have accepted.

Section 7 Alteration of risk

- 1 Where after the conclusion of the contract of insurance circumstances occur which result in an alteration of the risk, the Assured shall disclose such circumstances to the Insurer without undue delay.
- 2 Where there is an alteration of the risk which has been intentionally caused or agreed to by the Assured and the Insurer would not have accepted the conditions of insurance at the same Premium if it had known of such an alteration prior to the conclusion of the contract of insurance, the Insurer is free from liability to the extent that the liability, loss, cost or expense incurred by the Assured was caused or increased by the alteration. Where the Insurer would have accepted the conditions of insurance at the same Premium but on other conditions, the Insurer shall only be liable to the extent that it is proved that any liability, loss, cost or expense would have been covered under those conditions the Insurer would have accepted.

Section 8 Classification and certification of the Ship

- 1 It shall be a condition of the Cover that the Ship shall be and remain throughout the period of entry classed with a classification society approved by the Insurer.
- 2 To the extent the Assured or Co-Assured is an owner of the Ship or has responsibility for maintenance of the Ship, or for compliance with classification or statutory maintenance of the Ship, or otherwise for compliance with classification or statutory requirements, it shall be a condition of the cover that:
 - a the Assured shall promptly call to the attention of that classification society any incident, occurrence or condition which has given or might have given rise to damage in respect of which the classification society might make recommendations as to repairs or other action to be taken by the Assured;
 - b the Assured shall comply with all the rules, recommendations and requirements of that classification society relating to the Ship within the time or times specified by the society;

- c** the Insurer is authorised to inspect any documents and obtain any information relating to the maintenance of class of the Ship in the possession of any classification society with which the Ship is or has at any time been classed prior to and during the Period of Insurance and such classification society or societies are authorised to disclose and make available such documents and information to the Insurer upon request by it and for whatsoever purpose the Insurer in its sole discretion may consider necessary;
 - d** the Assured shall immediately inform the Insurer if, at any time during the Period of Insurance, the classification society with which the Ship is classed is changed and advise the Insurer of all outstanding recommendations, requirements or restrictions specified by any classification society relating to the Ship as at the date of such change;
 - e** the Assured shall comply or procure compliance with all statutory requirements of the state of the Ship's flag relating to the construction, adaptation, condition, fitment, equipment, manning, safe operation, security and management of the Ship and at all times maintain or procure the maintenance of the validity of such statutory certificates as are issued by or on behalf of the state of the Ship's flag in relation to such compliance.
- 3** The Insurer shall notify the Assured when it intends to inspect classification documents or request information from a classification society in accordance with Section 8.2.c.

Section 9 Survey

- 1** To the extent the Assured or Co-Assured is an Owner of the Ship or has responsibility for maintenance of the Ship, or for compliance with classification or statutory maintenance of the Ship, or otherwise for compliance with classification or statutory requirements, the following requirements shall apply:
- a** The Insurer may at any time during the Period of Insurance appoint a surveyor to inspect the Ship on behalf of the Insurer.
 - b** Where the Ship has been laid-up for a period exceeding six months, the Assured shall give the Insurer not less than seven days notice prior to the Ship leaving the place of lay-up for recommissioning, to afford the Insurer an opportunity to inspect the Ship pursuant to Section 9.1.
 - c** Should the Assured refuse to co-operate in an inspection under Section 9.1.a, or fail to give notice in accordance with Section 9.1.b, the Insurer shall thereafter be liable only to the extent that the Assured can prove that any liability, cost or expense is not attributable to defects in the Ship that would have been detected in the course of an inspection under Section 9.1.a.
 - d** Where an inspection reveals matters which, in the sole determination of the Insurer, represent a deficiency in the Ship, the Insurer may exclude specified liabilities, losses, costs and expenses from the Cover until the deficiency has been repaired or otherwise remedied.

Chapter 4 Premium

Section 10 Premiums

A premium shall be payable to the Insurer in an amount agreed between the Insurer and the Assured for the Period of Insurance.

Section 11 Payment

- 1 Unless otherwise agreed with the Insurer, Premiums are due at the inception of the Period of Insurance
- 2 Any other sums debited by the Insurer to an Assured, including reimbursement of deductibles, interest, costs or expenses, are due on demand.
- 3 If any sums due to the Insurer from the Assured are not paid on or before the due date interest is chargeable on such unpaid sums at such rate as the Insurer may from time to time decide.

Section 12 Set-off

- 1 Without prejudice to anything elsewhere contained in these Terms and Conditions, the Insurer shall be entitled to set off any amount due from an Assured to the Insurer against any amount due from the Insurer to such Assured or its Co-assureds or Affiliates.
- 2 An Assured shall not be entitled to set off against any amount due from the Assured to the Insurer the amount of any claim the Assured, the Co-assured(s) or Affiliate(s) may have against the Insurer.

Chapter 5 Termination and cesser

Section 13 Termination by the Insurer

- 1 The Insurer may terminate the Insurance Policy:
 - a without notice, where a casualty or other event has been brought about by wilful misconduct on the part of the Assured, as defined in Section 18;
 - b on three days' notice, where the Assured has failed to pay when due and demanded any premium or other amount due from him to the Insurer;
 - c on 14 days' notice, where the Assured has neglected a duty of disclosure under Section 6 or Section 7 or where there has been an alteration of the risk after conclusion of the contract of insurance;
 - d on 45 days' notice, without giving any reason.
- 2 Notwithstanding and without prejudice to Section 13.1, the Insurer may, on such notice in writing as the Insurer may decide, terminate the Cover in circumstances where the Assured has exposed or may, in the opinion of the Insurer, expose the Assured or the Insurer to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by the State of the Ship(s) flag, by any State where the Insurer has its registered office or permanent place of business or by any State being a Major Power or by the United Nations or the European Union. For the purpose of this Section 13.2 "Major Power" means any of the following States: United Kingdom, United States of America, France, the Russian Federation and the People's Republic of China.

Section 14 Cesser

- 1 The Assured shall cease to be covered under the Additional Cover in the following circumstances:
 - a where the Assured is a corporation, a resolution is passed for the voluntary winding up of the Assured or an order is made for its compulsory winding up or it is dissolved or a receiver or similar official to all or part of its affairs is appointed or any secured party takes possession of any of its property or it seeks protection from its creditors under any applicable bankruptcy or insolvency laws or any similar event occurs (in the determination of the Insurer) in any applicable jurisdiction; and
 - b where the Assured is an individual, the Assured dies or becomes incapable by reason of mental disorder of managing or administering his property and affairs or he becomes bankrupt or he makes any composition or arrangement with his creditors generally or a receiving order is made against him or any secured party takes possession of any of his property or any similar event occurs (in the determination of the Insurer) in any applicable jurisdiction.
- 2 The Assured shall cease to be covered by the Insurer in respect of the Ship in the following circumstances:
 - a the Ship becomes a total loss;
 - b the Ship is accepted by the hull underwriters (whether of marine or war risks) as a constructive total loss;
 - c the Ship suffers damage and the cost of repairs (as determined by the Insurer) will equal or exceed the higher of 80% of its insured value or of its value in repaired condition (as determined by the Insurer);
 - d the Ship is transferred to a new owner by sale or otherwise;

- e** new managers of the Ship are appointed or there is a change in the operator of the Ship;
 - f** any mortgagee or other secured party enters into possession of the Ship;
 - g** the Ship ceases to be classed with a classification society approved by the Insurer, or its class is suspended;
 - h** the Ship is requisitioned;
 - i** the Ship, with the consent or knowledge of the Assured, is being used for the furtherance of illegal purposes.
- 3** Where the Ship disappears, it shall be deemed to be a total loss ten days from the day it is last heard of.
- 4** Notwithstanding and without prejudice to Sections 14.1, 14.2 and 14.3, an Assured shall forthwith cease to be covered if the Assured exposes the Insurer to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any State where the Insurer has its registered office or permanent place of business or by any State being a Major Power or by the United Nations or the European Union. For the purpose of this Section 14.4 "Major Power" means any of the following States: United Kingdom, United States of America, France, the Russian Federation and the People's Republic of China.
- 5** Notwithstanding the provisions of Sections 14.1, 14.2 and 14.4, the Insurer may decide in any particular case that Cover shall be continued without interruption, or that Cover shall be reinstated, in either case on such terms as the Insurer shall determine.

Section 15 Effect on Premiums of cesser or termination

Where the Cover ceases or is terminated, the Assured shall remain liable for all premiums in respect of the current Period of Insurance pro rata for the period up to the date of cesser or termination, and for all premiums in respect of any prior Periods of Insurance.

PART II AVAILABILITY OF COVER, RISKS COVERED AND SPECIAL EXCLUSIONS

Chapter 1 Availability of cover

Section 16 Availability of cover

- 1** The Insurer shall cover the categories of risks as set out below to the extent that they are specified in the Insurance Policy. The categories of risks are:
 - A** Comprehensive Carrier's Liability Cover (Section 17.A);
 - B** Extended Crew Cover (Section 17.B);
 - C** Deviation liability Cover (Section 17.C);
 - D** Tour Operator Passenger Liability Cover (Section 17.D);
 - E** Divers' Cover (Section 17.E).

- 2** Legal costs
The Insurer shall cover legal costs and expenses relating to any liability, loss, cost and expense which in the opinion of the Insurer is (or, save from any applicable deductible, would be) likely to result in claims on the Insurer under the Insurance Policy, but only to the extent that such legal costs and expenses have been incurred with the agreement of the Insurer.

- 3** Costs to avoid or minimise a liability or loss
 - a** The Insurer shall cover extraordinary costs and expenses reasonably incurred on or after the occurrence of a casualty or event for the purpose of avoiding or minimising any liability on the Insurer under the relevant Additional Cover, other than:
 - i** costs and expenses claimable in general average;
 - ii** costs and expenses relating to the Ship being overloaded or the cargo being incorrectly stowed;
 - iii** costs and expenses resulting from measures that have been or could have been accomplished by the Ship's or the Assured's own personnel or by reasonable use of the Ship's or the Assured's own equipment;
 - iv** costs and expenses resulting from making the Ship seaworthy for receiving cargo;

 - b** losses, costs and expenses incurred at the direction of the Insurer.

Chapter 2 Risks covered and special exclusions

Section 17 Risks covered and special exclusions

A Comprehensive Carrier's Liability Cover

1 Special Definitions

In this Section 17 A, the following words or expressions shall have the following meanings:

Bill of Lading: bill of lading or similar document of title.

Document: non-negotiable Bill of Lading, waybill or similar document provided production of such document by the person to whom delivery of the Cargo is made is required by the express terms of that document or the law to which that document or the contract of carriage contained in or evidenced by it, is subject.

Cargo: Any lawful and merchantable commodity or goods intended to be or being or having been carried on board a ship pursuant to a contract of carriage but excluding any other equipment, stores, fuel (unless carried as Cargo) or any other substance of whatsoever nature, and shall further exclude waste and residues of Cargo(es) and/or of such equipment, stores, fuels and/or other substances.

Owner of Cargo: Any buyer or seller of Cargo, or any holder of the Bill of Lading issued in respect of Cargo.

2 Capacity of the Assured

The cover afforded to the Assured shall extend only to liabilities, losses, costs or expenses that have arisen out of the activities and/or operations customarily carried on by or at the risk and responsibility of the Assured in any one of the capacities set out below, but only to the extent specified in the Insurance Policy:

- a an owner, operator or charterer of the Ship;
- b an owner or operator of a container accepted for carriage on the Ship;
- c a non vessel operating common carrier (NVOCC);
- d a user of a cargo terminal and cargo handling equipment;
- e an Owner of Cargo carried on a ship; or
- f an operator of a terminal.

3 Special conditions

None.

4 Risks covered

The Insurer shall cover any one of the risks set out below only to the extent specified in the Insurance Policy as "Covered" and always subject to the Terms, Conditions and Exclusions as set out in Sections 1-16 above, this Section 17 A and Sections 18-52 below: :

- a Cargo
Liabilities incurred by the Assured to cargo interests in respect of Cargo accepted for carriage by the Assured.

- b** Property
Liabilities incurred by the Assured in respect of physical loss of or damage to property not specified elsewhere in this Section 17 A other than property owned or leased by the Assured or by any company associated with the Assured.
- c** Personal injury, death, illness
Liabilities incurred by the Assured in respect of death, personal injury or illness of any person.
- d** Environmental damage
Liabilities incurred by the Assured in respect of environmental damage.
- e** Indemnities
Liabilities incurred by the Assured to any party to whom the Assured has given an indemnity.
- f** Waiver of general average contribution
Losses, costs and expenses incurred or suffered by the Assured as a result of having waived, in the Bill of Lading or Document, his right in whole or in part to claim general average contributions from the other parties to the adventure.
- g** Irrecoverable general average contribution
The proportion of general average which the Assured may be entitled to claim from cargo interests and which is not legally recoverable solely by breach of contract of carriage when the Cargo has been carried on terms less favourable to the Assured than compulsorily required, or otherwise applicable international conventions regulating carriage of goods by sea.

5 Special exclusions

5.1 Notwithstanding the terms of subsection 4 (a) above, the Insurer shall not cover liabilities, losses, costs and expenses as described in subsection 5.1 (i) to (iii) below, save to the extent any one or more of the liabilities, losses, costs and expenses listed below are identified as covered by the Insurer in the Insurance Policy subject to the special terms as set out in section 5.2 below.;

- i** *Delivery of cargo without production of Bill of Lading*
The Insurer shall not cover liabilities, losses, costs and expenses arising out of delivery of Cargo under a negotiable Bill of Lading without production of that Bill of Lading by the person to whom delivery is made;
- ii** *Delivery of cargo without production of a Document*
The Insurer shall not cover liabilities, losses, costs and expenses arising out of delivery of cargo carried under a Document without production of such Document by the person to whom delivery is made, where such production is required by the express terms of that Document or the law to which that Document (or the contract of carriage contained in or evidence by it) is subject;

- iii *Delivery of cargo without production of Bill of Lading or Document at a port or place other than stated in the Bill of Lading or document*
The Insurer shall not cover liabilities, losses, costs and expenses arising out of delivery of Cargo carried under a Bill of Lading or Document, at a port other than that stated in the Bill of Lading or Document, as the case may be, without production of all originals of that Bill of Lading or without production of such Document by the person to whom delivery is made, where such production is required by the express terms of that Document or the law to which that Document (or the contract of carriage contained in or evidence by it) is subject; and

5.2 Special terms delivery without production of Bill of Lading

If any one or more of the liabilities, losses, costs and expenses described in section 5.1 (i) to (iii) above are indentified as covered by the Insurer in the Insurance Policy, such cover shall be subject to the terms and conditions as set out in this section 5.2.

- i *Delivery of Cargo without production of Bill of Lading*

The Insurer shall cover liabilities, losses, costs and expenses arising out of delivery of Cargo under a negotiable Bill of Lading without production of that Bill of Lading by the person to whom delivery is made subject to the following terms, conditions, restrictions and limitations:

- a The Assured shall receive an undertaking on the terms of the Standard Form of Undertaking attached as Appendix 1 from either the charterer of the Ship or the person to whom delivery of the Cargo is made, or;
- b The Assured shall be required by law to deliver or relinquish custody or control of the Cargo without production of the Bill of Lading, or;
- c where delivery is made against a forged, fraudulent, misappropriated or otherwise unauthorised version of the Bill of Lading, the Assured shall satisfy the Insurer that he took such steps as appear to the Insurer to be reasonable to ascertain that the Cargo was properly delivered to the person entitled to such delivery, save that liabilities, losses, costs or expenses arising out of any wilful misconduct or gross negligence on the part of the Assured are always excluded, or;
- d where an agent or other designated representative acting on behalf of the Assured has caused the Cargo to be delivered without production of the relevant Bill of Lading, the Assured shall satisfy the Insurer that this has been done without the Assured's approval.

- ii *Delivery of Cargo without production of a Document*

The Insurer shall cover liabilities, losses, costs and expenses arising out of delivery of cargo carried under a Document without production of such Document by the person to whom delivery is made, where such production is required by the express terms of that Document or the law to which that Document (or the contract of carriage contained in or evidence by it) is subject, subject to the following terms, conditions, restrictions and limitations:

- a. The Assured shall receive an undertaking on the terms of the Standard Form of Undertaking attached as Appendix 2 from either the charterer of the Ship or the person to whom delivery is made, or;

- b. where delivery is made against a forged, fraudulent, misappropriated or otherwise unauthorised version of the Document, the Assured shall satisfy the Insurer that he has taken such steps as appear to the Insurer to be reasonable to ascertain that the Cargo was properly delivered to the person entitled to such delivery, save that liabilities, losses, costs or expenses arising out of any wilful misconduct or gross negligence on the part of the Assured are always excluded; or
- c. where an agent or other designated representative acting on behalf of the Assured has caused the Cargo to be delivered without production of the relevant Document, the Assured shall satisfy the Insurer that this has been done without the Assured's approval.

iii *Delivery of Cargo without production of Bill of Lading or Document at a port or place other than stated in the Bill of Lading or Document*

The Insurer shall cover liabilities, losses, costs and expenses arising out of delivery of Cargo carried under a Bill of Lading or Document, at a port other than that stated in the Bill of Lading or Document, as the case may be, without production of all originals of that Bill of Lading or without production of such Document by the person to whom delivery is made, where such production is required by the express terms of that Document or the law to which that Document (or the contract of carriage contained in or evidence by it) is subject, provided always that the party to whom delivery is made or the charterer of the Ship has given to the Assured an undertaking on the Standard Form of Undertaking attached as Appendix 3.

5.3 Environmental damage and clean up obligations and any consequential loss or damage relating thereto;

The Insurer shall not cover liabilities, losses, costs and expenses in respect of environmental damage and clean up obligations and any consequential loss or damage relating thereto, save insofar as such liabilities, losses, costs or expenses are caused by a sudden, unintended and unexpected escape of oil or any other substance, provided that

- a such escape of oil or any other substance does not result from any failure to comply with any national or international statute, rule or regulation; and
- b the Assured has submitted to the Insurer a written notice of claim within one year from the expiry of the Period of Insurance in which the event giving rise to the claim(s) occurred.

B *Extended Crew Cover*

1 Special definitions

In this Section 17 B, the following words or expressions shall have the following meanings:

Crew: Officers, including masters and seamen, contractually obliged to serve on board a Ship owned or operated by the Assured.

Personnel: Agents, servants, sub-contractors and employee(s) of the Assured other than Crew, performing functions directly related to the operation of a ship, mobile offshore unit or other floating structure.

2 Capacity of the Assured

The cover afforded to the Assured shall extend only to liabilities, losses, costs or expenses that have arisen out of the activities and/or operations customarily carried on by or at the risk and responsibility of the Assured in any one of the capacities set out below, but only to the extent specified in the Insurance Policy:

- a** an owner or operator of a Ship; and /or
- b** an employer of the Crew and/or Personnel involved; and/or
- c** a party otherwise responsible for the Personnel involved:

3 Special conditions

None.

4 Risks covered

a Crew and Personnel

The Insurer shall cover liabilities, losses, costs and expenses as covered by a Standard P&I Cover for Crew, Diversion expenses and Life salvage in respect of Crew and Personnel as specified in the Insurance Policy. The Insurer shall cover any one of the risks set out below, but only to the extent specified in the Insurance Policy:

i Crew whilst being on

- 1** leave; or
- 2** extended leave not exceeding the number of days specified in the Insurance Policy.

provided that the Crew member served on board a Ship immediately prior to commencing the leave.

ii Crew whilst being on standby duty waiting to be ordered by the Assured to commence to serve on board a Ship.

iii Crew and/or Personnel whilst attending or travelling to or from courses, seminars, training sessions, briefings, debriefings, visits to the Assured(s) office(s), conferences or similar arrangements at the request of the Assured provided that the Crew member's last service at sea was on a Ship or that the Crew member's next service at sea is on a Ship.

iv Crew and/or Personnel whilst attending a ship not being entered with the Insurer under a Standard P&I Cover on behalf of the Assured, including the travelling to or from that ship at the request of the Assured, prior to that ship being delivered to the Assured.

v Crew and/or Personnel whilst remaining on board a ship not being entered with the Insurer under a Standard P&I Cover on behalf of the Assured for a period specified in the policy at the request of the Assured after the Assured has sold or otherwise disposed of that ship, provided that the ship until she was sold or otherwise disposed of was entered with the Insurer under a Standard P&I Cover on behalf of the Assured.

vi Crew and/or Personnel whilst temporarily carrying out work on board, or travelling to or from a ship, mobile offshore unit or other floating structure not being entered with the Insurer under a Standard P&I Cover on behalf of the Assured; or on an offshore structure or installation or in or at a shore based work site; provided that such Crew and/or Personnel remain under the direction and responsibility of the Assured.

- b** Close relatives of Crew
The Insurer shall cover liabilities incurred by the Assured to compensate a member of Crew in respect of illness, injury or death of the Crew member's spouse and/or children, provided that the Assured's liability has arisen under terms of contract approved by the Insurer.
 - c** Third party liabilities incurred by the Crew and/or Personnel
The Insurer shall cover liabilities to third parties incurred by Crew or Personnel which are indemnified by the Assured, arising solely by reason of acts or omissions committed within the scope of the employment of the Crew or Personnel, provided always that the Assured took reasonable steps to avoid the event giving rise to the liability.
 - d** Assured's Reimbursement of Fines imposed on Crew
The Insurer shall cover fine(s) imposed upon Crew (including any associated legal and other costs thereto) by any court, tribunal or other authority of competent jurisdiction arising from any act, default or omission committed by the Crew within the scope of their employment, which the Assured reimburses with the agreement of the Insurer, provided always the Assured has satisfied the Insurer that the Assured took such steps as appear to the Insurer to be reasonable to avoid the event giving rise to the fine.
 - e** Extra costs of crew detention
The Insurer shall cover extra costs and expenses, over and above the costs that would have been incurred but for the incident, which are reasonably incurred by the Assured in relation to the detention of crew members where such detention has been ordered by a court or tribunal or any other legally empowered authority for the purpose of investigating a casualty or other event involving a Ship, where such extra costs and expenses are incurred with the approval of the Insurer and provided always that the Assured has satisfied the Insurer that he took such steps as appear to the Insurer to be reasonable to avoid the casualty or event giving rise to the detention.
- 5** Special Exclusions
- a** Other professional activities of the Crew and/or Personnel whilst on leave
The Insurer shall not cover liabilities, losses, costs and expenses incurred by the Assured as a result of the Crew and/or Personnel being engaged by others than the Assured on a professional basis or the Crew's and/or Personnel's own professional business activities.
 - b** Professional divers
The Insurer shall not cover liabilities, losses, costs and expenses in respect of the injury to or the illness or death of a professional or commercial diver employed by, or operating on behalf of, an Assured or an affiliated or associated company of an Assured arising out of or during professional or commercial diving activities.
 - c** Environmental damages and liabilities
The insurer shall not cover liabilities, losses, costs and expenses including fines in respect of environmental damage, clean up obligations and violations of MARPOL or other applicable laws or conventions and any consequential loss or damage relating thereto unless arising out of sudden and accidental escape or discharge of oil or other substances.

C *Deviation Liability Cover*

1 Special definitions

In this Section 17 C, the following words or expressions shall have the following meanings:

Bill of Lading: bill of lading or similar document of title.

2 Capacity of the Assured

The cover afforded to the Assured shall extend only to liabilities, losses, costs or expenses that have arisen out of the activities and/or operations customarily carried on by or at the risk and responsibility of the Assured in his capacity as an owner, operator or charterer of the Ship;

3 Special conditions

The Assured is only covered in respect of liabilities, losses, costs and expenses incurred by him which arise in direct connection with the operation of, the Ship and in respect of the Assured's interest in the Ship.

4 Risks covered

The Insurer shall cover liabilities incurred by the Assured to cargo interests in respect of cargo accepted for carriage by the Assured as a result of a deviation or departure from the contractually agreed voyage or adventure, as specified in the Insurance Policy.

5 Special exclusions

a *Cargo on deck*

The Insurer shall not cover liabilities, losses, costs and expenses arising out of cargo being carried on deck against under deck Bill(s) of Lading, save insofar as the Assured has notified the Insurer of the cargo being carried on deck against under deck Bill(s) of Lading once the Bill(s) of Lading has been issued and the Insurer has agreed to reinstate the cover on such terms and conditions as may be deemed appropriate and the Assured has agreed to such terms (including but not limited to the payment of additional premium).

b *Delivery of cargo without production of Bill of Lading*

The Insurer shall not cover liabilities, losses, costs and expenses arising out of delivery of cargo under a Bill of Lading without production of that Bill of Lading by the person to whom delivery is made.

c *Delivery of cargo at a port other than stated in the Bill of Lading*

The Insurer shall not cover liabilities, losses, costs and expenses arising out of delivery of cargo carried under a Bill of Lading issued in a set of two or more originals at a port other than that stated in the Bill of Lading without production of all originals of that Bill of Lading.

d *Environmental damage*

Liabilities, losses, costs and expenses in respect of environmental damage and clean up obligations and any consequential loss or damage relating thereto.

e *Personal injury, illness and death*

The Insurer shall not cover liabilities, losses, costs and expenses in respect of personal injury, illness or death of any person.

D *Tour Operator Passenger Liability Cover*

1 Special definitions

In this Section 17 E, the following words or expressions shall have the following meanings:

Passenger: Any person or persons intended to be or being or having been carried on the Ship pursuant to a contract of carriage or passage.

2 Capacity of the Assured

The cover afforded to the Assured shall extend only to liabilities, losses, costs or expenses that have arisen out of the activities and/or operations customarily carried on by or at the risk and responsibility of the Assured in any one of the capacities set out below, but only to the extent specified in the Insurance Policy:

- a** an owner, operator or charterer of the Ship,
- b** carrier or tour operator in relation to the Passenger.

3 Special conditions

None.

4 Risks covered

The Insurer shall cover liabilities to the Passenger or his estate as specified in the Insurance Policy. The available risks are:

- i** liability in respect of death of or personal injury sustained by the Passenger
- ii** liability in respect of loss of or damage to property, delay or other consequential losses sustained by the Passenger.

5 Special exclusions

Refund of passenger money

The Insurer shall not cover liabilities, losses, costs and expenses in respect of refund of passenger money, substitute cruises and future cruise discounts, except where, and only to the extent that, they form part of a claim recoverable under Section 17.E.4 above.

E *Divers' Cover*

1 Special definitions

In this Section 17 E, the following words or expressions shall have the following meanings:

Divers: Commercial or professional divers employed by, or operating on behalf of or under the direction and responsibility of the Assured or an affiliated or associated company of the Assured.

2 Capacity of the Assured

The cover afforded to the Assured shall extend only to liabilities, losses, costs or expenses that have arisen out of the activities and/or operations customarily carried on by or at the risk and responsibility of the Assured in his capacity as an owner, operator or charterer of the Ship.

3 Special conditions

None.

4 Risks covered

- a** The Insurer shall cover liabilities, losses, costs and expenses incurred in respect of Divers which would have been covered under a Standard P&I Cover for crew and diversion expenses had the diver been considered as crew, including when such liabilities, losses, costs and expenses arise in connection with:
- Specialist operations
 - Drilling, production and accommodation vessels
 - Submarines and diving bells
- b** the Insurer shall cover third party liabilities which the Assured is liable to indemnify, and which arise solely out of any act or omission by Divers committed within the scope of the employment of the Diver.

5 Special exclusions

- a** *Damage to or loss of the contract works*
The Insurer shall not cover any liabilities, losses, costs and expenses in respect of damage to or loss of the contract works or failure to perform the contract works, including but not limited to construction, development and maintenance work in which the Diver is directly engaged under contract of otherwise.
- b** *Covered under a Comprehensive general third party legal and contractual liability cover (CGL or similar)*
The Insurer shall not cover any liabilities, losses, costs and expenses which are covered under a Comprehensive general third party legal and contractual liability cover such as Gard's CGL cover or similar.

PART III GENERAL EXCLUSIONS AND LIMITATIONS

Chapter 1 General exclusions and limitations

Section 18 Conduct of the Assured

The Insurer shall not cover any liabilities, losses, costs or expenses arising or incurred in circumstances where there has been wilful misconduct on the part of the Assured, such misconduct being an act intentionally done, or a deliberate omission by the Assured, with knowledge that the performance or omission will probably result in injury, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences.

Section 19 General limitation of liability

Where the Assured or a Co-assured is entitled to limit his liability pursuant to any rule of law, the maximum recovery under the Additional Cover is, unless otherwise agreed, the amount to which the Assured or the Co-assured may limit his liability, provided always that the maximum recovery under the Additional Cover is limited pursuant to the relevant limit(s) stated in the Insurance Policy.

Section 20 Amounts saved by the Assured

Where the Assured, as a result of an event for which he is covered by the Insurer, has obtained extra revenue, saved costs or expenses or avoided liability or loss which would otherwise have been incurred and which would not have been covered by the Insurer, the Insurer may deduct from the compensation payable under the Additional Cover an amount corresponding to the benefit obtained.

Section 21 Terms of contract

The Insurer shall not cover under this Insurance Policy liabilities, costs and expenses which would not have arisen but for the terms of a contract or indemnity entered into by the Assured, or by some other persons acting on his behalf, unless the terms are no less favourable to the Assured than those which the Insurer has prescribed in written guidelines or which have previously been approved by the Insurer.

Section 22 War risks

- 1** The cover for War Risks is subject to the Institute Notice of Cancellation and War Automatic Termination of Cover Clause (Appendix 4).
- 2** For the purpose of this clause, War Risks shall be deemed to have the same meaning as in a Standard P&I Cover.

Section 23 Nuclear perils

- 1** The Insurer shall not cover any liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from:
 - a** ionising radiations from, or the radioactive, toxic, explosive or other hazardous or contaminating properties of:
 - i** any nuclear fuel or any nuclear waste or the combustion of nuclear fuel, or
 - ii** any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
 - b** any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter,

- c the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter,

other than liabilities, costs and expenses arising out of carriage of "excepted matter" (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo on the Ship.

Section 24 Biological risks

The Insurer shall not cover liabilities, losses, costs and expenses directly or indirectly caused by or contributed to by or arising from any chemical, biological, bio-chemical or electromagnetic weapon in accordance with Appendix 5.

Section 25 Unlawful trades etc.

The Insurer shall not cover liabilities, losses, costs or expenses arising out of or consequent upon:

- 1 transport of contraband
- 2 blockade running
- 3 unlawful, unsafe or unduly hazardous trade or voyage

Section 26 Administrative costs, insolvency and sanctions etc.

- 1 The Insurer shall not cover the Assured's internal administrative costs or expenses;
- 2 The Insurer shall not cover liabilities, losses, costs and expenses arising out of the insolvency of the Assured or any other person or out of overdue or irrecoverable debts or out of any of the circumstances described in Section 14.1.a and b.
- 3 The Insurer shall not indemnify an Assured against any liabilities, costs or expenses where the provision of cover, the payment of any claim or the provision of any benefit in respect of those liabilities, costs or expenses may expose the Insurer to any sanction, prohibition, restriction or adverse action by any competent authority or government.
- 4 The Assured shall in no circumstances be entitled to recover from the Insurer that part of any liabilities, costs or expenses which is not recovered by the Insurer from any reinsurer because of a shortfall in recovery from such reinsurer by reason of any sanction, prohibition or adverse action by a competent authority or government or the risk thereof if payment were to be made by such reinsurer. For the purposes of this paragraph, "shortfall" includes, but is not limited to, any failure or delay in recovery by the Insurer by reason of the reinsurer making payment into a designated account in compliance with the requirements of any competent authority or government.

Section 27 Waste incineration, disposal operations and landfills

- 1 The Insurer shall not cover liabilities, losses, costs or expenses arising out of waste incineration or waste disposal operations carried out by the Ship (other than any such operations carried out as an incidental part of other commercial activities).
- 2 The Insurer shall not cover any liability, loss, damage, cost or expense, including without limitation, liability for the cost of any remedial works or clean up operations, arising as a result of the presence in, or the escape or discharge or threat of escape or discharge from, any land based dump, site storage or disposal facility of any substance previously carried on the Ship whether as cargo, fuel, stores or waste and whether at any time mixed in whole or in part with any other substance whatsoever.

Section 28 Loss of freight or hire

The Insurer shall not cover claims by or against the Assured relating to loss of freight or hire on the Ship or any proportion thereof unless freight or hire forms part of a claim for liabilities in respect of cargo.

Section 29 Demurrage, detention and delay

The Insurer shall not cover claims by or against the Assured relating to demurrage on, detention of or delay to the Ship, unless such demurrage, detention or delay forms part of a claim for liabilities in respect of cargo, provided that the Insurer shall in no circumstances cover liabilities, costs or expenses arising out of the failure to arrive or late arrival of the Ship or other means of transport at the port or place of loading.

Section 30 Daily running costs

The Insurer shall not cover costs and expenses forming part of the daily running costs and expenses of the Ship,

- a being claimable in general average;
- b relating to the Ship being overloaded;
- c relating to the cargo being incorrectly stowed; or
- d resulting from measures that have been or could have been accomplished by the crew or by reasonable use of the Ship's equipment or resulting from making the Ship seaworthy for receiving cargo.

Section 31 Loss of or damage to the Ship

The Insurer shall not cover loss of or damage to the Ship or any part thereof.

Section 32 Product liability

The Insurer shall not cover liabilities, losses, costs and expenses arising out of the Assured's products or reliance upon a warranty or representation made in respect thereof. This cover shall not include liabilities, losses, costs and expenses caused by or arising in connection with the processing or manufacturing of cargo, or damage to or loss or reduced value of cargo arising as a consequence of a condition, quality or specification of the cargo which existed prior to the cargo being accepted for carriage or which was caused by treatment or processing, including blending, of cargo other than treatment necessary for transportation.

Section 33 Performance guarantees and penalties

The Insurer shall not cover liabilities, losses, costs and expenses arising from performance guarantees provided by the Assured.

Section 34 Electronic trading systems

The Insurer shall not cover liabilities, losses, costs and expenses arising from the use of any electronic trading system, other than an electronic trading system approved in writing by the Insurer, to the extent that such liabilities, losses, costs and expenses would not (save insofar as an Insurer in its sole discretion otherwise determines) have arisen under a paper trading system. For the purposes of this section 34 an "electronic trading system" is any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport and which:

- a are documents of title, or
- b entitle the holder to delivery or possession of the goods referred to in such documents, or
- c evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party.

For the purpose of this Section 34 a "document" shall mean anything in which information of any description is recorded including, but not limited to, computer or other electronically generated information.

Section 35 Market fluctuations etc.

The Insurer shall not cover general monetary loss, or loss of time, loss through price or currency fluctuations, loss of market or similar loss resulting from delay, except where the Assured is legally liable to a third party for such loss and such liability is covered by the Insurer under these Terms and Conditions.

Section 36 Other insurance

- 1 If and to the extent the Assured is not assured or co-assured under a Standard P&I Insurance, the cover afforded by the Insurer under these Terms and Conditions shall not extend further than would have been the case had the Assured been assured or co-assured under a Standard P&I Cover.
- 2 The Insurer shall not cover liabilities, losses, costs and expenses incurred by an Assured that are;
 - a recoverable under a Standard P&I Cover, or which would have been recoverable under a Standard P&I Cover had the Assured taken out Standard P&I Cover, without deductible.
 - b recoverable under the Hull Policies, or which would have been recoverable by the Hull Policies had the Ship been fully covered on standard terms - without deductible - for an insured value of not less than the market value of the Ship without commitment.
 - c recoverable under the Hull Policies with a P&I war risk extension for the proper value of the Ship or USD 100 million whichever is the lesser, or which would have been covered had the Ship been so insured.
- 3 The Insurer shall not cover liabilities, losses, costs and expenses which are recoverable under any other insurance, or which would have been so recoverable apart from any term in such other insurance excluding or limiting liability on the ground of double insurance
- 4 The Insurer shall not cover liabilities, losses, costs or expenses covered by social insurance or by public or private insurance required by the legislation or collective wages agreement governing the contract of employment of such person, or which would have been so covered if such insurance had been effected.

Section 37 Deductibles

The cover shall be subject to a deductible as specified in the Insurance Policy save that no deductible shall apply if the event giving rise to the claim or claims under the Cover also gives rise to a claim or claims under the Standard P&I Cover with Gard P. & I. (Bermuda) Ltd. or Assuranceforeningen Gard – gjensidig –

Section 38 Limit of insurance

The Cover shall be subject to a limit as specified in the Insurance Policy.

PART IV MISCELLANEOUS PROVISIONS

Chapter 1 Co-assureds

Section 39 Cover for Co-assureds and Affiliates

- 1** The Insurer may agree, subject to the provisions of this Section 39 and to such other terms as may be required, to extend the cover afforded by the Insurer to the Assured to:
 - a** any person who is affiliated to or associated with the Assured (not being a Co-assured or other Affiliate), and who shall not be specifically named in the Insurance Policy; and
 - b** any other named co-assured.
- 2** If the Insurer is a mutual association any Affiliates and Co-assureds shall not be entitled to membership of the Insurer.

Section 40 Assureds, Co-assureds and Affiliates

- 1** Assureds and Co-assureds named in the same Insurance Policy shall be jointly and severally liable for all sums due to the Insurer.
- 2** Payment(s) by the Insurer to any one of the Assureds, Co-assureds or Affiliates shall fully discharge the obligations of the Insurer in respect of such payment(s).
- 3** Any communication by the Insurer to one Assured or Co-assured shall be deemed to be communication to all.
- 4** The conduct or omission of one Assured or Co-assured which under these Terms and Conditions would constitute a breach of the contract of insurance, shall be deemed as the conduct or omission of all the Assureds and Co-assureds.

Chapter 2 Claims

Section 41 The event

Any incident being covered by the Insurer under more than one Section as specified in Part II of the Terms and Conditions shall, for the purpose of these Terms and Conditions, be regarded as separate events for each Section of Part II of the Terms and Conditions.

The Insurer shall determine in its absolute discretion in respect of the cover evidenced by the Insurance Policy when the event shall be deemed to have occurred and whether liabilities, losses, costs or expenses covered under the Insurance Policy in whole or in part shall be deemed to have arisen out of one or several events.

Section 42 Time bar

- 1 The Assured shall have no right to compensation unless he has given notice to the Insurer of any event which may give rise to a claim on the Insurer within six months of his becoming aware of it.
- 2 The Assured's claim for compensation becomes time-barred three years from the date on which he became aware of his claim and of the circumstances that determine its extent.
- 3 Where a time-bar has not taken effect earlier, the Assured's claim for compensation becomes time-barred five years from the occurrence of the event unless litigation or a general average adjustment is in progress, when the claim becomes time-barred one year after the issue of the final judgment or adjustment.
- 4 Notwithstanding and without prejudice to Sections 42.1, 42.2 and 42.3, the Assured shall have no right to compensation for liabilities, losses, costs and expenses in respect of death, personal injury or illness of any person of which the Assured has not submitted a notice of claim to the Insurer within five years from the expiry of the Period of Insurance in which the event giving rise to the claim occurred.

Section 43 Obligations with respect to claims

- 1 An Assured shall:
 - a promptly notify the Insurer of any event which may give rise to a claim upon the Insurer, and of any formal enquiry into a loss or casualty;
 - b upon the occurrence of any event which may give rise to a claim upon the Insurer, take and continue to take all such steps as may be reasonable, including the preservation of any right of recourse against a third party, for the purpose of averting or minimising any liability, loss, cost or expense in respect whereof he may be covered by the Insurer;
 - c notify and, if possible, consult the Insurer prior to taking any action as described in Section 43.1.b above;
 - d promptly provide the Insurer with all documents and information which may be relevant to such event and which are required to enable the Insurer to determine whether the event is covered according to these Terms and Conditions;
 - e allow the Insurer or its appointees to interview any person who in the opinion of the Insurer may have knowledge relevant to the event;
 - f not without the prior consent of the Insurer admit liability for or settle any claim for which he may be covered by the Insurer.

- 2 If an Assured commits a breach of any of these obligations:
 - a the Insurer may reject any claim, or reduce the sum payable, in relation to such event; and
 - b the Assured shall reimburse to the Insurer such part of any costs or expenses incurred by the Insurer in relation to such event as the Insurer shall determine.
- 3 The Insurer shall have the right if it so decides to control or direct the conduct of any claim or legal or other proceedings relating to any liability, loss, cost or expense in respect whereof the Assured is or may be covered, in whole or in part, and to instruct, on behalf of the Assured, lawyers and other advisers and experts to assist and to require the Assured to settle, compromise or otherwise dispose of such claim or proceedings in such manner and upon such terms as the Insurer sees fit, provided that no actions or directions of the Insurer shall imply an obligation to cover the liability, loss, cost or expense. If the Assured does not settle, compromise or dispose of a claim or of proceedings after being required to do so by the Insurer, any recovery by the Assured from the Insurer in respect of such claim or proceedings shall be limited to the amount he would have recovered if he had acted as required by the Insurer.
- 4 An Assured shall, in respect of a dispute which falls under the cover, for his own account, obtain information, make calculations, attend meetings and otherwise provide assistance, where such work can be performed by him or by persons employed by him or regularly engaged by him to perform such services.

Section 44 Exclusion of liability

- 1 The Insurer shall not be liable for errors or omissions in the handling of a case which may be committed by the Insurer's employees, managers, employees of the managers or by lawyers, advisers or other experts engaged by the Insurer on behalf of the Assured.
- 2 The Insurer shall not be liable for monies which are lost, having been collected by persons engaged by the Insurer on behalf of the Assured, or entrusted to such persons.
- 3 The Insurer shall not be liable to pay interest on any sums due from it to the Assured.

Section 45 Recoveries from third parties

- 1 When the Assured has a right of recourse against a third party for any liability, loss, cost or expense covered by the Insurer, the Insurer shall be subrogated to the Assured's right of recourse upon payment by the Insurer to the Assured in respect of the liability, loss, cost or expense.
- 2 Where the Insurer has made a payment in respect of any liability, loss, cost or expense to or on behalf of an Assured, the whole of any recovery from a third party in respect of that liability, loss, cost or expense shall be credited and paid to the Insurer up to an amount corresponding to the sum paid by the Insurer together with any interest element on that sum comprised in the recovery, provided however, that
 - a where because of a deductible the Assured has contributed towards a liability, loss, cost or expense any such interest element shall be apportioned between the Assured and the Insurer taking into account the payments made by each and the dates on which those payments were made; and
 - b the Insurer shall retain the whole amount of any award of costs in respect of its own handling of any case.

Section 46 Discharge

Payment of a claim by the Insurer to any manager or agent of the Assured shall fully discharge the Insurer's liability to the Assured.

Section 47 Currency of payments

- 1 The Insurer shall make all payments to the Assured for liabilities, losses, costs and expenses covered by the Insurer in the currency in which the Assured's Premium is calculated (the "premium currency").
- 2 Where the Assured has made a payment in respect of any liability, loss, cost or expense which is covered by the Insurer in a currency other than the premium currency, that payment shall be converted into the premium currency at the rate of exchange ruling on the day payment was made by the Assured.
- 3 Where a deductible under Section 37 is expressed in a currency other than the premium currency, the deductible shall be converted into the premium currency at the rate of exchange ruling on the day payment was made by the Assured.
- 4 Where a payment in respect of a liability, loss, cost or expense is due at a fixed time and the Assured without valid reason neglects to make payment when due, the Assured shall not be entitled to compensation at a higher rate of exchange than that ruling on the day on which payment was due.
- 5 All rates of exchange for the purposes of this Section 47 shall be conclusively determined by the Insurer.

Section 48 Payment first by the Assured

- 1 Unless the Insurer shall in its absolute discretion otherwise determine, it is a condition precedent to an Assured's right to recover from the Insurer in respect of any liability, loss, cost or expense that he shall first have discharged or paid the same.
- 2 The Insurer shall not be obliged to compensate an Assured for a payment made to a third party unless the Assured's liability to make that payment has been determined by:
 - a a final judgement or order of a competent court; or
 - b a final arbitration award (if settlement of the dispute by arbitration was agreed upon before the dispute arose, or was, with the consent of the Insurer, agreed upon subsequently); or
 - c a final settlement of the dispute approved by the Insurer.

Section 49 Payments and undertakings to third parties

- 1 The Insurer shall be under no obligation to provide any guarantee, certificate, bail or other security or undertaking ("security") for or on behalf of an Assured, or to pay the costs of such provision.
- 2 The Insurer may at its discretion provide security or pay the cost of such provision in relation to liabilities within the scope of an Assured's cover, and may recover any costs incurred thereby from the Assured.

- 3** The Assured shall indemnify the Insurer for any liability the Insurer may incur to a third party under or in connection with any security issued by the Insurer for or on behalf of the Assured and for any payment made by the Insurer to a third party for or on behalf of the Assured (irrespective of whether that liability was incurred, or that payment was made during or after the Period of Insurance), save to the extent that, had that third party pursued its claims in respect of the relevant liability against the Assured rather than against the Insurer, or had that payment been made by the Assured rather than by the Insurer, the Assured would have been entitled to reimbursement pursuant to these Terms and Conditions.

Chapter 3 Assignment, law, arbitration and amendments to the Terms and Conditions

Section 50 Assignment

- 1** The Assured shall not assign or otherwise transfer its rights under its contract of insurance with the Insurer or otherwise arising pursuant to these Terms and Conditions, save as provided in Section 50.2

- 2** The Insurer may, in its absolute discretion, consent to an assignment or transfer by an Assured of its rights as referred to in Section 50.1, subject to such terms and conditions as the Insurer deems fit and subject to the Insurer's right to deduct from any sum due or to become due from the Insurer to any assignee or transferee of the Assured's rights such amount as the Insurer may estimate to be sufficient to discharge any existing or anticipated liability of the Assured to the Insurer.

Section 51 Governing law

The legal relationship between the Insurer and the Assured shall be governed by these Terms and Conditions and Norwegian law, but the provisions of the Insurance Contracts Act of 16th June 1989 shall not apply.

Section 52 Arbitration

Unless otherwise agreed, disputes between the Insurer and an Assured or a former Assured or any other person arising out of the contract of insurance or these Terms and Conditions shall be resolved by arbitration. Each party shall nominate one arbitrator and those so nominated shall appoint an Umpire. If the arbitrators cannot agree on an Umpire or a party fails to nominate his arbitrator, the nomination shall be made by the Chief Justice of the Oslo City Court. Reasons shall be given for the award. Arbitration proceedings shall take place in Oslo.

APPENDIX 2
STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR
DELIVERING CARGO WITHOUT PRODUCTION OF A DOCUMENT

To: the owners of the

Dear Sirs,

Ship:

Voyage:

Cargo:

Document:

For the purpose of this Letter of Indemnity "Document" shall mean: non-negotiable bill of lading, waybill or similar document provided production of such document by the person to whom delivery of the Cargo is made is required by the express terms of that document or the law to which that document, or the contract of carriage contained in or evidenced by it, is subject.

The above cargo was shipped on the above Ship by (*Name of shipper*) and consigned to (Name of consignee or to whose order the Document(s) is (are) made out, as appropriate) for delivery at the port of (*Name of discharge port stated in the Document(s)*) but the Document(s) has (have) not arrived and we, (*Name of party requesting substituted delivery*), hereby request you to give delivery of the said cargo to (*Name of party to whom delivery is to be made*) without production of the Document(s).

In consideration of your complying with our above request, we hereby agree as follows:

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expenses of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the cargo as aforesaid to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship or any other ship or property belonging to you should be arrested or detained or if the arrest or detention thereof should be threatened to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property and to indemnify you in respect of any liability, loss, damage or expenses caused by such arrest or detention or threatened arrest or detention whether or not such arrest or detention or threatened arrest or detention may be justified.
4. As soon as all Document(s) for the above cargo shall have come into our possession to deliver the same to you, whereupon our liability hereunder shall cease.
5. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
6. The liability of each and every person under this indemnity shall in no circumstances exceed 200% of the CIF value of the above cargo.

7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully,

For and on behalf of

.....
Signature

**APPENDIX 3
STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR
DELIVERING CARGO AT A PORT OR PLACE OTHER THAN THAT STATED IN THE
BILL OF LADING**

To: the owners of the

Dear Sirs,

Ship:

Voyage:

Cargo:

Bill(s) of Lading/Document(s) of Title:

The above cargo was shipped on the above Ship by *(Name of shipper)* and consigned to *(Name of consignee or to whose order the Bill of Lading/Document of Title is made out, as appropriate)* for delivery at the port or place of *(Name of discharge port or place stated in the Bill of Lading)* but we, *(Name of party requesting substituted delivery)*, hereby request you to order the Ship to proceed to and give delivery of the said cargo at the port or place of *(Name of substitute port or place)* without production of all originals of that Bill of Lading and/or Document of Title.

In consideration of your complying with our above request, we hereby agree as follows:

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expenses of whatsoever nature which you may sustain by reason of the Ship proceeding and giving delivery of the cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the Ship proceeding and giving delivery of the cargo as aforesaid to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the Ship proceeding and giving delivery of the cargo as aforesaid, the ship or any other ship or property belonging to you should be arrested or detained or if the arrest or detention thereof should be threatened to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property and to indemnify you in respect of any liability, loss, damage or expenses caused by such arrest or detention or threatened arrest or detention whether or not such arrest or detention or threatened arrest or detention may be justified.
4. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
5. The liability of each and every person under this indemnity shall in no circumstances exceed 200% of the CIF value of the above cargo.
6. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully,

For and on behalf of

.....
Signature

**APPENDIX 4
INSTITUTE NOTICE OF CANCELLATION AND WAR AUTOMATIC TERMINATION OF
COVER CLAUSE - HULLS, ETC.**

Cover hereunder in respect of the risks of war, etc., may be cancelled by either the Underwriters or the Assured giving 7 days notice (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by or to the Underwriters). The Underwriters agree however to reinstate cover subject to agreement between the Underwriters and the Assured prior to the expiry of such notice of cancellation as to new rate of premium and/or conditions and/or warranties.

Whether or not such notice of cancellation has been given cover hereunder in respect of the risks of war, etc., shall TERMINATE AUTOMATICALLY

- i** upon the occurrence of any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter wheresoever or whensoever such detonation may occur, whether or not the insured vessel(s) may be involved, and this insurance excludes loss damage liability or expense arising from such occurrence;
- ii** upon the outbreak of war (whether there be a declaration of war or not) between any of the following countries: - United Kingdom, United States of America, France, the Union of Soviet Socialist Republics, the People's Republic of China and this insurance excludes loss damage liability or expense arising from such outbreak of war;
- iii** in respect of any vessel, in connection with which cover is granted hereunder, in the event of such vessel being requisitioned either for title or use and this insurance excludes loss damage liability or expense arising from such requisition.

Cover in respect of the risks of war, etc., shall not become effective if, subsequent to acceptance by the Underwriters and prior to the intended time of attachment of risk, there has occurred any event which would have automatically terminated cover under the provisions of this clause.

1/10/83

**APPENDIX 5
INSTITUTE RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL,
BIOCHEMICAL AND ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE**

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

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
 - 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
 - 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
 - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
 - 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
 - 1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

10/11/2003



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