

# Protection and Indemnity Insurance

Policy Wording



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# Welcome to Zurich

## About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507. In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, mid-sized and large companies, including multinational corporations.

## Duty of Disclosure

Your attention is drawn to Sections 23 to 27 of the Marine Insurance Act 1909 (Cth) and, in particular, that any contract of marine insurance is based on utmost good faith and in the absence of such good faith, may be avoided. Further, the Assured has an obligation to disclose to the insurer every material circumstance which is known to the Assured and/or which in the ordinary course of business ought to be known to the Assured. Every circumstance is material if it would influence the judgement of a prudent insurer in fixing the premium or determining whether they will take the risk. If there is a failure to make such disclosure, the insurer may avoid the contract.

## Our contract with you

This policy is a contract of insurance between the Assured and Zurich and contains all the details of the cover that we provide.

This policy is made up of:

- the Protection and Indemnity Rules. It states what is covered, sets out the claims procedure, Exclusions and other terms and conditions of cover;
- the proposal which is the information the Assured provided to Zurich when applying for insurance cover;
- the most current policy schedule issued by Zurich. The policy schedule is a separate document unique to the Assured, which shows the insurance details relevant to the Assured. It includes any changes, Exclusions, terms and conditions made to suit the individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the policy schedule are insured. Please keep this policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

## Privacy

Zurich is bound by the Privacy Act 1988 (Cth). We collect, disclose and handle information, and in some cases personal or sensitive (eg health) information, about you ('your details') to assess applications, administer policies, contact you, enhance our products and services and manage claims ('Purposes'). If you do not provide your information, we may not be able to do those things. By providing us, our representatives or your intermediary with information, you consent to us using, disclosing to third parties and collecting from third parties your details for the Purposes.

We may disclose your details, including your sensitive information, to relevant third parties including your intermediary, affiliates of Zurich Insurance Group Ltd, other insurers and reinsurers, our banking gateway providers and credit card transactions processors, our service providers, our business partners, health practitioners, your employer, parties affected by claims, government bodies, regulators, law enforcement bodies and as required by law, within Australia and overseas.

We may obtain your details from relevant third parties, including those listed above. Before giving us information about another person, please give them a copy of this document. Laws authorising or requiring us to collect information include the Insurance Contracts Act 1984 (Cth), Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), Corporations Act 2001 (Cth), Autonomous Sanctions Act 2011 (Cth), A New Tax System (Goods and Services Tax) Act 1999 (Cth) and other financial services, crime prevention, trade sanctions and tax laws.

Zurich's Privacy Policy, available at [www.zurich.com.au](http://www.zurich.com.au) or by telephoning us on 132 687, provides further information and lists service providers, business partners and countries in which recipients of your details are likely to be located. It also sets out how we handle complaints and how you can access or correct your details or make a complaint.

## General Insurance Code of Practice

We are signatories to the General Insurance Code of Practice (the Code) and support the Code.

The objectives of the Code are:

- to commit us to high standards of service;
- to promote better, more informed relations between us and you;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes you make about us; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers compliance with the Code.

Further information about the Code or the Code Governance Committee and your rights under it is available at <https://insurancecouncil.com.au/cop/> or by contacting us.

## Complaints and Disputes Resolution process

If you have a complaint about an insurance product we have issued or the service you have received from us, please contact your intermediary to initiate your complaint with us. If you are unable to contact your intermediary, you can contact us directly on 132 687. We will acknowledge receipt of your complaint within 24 hours or as soon as practicable.

If you are not satisfied with our initial response, you may access our internal dispute resolution process. Please refer to the general insurance fact sheet available on our website for details of our internal dispute resolution process.

We expect that our internal dispute resolution process will deal fairly and promptly with your complaint, however, you may take your complaint to the Australian Financial Complaints Authority (AFCA) at any time.

AFCA is an independent external dispute resolution scheme. We are a member of this scheme and we agree to be bound by its determinations about a dispute. AFCA provides fair and independent financial services complaint resolution that is free to you.

Their contact details are:

Website: [www.afca.org.au](http://www.afca.org.au)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Freecall: 1800 931 678

In writing to: The Australian Financial Complaints Authority, GPO Box 3, Melbourne, Victoria 3001.

If your complaint or dispute falls outside the AFCA Rules, you can seek independent legal advice or access any other external dispute resolution options that may be available to you.

## Headings

Headings and sub-headings are for reference only and do not affect the construction of any Rule.

References to the masculine gender shall include the feminine gender.

References to singular numbers shall include plural numbers and vice versa.

References to persons shall include corporations.

References to Rule numbers shall include any sub-paragraphs of that Rule.

# Protection and Indemnity Rules

Subject to the prior payment of, or the Assured's agreement to pay, the premium set out in the schedule, we agree to provide insurance as set out in this policy.

In issuing this policy, we have relied on the information contained in the proposal form and/or any other information given by the Assured or on the Assured's behalf.

## Definitions

When used in this policy, its schedule and its Endorsements, the following definitions shall apply:

### Applicant

Any person seeking to enter a Ship on his own or another's behalf or on whose behalf an application is made.

### Assured

Every Owner or other person insured under the Policy of Insurance and who is stated as being the assured in such policy.

### Charterer's Insurance

Insurance which has a charterer, not being a Demise or Bareboat Charterer, as Assured.

### Cargo

Goods (other than a Container supplied by or on behalf of an Assured) carried under a contract of carriage.

### Co-Assured

A person named as a co-Assured in the Policy of Insurance.

### Communicable Disease

Communicable Disease is any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- (1) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not; and
- (2) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and
- (3) the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property insured hereunder,

and includes, but is not limited to, a disease that is or becomes listed on the National Notifiable Disease List and/or is or becomes a temporary addition to the National Notifiable Disease List and/or has or could give rise to a public health event of national significance and/or is or becomes a listed human disease (where National Notifiable Disease List means the list established and in force from time to time under section 11 of the National Health Security Act 2007 (Cth) and listed human disease has the meaning given by section 42 of the Biosecurity Act 2015 (Cth), or in each case any subsequent amendment, replacement or successor legislation of the Commonwealth of Australia).

### Container

Any device or receptacle in or on which Cargo is carried and which is either designed to be, or expected to be, carried in The Ship.

### Crew

Any person employed as part of a Ship's complement under the terms of a crew agreement or other contract of service or employment to serve on board The Ship, whether or not on board that Ship.

### Demise or Bareboat Charterer

A charterer who has sole possession of The Ship and sole control of her management and Crew.

**Effects**

Includes clothes, documents, navigation and other technical instruments and tools, but does not include Valuables.

**Fines**

Includes penalties and other impositions similar in nature to fines.

**General Average**

A legal principle of maritime law to which all parties in a sea venture proportionally share any losses resulting from a voluntary sacrifice of part of The Ship Cargo to save the whole adventure in an emergency.

**Group Rating Agreement**

Any agreement whereby the contributions of The Ship are assessed by reference to the record of any other Ships which are or were insured through the group, whether The Ships are in the same registered or beneficial ownership or not.

**Hague Rules**

The International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

**Hague-Visby Rules**

The Hague Rules as amended by the Protocol Convention signed at Brussels on 23 February 1968.

**Hull Policies**

The policies effected on the hull and machinery of a Ship, including excess liability policies.

**Insured Party**

The Assured, Joint Assured and Co-Assured in respect of a Policy of Insurance.

**Joint Assured**

A person insured under the Policy of Insurance and who is stated to be a Joint Assured in such policy

**Knock-for-Knock**

A provision to the effect:

- (1) that each party to a contract shall be similarly responsible for loss of or damage to, and/or death of or injury to, any of its own property or personnel, and/or the property or personnel of its contractors and/or of its or their sub-contractors and/or of other third parties; and
- (2) that such responsibility shall be without recourse to the other party and arise notwithstanding any fault or neglect of any party; and
- (3) that each party shall, in respect of those losses, damages or other Liabilities for which it has assumed responsibility, correspondingly indemnify the other party against any liability that that party shall incur in relation thereto.

**Liabilities**

Liabilities, costs and expenses incurred by an Assured.

**Owner**

Includes an owner, owners in partnership, owners holding separate shares in severalty, part owner, trustee, mortgagee, charterer, operator or manager, builder, insurer or reinsurer who insures a Ship with the insurer or who is a Joint Assured or Co-Assured.

**Owner's Insurance**

A Policy of Insurance other than a charterer's Policy of Insurance.

**Passenger**

Any person carried or intended to be or having been carried on board The Ship by virtue of holding a ticket of passage.

**Policy of Insurance**

A document issued pursuant to Rule 12.1 including any endorsement thereto.

**Pollutant**

Any substance that is hazardous, noxious, toxic, dangerous, corrosive, explosive or injurious to life, persons, property or the environment.

**Rules**

The Protection and Indemnity Rules for the time being in force.

**Ship**

Any ship, boat, hydrofoil, hovercraft or any other description of vessel, whether completed or under construction, (including a lighter, barge or similar vessel howsoever propelled but excluding a fixed platform or a fixed rig) used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water or any part of such ship, or any proportion of the Tonnage thereof or any share therein.

**STOPIA**

Small Tanker Oil Pollution Indemnification Agreement 2006.

**Supernumerary**

Any other person, whom an Assured has agreed to maintain or carry on board The Ship (except a Passenger).

**The Ship**

A ship insured under the Policy of Insurance.

**Tonnage**

The gross tonnage of a Ship as stated in the Certificate of Registry or other official document relating to the registration of The Ship.

**TOPIA**

Tanker Oil Pollution Indemnification Agreement 2006.

**Towage**

Any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of or standing by a Ship or object.

**Valuables**

Money, negotiable securities, gold, silverware, jewellery, ornaments or works of art.

**Wilful Misconduct**

An act intentionally done or a deliberate omission by the Assured with knowledge that the performance or omission will probably result in injury or loss, or an act done or omitted in such a way as to allow an inference of a reckless disregard for the probable consequences.

## Rule 1: Insurance

- 1.1 The standard risks against which an Assured is covered are set out in Rule 3.
- 1.2 An Assured may have cover in respect of risks other than those set out in Rule 3, or in respect of risks otherwise excluded, where such risks have been agreed by the insurer:
  - 1.2.1 When any such other risks are covered, they are covered subject to the terms, conditions, limitations and exclusions of the Rules.
  - 1.2.2 The insurer may reinsure any such other risk and, in the event that such reinsurance is arranged, the Assured is entitled to recover from the insurer only the net amount actually recovered under such reinsurance together with that portion of the risk retained by the insurer.
- 1.3 No act, omission, course of dealing or forbearance or reimbursement by the insurer shall be treated as any evidence of a waiver in whole or in part of the insurer's rights under the Rules.
- 1.4 The Rules and any contract of insurance between the insurer and any Insured Party are governed by and construed in accordance with the laws in force in the State of Victoria, Australia. In particular this insurance is subject to and incorporates the Marine Insurance Act 1909 (Cth) and any statutory modifications thereof except insofar as such Act or modification may have been excluded by the Rules or by any term of such contract.

## Rule 2: Scope of cover

- 2.1 The Liabilities in respect of which an Assured is insured must have arisen by reason of the Assured's interest in The Ship, out of events occurring during the period of The Ship's insurance under the policy and in connection with the operation of The Ship. Where such Liabilities would not have arisen but for the terms of any contract or indemnity, the contract or indemnity must either correspond to any specific requirements set out in Rule 3, or have been approved by the insurer.
- 2.2 Under a charterer's Policy of Insurance, an Assured is entitled to recover for his liability to indemnify another person in respect of the risks set out in Rule 3.
- 2.3 An Assured's insurance is subject to the warranties, conditions, exceptions, limitations and other terms set out in the Rules and his Policy of Insurance.
- 2.4 An Assured is not insured for any Liabilities incurred by him in a capacity other than that in which he has entered into the contract of insurance with the insurer.

## Rule 3: Risks covered

### 3.1 Crew

#### Injury, illness or death

- 3.1.1 Liabilities in respect of Crew injury, illness or death.

#### Repatriation

- 3.1.2 Liabilities in respect of Crew repatriation.

#### Exclusion to Rule 3.1.2

Liabilities arising out of the termination of any agreement, or the sale of The Ship, or any other act of the Assured in respect of The Ship, unless the insurer, acting reasonably, considers that such termination or other act was necessary in the interests of the safety of The Ship or Crew, or the proper running of The Ship.

#### Substitute expenses

- 3.1.3 Expenses necessarily incurred in sending substitutes to replace Crew who have died, are incapacitated or who have been left ashore in consequence of injury, illness, or desertion. Wages are only recoverable when payable to substitutes, while awaiting and during repatriation.

### **Loss of effects**

3.1.4 Loss of Crew Effects, excluding Valuables.

### **Shipwreck unemployment indemnity**

3.1.5 Wages or other compensation payable to Crew arising out of the actual or constructive total loss of The Ship.

### **Port expenses**

3.1.6 Port and other charges as set out in Rule 3.4 incurred in relation to Crew.

## **3.2 Passengers**

3.2.1 Liabilities in respect of the injury, illness or death of a Passenger.

3.2.2 Liabilities to Passengers arising out of a casualty while they are on board The Ship. For the purpose of this Rule 'casualty' means collision, stranding, explosion, fire or any other cause affecting the condition of The Ship so as to render her incapable of safe navigation to her intended destination; or a threat to the life, health or safety of Passengers.

3.2.3 Loss of or damage to a Passenger's baggage or Effects, excluding Valuables.

3.2.4 In respect of any Liabilities arising under Rule 3.2, the Passenger ticket must relieve the Assured of liability to the maximum extent permitted under the applicable law.

### **Exclusions to Rule 3.2**

(1) Liabilities arising out of the carriage of a Passenger by air unless they occur:

- (a) during repatriation of an injured or sick Passenger, or following a casualty to The Ship; or
- (b) during excursions from The Ship, subject to exclusion (2) below.

(2) Contractual Liabilities arising in respect of a Passenger while on an excursion from The Ship in circumstances where either:

- (a) a separate contract has been entered into by the Passenger for the excursion, whether or not with the Assured; or
- (b) the Assured has waived any rights of recourse against any subcontractor or other third party in respect of the excursion.

## **3.3 Third parties**

Liabilities in respect of the injury, illness or death of any person other than Crew or Passengers.

## **3.4 Stowaways and refugees: port charges**

Port and other charges solely incurred for the purpose of landing stowaways or refugees, or others saved at sea, or landing or securing the necessary treatment for an injured or sick person, other than a seaman, including the net loss to the Assured in respect of fuel, insurance, wages, stores and provisions incurred for such purpose.

## **3.5 Life salvage**

Sums due to a third party because he has saved or attempted to save the life of any person on or from The Ship.

## **3.6 Collision with other ships**

3.6.1 One-fourth, or such other proportion agreed by the insurer, acting reasonably, of the Liabilities arising out of a collision other than those set out in Rule 3.6.3.

3.6.2 Under a charterer's Policy of Insurance, four-fourths of the Liabilities arising out of a collision.

3.6.3 The Liabilities arising out of a collision relating to:

- (1) the raising, removing, destroying, lighting or marking of wrecks, Cargoes or other property;

- (2) damage done by such other Ship to any property not being another Ship or any property therein;
- (3) loss of or damage to Cargo or other property being carried in The Ship; if the Cargo is the property of the Assured, it is deemed to be fully insured, and the Assured is entitled only to recover from the insurer the amount by which such indemnity exceeds the sum recoverable under such insurance;
- (4) the injury, illness or death of any person on board such other Ship;
- (5) pollution Liabilities as may be covered under Rule 3.8.

3.6.4 That part of the Assured's collision liability which exceeds the sum recoverable under the Hull Policies solely by reason of such liability exceeding the valuation of The Ship in those policies. However, the insurer may determine the proper value (being the market value of The Ship without commitment) for which The Ship should have been insured under the Hull Policies, and the insurer shall pay only the excess of the amount which would have been recoverable if The Ship had been insured thereunder at such value.

3.6.5 There will be no recovery from the insurer insofar as such collision Liabilities are not recoverable under the Hull Policies by reason of any breach of such policies.

3.6.6 If both Ships are to blame then, unless the liability of the Owners of one or both of them becomes limited by law, claims shall be settled upon the principle of cross-liabilities.

### 3.7 Damage to other ships (other than by collision)

Liabilities for loss of or damage to, delay to, or wreck removal of, any other Ship or any property therein caused other than by collision with The Ship.

### 3.8 Pollution

3.8.1 Liabilities caused by the discharge or escape from The Ship of any Pollutant.

3.8.2 The costs of any measures reasonably taken after the discharge or escape of any Pollutant from The Ship for the purpose of avoiding or minimising any resulting loss, damage or contamination or cleaning up any resulting pollution, together with liability for any loss of or damage to property caused by any measures so taken.

3.8.3 The costs of any measures reasonably taken to prevent an imminent danger of the discharge or escape from The Ship of any Pollutant.

3.8.4 Extraordinary Liabilities incurred as a result of complying with any order or direction given or any measures taken by any authority in connection with The Ship or her Cargo for preventing or reducing pollution or the risk thereof by the escape from The Ship of any Pollutant, excluding any permanent structural alteration to The Ship.

3.8.5 Liabilities under a salvage agreement to compensate salvors for work done or measures taken to prevent or reduce pollution or the risk thereof by the escape from The Ship of any Pollutant.

3.8.6 Liabilities incurred after The Ship has become a wreck arising from the discharge or escape from such wreck of any Pollutant.

3.8.7 Liabilities for which an Assured may be liable or otherwise incurs as a party to STOPIA and/or TOPIA. An Assured insured in respect of a 'relevant' Ship as defined in STOPIA or TOPIA shall, unless otherwise agreed by the insurer, be a party to STOPIA and/or TOPIA for the period of insurance of that Ship by the insurer. Unless agreed by the insurer, there shall be no cover under Rule 3.8 in respect of such Ship during a period when the Assured is not a party to STOPIA and/or TOPIA.

3.8.8 Liabilities in respect of pollution where such Liabilities arise under Rules 3.6, 3.7, 3.9, 3.10, 3.11 and 3.20.

#### Exclusions to Rule 3.8

Unless the insurer otherwise determines, there shall be no recovery in respect of:

- (1) Liabilities which but for the terms of any contract of carriage would have been allowed in General Average adjusted under the unamended York Antwerp Rules 1994.

- (2) Liabilities, loss or damage 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 Pollutant 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.

### **3.9 Damage to property (other than by pollution)**

Liabilities for loss of or damage to, or interference with rights in relation to, any property not being any Ship or any property therein or the Cargo or other property intended to be or being or having been carried in The Ship.

### **3.10 Towage of the ship**

3.10.1 Liabilities arising under the terms of a contract for the Towage of The Ship where they:

- (1) relate to the risks specified in the other paragraphs of Rule 3; and
- (2) arise under a contract for Towage undertaken in the ordinary course of trading for the purpose of entering, leaving or manoeuvring within a port; or
- (3) arise under a contract for the Towage of cargo barges; or
- (4) arise under a contract which has been approved by the insurer.

#### **Towage by the ship**

3.10.2 Liabilities under the terms of a contract for, or arising out of, the Towage by The Ship of any Ship or object where:

- (1) such Liabilities relate to the risks specified in the other paragraphs of Rule 3; and
- (2) the Towage is undertaken for the purpose of saving life or property at sea; or
- (3) The Ship is towing under a United Kingdom, Netherlands or Scandinavian standard Towage contract, the current Lloyd's standard form of salvage agreement - no cure no pay, or other Towage contract containing similar exclusions of Liabilities to these market forms; or
- (4) the contract is on Knock-for-Knock terms; or
- (5) a contract on Knock-for-Knock terms is likely to be unlawful or unenforceable in whole or part and the contract under which the Towage takes place:
  - (a) does not impose on the Assured any liability to any person arising out of any act, neglect or default of the Owner of the tow or any other person; and
  - (b) limits the liability of the Assured, or preserves his right to limit, to the maximum extent possible by law; or
- (6) the contract has been approved by the insurer.

### **3.11 Wreck liabilities**

3.11.1 Liabilities for or incidental to the raising, removal, destruction, lighting or marking of the wreck of The Ship. The value of the wreck and all stores and materials saved must be deducted from any reimbursement and only the balance is recoverable.

3.11.2 Liabilities resulting from the actual or attempted raising, removal or destruction of the wreck of The Ship. Unless the insurer otherwise determines, an Assured is not entitled to be reimbursed in respect of any Liabilities if:

- (a) he has employed independent contractors to perform the relevant operations and has not taken reasonable measures to provide that under the terms of the contract the risk of incurring the relevant Liabilities fell upon the contractors; and
- (b) the Assured has not taken reasonable measures to ensure those contractors have taken out such insurance as was reasonable to insure themselves against such risks. No Liabilities insured under a contractor's policy are recoverable from the insurer.

- 3.11.3 Liabilities resulting from the presence or involuntary shifting of the wreck of The Ship caused by the casualty or event that led to the loss of The Ship. Unless the insurer otherwise determines, an Assured is not entitled to be reimbursed in respect of any liability incurred more than two years after The Ship became a wreck.
- 3.11.4 Liabilities for or incidental to the raising, removal, destruction or disposal of Cargo which is being, or has been, carried on The Ship. The value of all Cargo saved accruing to the Assured must be deducted from any reimbursement and only the balance is recoverable.

#### **Exclusions to Rule 3.11**

- (1) There shall be no recovery if the Assured has, without the agreement of the insurer (not to be unreasonably withheld), transferred his interest in the wreck other than by abandonment, at any time after The Ship became a wreck.
- (2) There shall be no recovery unless the raising, removal, destruction, lighting or marking of the wreck, or the raising, removal, destruction or disposal of Cargo, was compulsory by law or was undertaken with the agreement of the insurer (not to be unreasonably withheld).
- (3) Unless the insurer otherwise determines, an Assured is not entitled to reimbursement in respect of any liability unless he took reasonable measures to raise, remove, destroy, light or mark the wreck, or raise, remove, destroy or dispose of Cargo.

#### **3.12 Quarantine expenses**

Expenses incurred as a direct consequence of an outbreak of infectious disease on The Ship, including quarantine and disinfection expenses, and the net loss to the Assured in respect of fuel, insurance, wages, stores, provisions, cargo handling and port charges.

#### **Exclusion to Rule 3.12**

There shall be no recovery if at the time The Ship was chartered to, or was under orders from the Assured or her managers to, proceed to a port it was known, or should in the reasonable opinion of the insurer, reasonably have been anticipated, that she would be quarantined.

#### **3.13 Cargo liabilities**

- 3.13.1 Liabilities for loss or shortage of, or damage to, or other responsibility in respect of, Cargo or other property intended to be, or being, or having been carried in, on or by The Ship arising out of any breach by the Assured, or by any person for whose acts, neglect or default he may be legally liable, of his obligation properly to load, handle, stow, carry, keep, care for, discharge and deliver such Cargo or property, or out of unseaworthiness or unfitness of The Ship.
- 3.13.2 The extra costs incurred by the Assured:
- (1) in the actual discharge or disposal of damaged or worthless Cargo, provided that he can only recover such costs if he has no recourse to recover them from any other party; or
  - (2) as a direct consequence of the failure by Cargo interests to collect or remove Cargo from the place of discharge or delivery, provided that he can only recover such costs to the extent they exceed the proceeds of the sale of the Cargo and he has no recourse to recover them from any other party.
- 3.13.3 Liabilities for loss of or damage to or responsibility in respect of Cargo or other property being carried by means of transport other than The Ship, for which the Assured may be liable under a contract of carriage, approved by the insurer (not to be unreasonably withheld), providing for carriage partly to be performed by The Ship.

### Exclusions to Rule 3.13

Unless the insurer otherwise determines, there shall be no recovery in respect of Liabilities arising out of:

#### Hague and Hague Visby Rules

- (1) the carriage of Cargo on contractual terms more onerous to the carrier than those of the Hague or Hague-Visby Rules, or equally wide exemptions of the carrier from liability, save where it is on terms solely by reason of the incorporation by law of the Hamburg Rules or parts thereof, to the extent that the Liabilities exceed those which would have been incurred had the contract been on the Hague, Hague-Visby or Hamburg terms as applicable, unless the contract has been approved in advance by the insurer.

#### Deviation

- (2) a deviation, or as a consequence of a deviation, from the contractually agreed voyage, which may deprive the Assured of the right to rely on defences or rights of limitation which would otherwise have been available to him, unless the insurer has agreed that cover may continue unprejudiced.

#### Loading / Discharge

- (3) the failure to arrive or late arrival of The Ship at a port of loading, or the failure to load or delay in loading any particular Cargo other than under a bill of lading already issued, or the application of Article 4A of Schedule 1A to the Carriage of Goods by Sea Act 1991 (Cth) including any amending, replacement or substitute legislation.
- (4) the discharge of Cargo at a place other than that stipulated in the contract of carriage.

#### Documentation/ delivery

- (5) delivery of Cargo carried under a negotiable document of title without production of that document by the person to whom delivery is made except where the Cargo has been carried under the terms of a non-negotiable document, and has been properly delivered as required by that document, notwithstanding that the Assured may be liable under the terms of a negotiable document of title issued by or on behalf of a party other than the Assured providing for carriage in part upon The Ship and in part upon another Ship or by another mode of transport.
- (6) delivery of Cargo carried under a non-negotiable 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 evidenced by it, is subject, except where the Assured is required by any other law to which he is subject to deliver or relinquish custody or control of the Cargo, without production of such document.
- (7) the issue of a document containing or evidencing the contract of carriage recording the loading or shipment or receipt for shipment on a date other than the date on which the Cargo was in fact loaded, shipped or received.
- (8) a document containing or evidencing the contract of carriage issued with the knowledge of the Assured or his master with an incorrect description of the Cargo or its quantity or condition.

#### Finished steel

- (9) the carriage of finished steel products unless the Assured has arranged products for a pre-loading survey to be carried out by an insurer-approved surveyor (such approval not to be unreasonably withheld) at each port of shipment, and the bills of lading have been caused in accordance with the findings of the surveyor as to the condition of Cargo at the time of loading.

#### Deck cargo

- (10) loss of, damage to or responsibility in respect of Cargo carried on deck unless it is carried under a contract of carriage which permits it to be carried on deck and either the contract states that it is being so carried and exonerates the Assured from all liability in respect of such Cargo or it is customary to carry such Cargo on deck, or such carriage has been approved by the insurer.

#### Detention

- (11) the arrest or detention of The Ship pursuant to a claim against the Assured, liability for which is not covered under the Rules.

Valuables

- (12) the carriage of Valuables, unless such carriage has been approved by the insurer (not to be unreasonably withheld).

Value declared

- (13) goods carried under a document containing or evidencing the contract of carriage where the value per unit, piece or package has been stated to be in excess of AUD\$2,500 or the equivalent in any other currency, to the extent that such Liabilities exceed that sum.

### 3.14 Unrecoverable general average contributions

The proportion of General Average, special charges or salvage which the Assured is or would be entitled to claim from Cargo or from another party which is not recoverable solely by reason of a breach of the contract of carriage.

#### Exclusions to Rule 3.14

- (1) If the contribution is irrecoverable by reason of a deviation, Rule 3.13 exclusion (2) applies to any claim under Rule 3.14.
- (2) The insurer may reject or reduce a claim if the contract of carriage under which the Cargo was being carried did not include Article IV Rule (2)(a) of the Hague Rules, as amended by the Hague-Visby Rules, or an equally wide exemption from liability.

### 3.15 Ship's proportion of general average

Ship's proportion of General Average, special charges or salvage not recoverable under the Hull Policies by reason of the value of The Ship being assessed at a sound value in excess of the insured value under the Hull Policies. The insurer may determine the proper value (being the market value of The Ship without commitment) for which The Ship should have been insured under the Hull Policies, and the insurer shall pay only the amount of The Ship's proportion of General Average which would not have been recoverable under the Hull Policies, if The Ship had been insured thereunder at such value.

### 3.16 Fines

Fines imposed on the Assured or upon any other person whom he reasonably reimburses or is legally liable to indemnify:

- 3.16.1 for short or over delivery of Cargo, or for failure to comply with regulations concerning the declaration of goods or the documentation of Cargo;
- 3.16.2 for smuggling or breach of any customs or immigration law or regulation;
- 3.16.3 in respect of the accidental escape or discharge of any Pollutant, so long as the Assured is insured for pollution Liabilities by the insurer, subject to his terms of insurance and the relevant limit of liability;
- 3.16.4 for any other matter to the extent that the Assured has taken reasonable steps to avoid the event of giving rise to the fine; in addition, any amounts claimed in respect of such fine are recoverable only to the extent the insurer may determine acting reasonably.

#### Exclusions to Rule 3.16

Unless the insurer otherwise determines, there shall be no recovery in respect of a fine imposed for or arising out of:

- (1) overloading;
- (2) illegal fishing;
- (3) any personal act or default on the part of the Assured or his managers;
- (4) breach of statutory obligations relating to the Assured's obligations as to health and safety or where otherwise contrary to public policy;
- (5) Wilful Misconduct on the part of any person unless the Assured has been compelled by law to pay the fine and the recovery is not otherwise contrary to public policy.

### 3.17 Enquiry expenses

Costs and expenses incurred in protecting an Assured's interests before a formal enquiry into a casualty to The Ship where, in the opinion of the insurer, acting reasonably, a claim upon the insurer is likely to arise, or in other cases as the insurer reasonably determines.

### 3.18 Interference by lawful authorities

Costs and expenses incurred with the authority of the insurer (not to be unreasonably withheld), in protecting an Assured's interests in cases of interference by any lawful authority of any country.

### 3.19 Confiscation of ships by customs authorities

Loss of The Ship following its confiscation by any legally empowered body in respect of the infringement of any customs law or regulation but only if and to the extent that,

#### Exclusions to Rule 3.19

- (1) The amount recoverable shall not exceed the market value of The Ship at the date of the confiscation.
- (2) The Assured has taken reasonable steps to prevent the infringement of the customs law or regulation giving rise to the confiscation.
- (3) No claim will be considered by the insurer until the Assured has been deprived of his interest in The Ship.

### 3.20 Sue and labour

Extraordinary costs and expenses reasonably incurred on or after the occurrence of any event liable to give rise to a claim upon the insurer and incurred solely for the purpose of avoiding or minimising any liability against which the Assured is insured by the insurer, but only to the extent that those costs and expenses have been incurred with the prior agreement of the insurer (not to be unreasonably withheld).

#### Exclusion to Rule 3.20

Unless the insurer otherwise decides, there shall be deducted from such costs and expenses the deductible which would have been applicable had the liability or expenditure against which the Assured is insured by the insurer been incurred.

### 3.21 Charterers' damage to hull

The Assured's liability as charterer of a Ship (other than as Demise or Bareboat Charterer) for:

- (1) loss or damage to The Ship;
- (2) damages for detention or loss of use or hire or demurrage paid or due to the Owner for a period during which the use of The Ship is lost or the performance impaired as a result of physical damage to The Ship;
- (3) salvage, salvage charges and/or General Average contributions in respect of charterers' freight at risk and/or charterers' bunkers and/or The Ship, following loss of or damage to The Ship;
- (4) loss of or damage to bunkers on The Ship as a consequence of fire, grounding, stranding, collision or the total loss of The Ship.

### 3.22 Omnibus

Any Liabilities which the insurer may determine to be within the scope of cover, but only to the extent that it decides that the Assured shall recover.

## Rule 4: Excluded risks

### 4.1 Risks covered by hull policies

Unless otherwise agreed by the insurer, there shall be no recovery from the insurer in respect of any Liabilities which would be recoverable from hull underwriters if The Ship were, at the time of the incident giving rise to such Liabilities, fully insured under Hull Policies on terms equivalent to those of the usual Lloyd's marine policy with the Institute Time Clauses (Hulls) 1.10.83 attached; furthermore, unless otherwise agreed by the insurer, there shall be no recovery in respect of any franchise or deductible borne by the Assured under such policies.

#### 4.2 Double insurance

Unless otherwise agreed by the insurer, there shall be no recovery in respect of any Liabilities recoverable under any other insurance or which would have been so recoverable:

- (1) apart from any terms in such other insurance excluding or limiting liability on the ground of double insurance; and
- (2) if The Ship had not been insured with the insurer with cover for the risks set out in the Rules.

#### 4.3 War risks

Unless otherwise agreed by the insurer, there shall be no recovery in respect of any Liabilities, irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Assured or his servants or agents, incurred as a result of:

- (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;
- (2) capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat;
- (3) mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war, save that this exclusion does not apply to Liabilities which arise solely by reason of:
  - (a) the transport of any such weapons whether on board The Ship or not; or
  - (b) the use of any such weapons, either as a result of government order or with the agreement of the insurer, where the reason for such use was the avoidance or mitigation of Liabilities which would otherwise fall within the cover given by the insurer.

#### 4.4 Radioactive contamination

There shall be no recovery in respect of any Liabilities, irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Assured or his servants or agents, incurred as a result of:

- (1) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or
- (2) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- (3) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- (4) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter, other than Liabilities arising out of carriage of such matter as Cargo in The Ship which carriage is lawful and permitted under all applicable laws (including without limitation regulations and codes in force in Australia and/or any State or Territory of Australia).

#### 4.5 Guarantees, undertakings and certificates

Notwithstanding the exclusions in Rules 4.3 and 4.4, the insurer will discharge on behalf of the Assured Liabilities arising under a demand made pursuant to the issue by the insurer on behalf of the Assured of:

- (1) a certificate in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 and 1992 or any amendments thereof; or
- (2) an undertaking to the International Oil Pollution Compensation Fund 1992 in connection with STOPIA; or
- (3) a certificate in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001; or
- (4) any enactment of any convention or agreement in (1)–(3) of Rule 4.5 for the time being in force by any applicable law including but not limited to any law of the flag State of the insured Ship.

- 4.6 The Assured shall indemnify the insurer to the extent that any payment under any such guarantee, undertaking or certificate is or would have been recoverable in whole or in part under a standard war risks policy had the Assured complied with the terms and conditions thereof.
- 4.7 The Assured agrees that any payment by the insurer under any such guarantee, undertaking or certificate shall, to the extent of any amount recovered under any Policy of Insurance or additional cover provided by the insurer, be by way of loan and there shall be assigned to the insurer to the extent and on the such as are considered reasonable and practicable, all the rights of the Assured under any other insurance and against any third party.
- 4.8 **Unlawful and hazardous trades**
- No claim is recoverable if it arises out of or is consequent upon The Ship blockade running or being employed in an unlawful trade, or if the insurer reasonably determines that the carriage, trade or voyage was imprudent, unsafe, unduly hazardous or improper.

## **Rule 5: Excluded losses**

Except as provided in this Rule or otherwise agreed by the insurer, there shall be no recovery in respect of:

- 5.1 **Hull damage**
- Loss of or damage to The Ship or any part thereof, save as provided for in Rules 3.19 and 3.21.
- 5.2 **Equipment damage**
- Loss of or damage to any equipment, Containers, lashings, stores, or fuel on board The Ship to the extent that they are owned or leased by the Assured or any associated company, save as provided for in Rule 3.21.
- 5.3 **Repairs**
- The cost of repairs to The Ship or any charges or expenses in connection therewith save as provided for in Rules 3.14, 3.15 and 3.21.
- 5.4 **Loss of hire**
- Loss of freight or hire or any proportion thereof in relation to The Ship, unless such loss, with the agreement of the insurer, forms part of a claim for Liabilities in respect of Cargo, or save as provided for in Rule 3.21.
- 5.5 **Detention**
- Loss arising out of demurrage on, detention of, or delay to The Ship or, except as provided for in Rules 3.16 and 3.4, running costs of The Ship, unless such costs, with the agreement of the insurer, form part of a claim for Liabilities in respect of Cargo.
- 5.6 **Cancellation**
- Loss arising out of the cancellation of any contract or engagement in relation to The Ship.
- 5.7 **Bad debts**
- Loss arising out of irrecoverable debts or the insolvency of any person.
- 5.8 **Pollution**
- Liabilities arising out of the actual, or threatened, escape or discharge of any substance save as provided for in Rule 3.8.
- 5.9 **Salvage**
- Salvage or other services in the nature of salvage provided to The Ship, and any Liabilities in connection therewith, other than such as may be covered under Rules 3.5, 3.8.5, 3.14, 3.15 and 3.21.
- 5.10 Liabilities arising out of salvage operations conducted by The Ship or provided by an Assured other than Liabilities arising out of salvage operations conducted by The Ship for the purpose of saving or attempting to save life at sea.

### 5.11 Specialist operations

Liabilities incurred during the course of performing specialist operations including but not limited to dredging, blasting, pile-driving, well stimulation, cable or pipe laying, construction, installation or maintenance work, core sampling, depositing of spoil, professional oil spill response or professional oil spill response training and tank cleaning (other than on The Ship), but excluding fire-fighting, to the extent that such Liabilities arise as a consequence of:

- (1) claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not), in respect of the specialist nature of the operations; or
- (2) the failure to perform such specialist operations by the Assured or the fitness for purpose or quality of the Assured's work, products or services; or
- (3) any loss of or damage to the contract work including, but not limited to materials, components, parts, machinery, fixtures, equipment and any other property which is or is destined to become a part of the completed project which is the subject of the contract under which The Ship is working, or to be used up or consumed in the completion of such project.

This exclusion does not apply to Liabilities incurred in respect of:

- (a) injury, illness or death of any person on board The Ship;
- (b) wreck removal of The Ship;
- (c) oil pollution emanating from The Ship or the threat thereof,

but only to the extent that such Liabilities are covered by the insurer in accordance with these Rules.

### 5.12 Drilling and production operations

5.12.1 Liabilities incurred in respect of The Ship, being a drilling Ship or any other Ship employed to carry out drilling or production operations in connection with oil or gas exploration or production, including any accommodation unit moored or positioned on site as an integral part of any such operations, to the extent that such Liabilities arise out of or during drilling or production operations.

5.12.2 A Ship shall be deemed to be carrying out production operations if, amongst other things, it is a storage tanker or other Ship engaged in the storage of oil, and either the oil is transferred directly from a producing well to the storage Ship; or the storage Ship has oil and gas separation equipment on board and gas is being separated from oil while on board the storage Ship other than by natural venting.

### 5.13 Heavy lift ships

Loss of or damage to or wreck removal of Cargo carried on a semisubmersible heavy lift Ship or any other Ship designed exclusively for the carriage of heavy lift Cargo, save to the extent that such Cargo is being carried under the terms of a contract on Heavycon terms or any other terms approved by the insurer (not to be unreasonably withheld).

### 5.14 Submarines and divers

Liabilities incurred in connection with any claim arising out of:

- (1) the operation by the Assured of submarines, mini submarines or diving bells; or
- (2) the activities of professional or commercial divers where the Assured is responsible for such activities, other than:
  - (a) activities arising out of salvage operations being conducted by The Ship where the divers form part of the Crew of that Ship (or of diving bells or other similar equipment or craft operating from The Ship) and where the Assured is responsible for the activities of such divers; and
  - (b) incidental diving operations carried out in relation to the inspection, repair or maintenance of The Ship or in relation to damage caused by The Ship; and
  - (c) recreational diving activities.

#### 5.15 Non-marine personnel

Liabilities incurred in respect of:

- (1) personnel (other than marine Crew) on board The Ship (being an accommodation vessel) employed other than by the Assured where there has not been a contractual allocation of risks between the Assured and the employer of the personnel approved by the insurer(not to be unreasonably withheld);
- (2) hotel and restaurant guests and other visitors and catering personnel of The Ship when she is moored (other than on a temporary basis) and is open to the public as a hotel, restaurant, bar or other place of entertainment.

#### 5.16 Waste disposal

Liabilities incurred in connection with any claim brought against the Assured arising out of waste incineration or disposal operations carried out by The Ship, other than any such operations carried out as an incidental part of other commercial activities, not being specialist operations.

#### 5.17 Paperless trading

Liabilities and losses arising from the use of any electronic trading system, other than an electronic trading system approved by the insurer(not to be unreasonably withheld) , to the extent that such Liabilities and losses would not (save insofar as the insurer otherwise reasonably determines) have arisen under a paper trading system.

For the purpose of this Rule:

- (1) 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 the contracting parties may be transferred to a third party.
- (2) a 'document' shall mean anything in which information of any description is recorded, including, but not limited to, computer or other electronically-generated information.

#### 5.18 Direction of the insurer

The Liabilities set out in Rule 5 may be recoverable to the extent that they may be treated as expenses arising under Rule 3.20, or are approved by the insurer(not to be unreasonably withheld).

#### 5.19 Contrary to law

Any loss, damage, cost, expense or liability where to so indemnify the Assured would be contrary to any applicable law, including any claim in respect of Crew Liabilities to the extent that the Assured is required under mandatory legislation to hold and maintain statutory insurances in respect of such Crew Liabilities.

#### 5.20 Cyber risk

Any loss, damage, liability or expense directly or indirectly caused by, contributed to by or arising from:

- 5.20.1 the failure, error or malfunction of any computer, computer system, computer software programme, code, or process or any other electronic system; or
- 5.20.2 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.

#### 5.21 Communicable disease

This policy excludes any actual or alleged loss, liability, damage, compensation, injury, sickness, disease, medical payment, claim, cost, expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

## 5.22 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.

## Rule 6: Scope of recovery and limits

### 6.1 Net loss

If an Assured incurs any of the Liabilities set out in Rule 3, he is entitled to recover the net amount of such Liabilities, deducting any costs and expenses which would have been incurred in any event together with any savings accruing to him and any recoveries made by him, unless otherwise agreed by the insurer.

### 6.2 Limits of recovery

Unless and to the extent the insurer otherwise determines, under no circumstances shall the recovery by any person exceed:

- (1) the amount to which the Assured is entitled to limit his liability, or would have been so entitled under any relevant law had he so petitioned;
- (2) if less than the full Tonnage of The Ship is covered by the insurer, such proportion of the amount referred to in Rule 6.1 as the insured Tonnage bears to the full Tonnage of The Ship;
- (3) any other limit contained in the Rules or set out in the Assured's Policy of Insurance.

6.3 The insurer's liability is limited to a maximum of AUD\$50,000,000, any one event. This limit applies in the aggregate in respect of the Assured and any other person entitled to claim under the Rules.

### 6.4 Assured's property

If a claim arises following a collision involving two Ships belonging to the same Assured, he is entitled to recover from the insurer, and the insurer has the same rights, as if the Ships had belonged to different Owners.

6.5 If a claim arises under Rules 3.7 or 3.9 following loss of or damage to any Ship, property or object belonging to the Assured in respect of whose Ship the claim arose, the Assured is entitled to recover from the insurer, and the insurer has the same rights, as if such Ship, property or object lost or damaged had belonged to a third party, but only to the extent that such loss or damage is not recoverable under any other insurance upon the said Ship, property or object.

6.6 If the Cargo in respect of which a claim arises under Rule 3.13 is the property of the Assured, he is entitled, subject to the exclusions to Rule 3.13, to recover such Liabilities as would have been recoverable if that property belonged to a third party and that third party had concluded a contract of carriage with the Assured.

### 6.7 Amounts owing to the insurer

The insurer is not liable to make any payment in respect of any claim while any sum is due from the Assured under the Rules, or due in respect of a Ship insured under the same Group Rating Agreement; however, if any payment is made, the insurer may deduct any sum which is due from an Assured relating to any policy year.

### 6.8 Interest

In no case is interest payable on sums due from the insurer.

## **6.9 Pay to be paid**

- 6.9.1 Where an Assured has failed to discharge a legal liability to pay a claim for compensation for Crew injury, illness or death, the insurer shall pay such claim on the Assured's behalf directly to such claimant, Crew or dependent thereof.
- 6.9.2 There shall be no recovery unless the claimant has no enforceable right of recovery against any other party and would otherwise be uncompensated.
- 6.9.3 , the amount payable by the insurer shall under no circumstances exceed the amount by which the Assured would have been able to recover from the insurer under the Rules and the Assured's terms of entry.
- 6.9.4 Where the insurer is under no liability to the Assured in respect of the claim solely by reason of the application of Rule 17.8, the insurer shall nevertheless pay the claim but as agent only of the Assured, and the Assured shall be liable to reimburse the insurer for the full amount of such claim.

## **6.10 Deductibles**

Any sum recoverable shall be subject to such deductible as has been agreed by the insurer and listed on the policy schedule.. Unless otherwise agreed, deductibles shall apply any one event.

- 6.11 The insurer may undertake the defence of an Assured or institute legal proceedings on his behalf in respect of any amount not recoverable by reason of any deductible for ascertaining the legal position of the Assured. In doing so the insurer will consider interests of the Assured and consult with the Assured. Although the insurer may pay the costs of such legal proceedings, the Assured shall bear any damages therein adjudged or awarded against him.

## **6.12 Wilful misconduct**

Unless the insurer otherwise decides, no claim is recoverable in respect of any Liabilities where in the opinion of the insurer, acting reasonably, have been incurred owing to the privity or Wilful Misconduct of an Assured.

## **6.13 Obligation to sue and labour**

An Assured must whenever it is reasonably and practicably possible take reasonable steps to avoid or minimise any loss, damage or liability in respect of which he may be insured. If an Assured is in breach of this obligation, the insurer may reject any claim by the Assured for reimbursement or reduce the sum payable by the insurer.

# **Rules 7 – 9: Obligations with regard to claims**

## **7.1 Notification**

An Assured must as soon as reasonably practicable notify the insurer in writing:

- (1) of every matter; and
- (2) of every claim made by a third party against him,

which may lead to a claim for recovery.

- 7.2 An Assured must submit his claim for reimbursement of any Liabilities within 12 months after discharging or settling them, and must produce in support of each claim the information the insurer may reasonably require.

## **7.3 Documentation**

An Assured must notify the insurer of any information or documentation in his power, custody, control or knowledge relevant to any matter and must, as soon as reasonably practicable after receiving a request by the insurer, give to the insurer and/or to the experts or lawyers appointed to act on his behalf all such documentation and allow it to be inspected and copied.

- 7.4 An Assured must allow the insurer, or the appointed experts or lawyers, to interview any person employed by the Assured whom the insurer considers may have knowledge of the matter. If any such person is required to give evidence at any legal proceedings relating to a matter, the Assured will use his best endeavours to make sure he attends.

#### **7.5 Developments**

An Assured must keep the insurer fully informed as reasonably practicable of the progress of any matter which will or may cause the Assured to incur Liabilities for which he may be insured by the insurer, including any costs and expenses, and of any action proposed in relation to such matter.

#### **7.6 Settlement**

An Assured must not settle, compromise or admit liability for any matter for which he may be insured by the insurer without the approval of the insurer (not to be unreasonably withheld) or without complying with any requirements of the insurer for making provision for any costs or expenses incurred by the insurer. If he does so, he will be liable to pay by way of indemnity to the insurer any costs and expenses (which the insurer has incurred in respect of such matter).

#### **7.7 Recovery**

Where an Assured has made a claim against another party and has become entitled to a recovery there shall be credited and paid to the insurer from such recovery an amount corresponding to the sum paid by the insurer, including any interest and costs, or such lesser sum as the insurer may determine.

7.8 An Assured who incurs any costs or expenses without the agreement of the insurer, or without the matter being conducted by an expert or lawyer appointed or previously approved by the insurer, will not be entitled to reimbursement of such costs or expenses by the insurer without the approval of the insurer. Any agreement or approval of the insurer shall not be unreasonably withheld.

#### **7.9 Evidence**

An Assured must not withhold any evidence which is or may be relevant to disclose, or make any false statement. If such evidence is withheld or concealed any Liabilities already incurred or reimbursed by the insurer must be repaid by the Assured.

#### **8.1 Powers of the insurer relating to the handling of claims**

The insurer has the right to control or direct the conduct of any matter or legal proceedings relating to any Liabilities in respect of which the Assured is or may be insured in whole or in part, and in particular to direct the Assured to use a particular expert. In doing so the insurer will consider an Assured's interests and consult with an Assured.

8.2 The insurer has the right to require the Assured to settle, compromise or otherwise dispose of any matter or proceeding in such manner as it sees fit. In doing so the insurer will consider an Assured's interests and consult with an Assured

8.3 The insurer may at any time on notice to the Assured in writing withdraw its approval of any expert or lawyer appointed to act on behalf of the Assured; in such circumstances the Assured will have no further entitlement to reimbursement of any of the costs or expenses of that expert or lawyer unless and to the extent the insurer otherwise determines.

8.4 The insurer may at any time appoint, on behalf of an Assured at the expense of the insurer, experts or lawyers to deal with any matter which may result in Liabilities in respect of which the Assured may be covered under the Rules. In doing so the insurer will consider an Assured's interests and consult with an Assured

#### **8.5 Effect of non-compliance**

If an Assured fails to comply with any obligation under Rules 7 and 8, the insurer shall not be under any obligation to reimburse him.

#### **9.1 Security**

The insurer is under no obligation to provide security on behalf of an Assured, but where it is provided it shall be on such terms as the insurer considers appropriate and shall not constitute any admission of liability by the insurer for the claim in respect of which it is given.

9.2 An Assured on whose behalf the insurer has provided security, with or without the Assured's express authority, shall on demand replace the security or pay to the insurer a sum corresponding to the amount of such security whether or not such amount may be recoverable in whole or in part from the insurer.

- 9.3 In no case shall the insurer be liable for the detention of The Ship, or for any other detention or attachment of an Assured's assets, or for any damage whatsoever caused to an Assured by reason of the provision or non-provision of security.
- 9.4 An Assured shall upon demand reimburse the insurer such sum or sums as the insurer has paid on his behalf or under security provided by the insurer to the extent that such payment is, in the reasonable opinion of the insurer, in respect of Liabilities not recoverable from the insurer.

## **Rules 10 – 14: Application and insurance**

### **10.1 Application**

The Applicant must provide the insurer with all material particulars and information together with any additional particulars and information as the insurer may require.

- 10.2 The Applicant warrants on his own behalf and on behalf of any other person that he has provided all material information and that all such information is, so far as he knows or could with reasonable diligence ascertain, true and complete, and will remain so throughout the period of insurance. The information so provided forms the basis of the contract of insurance between the Applicant and the insure
- 10.3 The insurer may, without giving any reason, refuse any application for the insurance of a Ship.
- 11.1 The Assured is obliged to disclose any change in the following material information relating to a Ship including, but not limited to, change of: management, flag, classification society, nationality of Crew, trading area or nature of trade. Upon such disclosure the insurer may amend the Assured's terms of insurance, or terminate the insurance in respect of such Ship.
- 11.2 The Assured is bound by and must observe and perform the obligations under the Rules, and must provide the insurer with electronic and postal addresses for service of notices.
- 11.3 The Assured warrants that he is, in relation to The Ship:
- (1) her Owner or charterer; or
  - (2) a manager or operator having control of her operation and employment; or
  - (3) any other person in possession and control of her.
- 11.4 Under a Charterer's Insurance, the Assured warrants that he will, unless otherwise agreed with the Insurer, declare to the Insurer all Ships chartered by him.

### **12.1 Policy of insurance**

The insurer will send the Assured a Policy of Insurance stating the date of commencement of cover and the terms and conditions on which The Ship has been accepted for insurance.

- 12.2 If at any time there is a variation in the terms of insurance, the insurer will send the Assured an endorsement stating the terms of such variation and the date from which such variation is to be effective.
- 12.3 Every Policy of Insurance issued is conclusive evidence as to its terms; if the insurer believes that such documentation contains any error or omission it may issue a new Policy of Insurance or endorsement which will be conclusive as aforesaid.

### **13.1 Joint Assured**

The insurer may accept an application from an Assured for another person or persons to become Joint Assureds under the Assured's Policy of Insurance. Each Joint Assured has an independent right of recovery from the insurer.

- 13.2 Unless otherwise agreed by the insurer, the Assured and all Joint Assureds are jointly and severally liable to pay all amounts due to the insurer in respect of such Policy of Insurance.

13.3 The Assured and each Joint Assured warrants that the Joint Assured is, in relation to The Ship:

- (1) interested in her operation, management or manning; or
- (2) the holding company or the beneficial Owner of the Assured or of any person interested in her operation, management or manning; or
- (3) a mortgagee; or
- (4) the charterer.

13.4 The Assured warrants that he has at all times full power and authority to act in the name of and/or on behalf of all Joint Assureds.

### 13.5 Co-Assureds

The insurer may accept an application from an Assured for another person or persons to become Co-Assureds under his Policy of Insurance.

13.6 The liability of the insurer to a Co-Assured only extends insofar as he may be found liable to pay in the first instance for Liabilities which are properly the responsibility of the Assured which, if the Assured has entered into a contract with the Co-Assured, means those Liabilities which are to be borne by the Assured under such contract. Cover does not extend to any amount which would not have been recoverable from the insurer by the Assured had the claim been made or enforced against him or to any Liabilities to be borne by any of the Co-Assureds under the said contract.

13.7 Once the insurer has indemnified a Co-Assured it shall not be under any further liability to any person in respect of that claim.

### 13.8 Insured Parties

The receipt by an Insured Party of any sums paid by the insurer under a Policy of Insurance is sufficient discharge by the insurer for the same.

13.9 Any provision of the Rules by which an Insured Party ceases either to be insured or to be entitled to recover from the insurer is deemed to apply to all Insured Parties. Failure by an Insured Party to comply with any of the obligations under the Rules is deemed to be the failure of all Insured Parties.

13.10 Conduct of an Insured Party which would have entitled the insurer to decline to indemnify it is deemed to be the conduct of all Insured Parties.

13.11 The contents of any communication between an Insured Party and the insurer is deemed to be within the knowledge of all Insured Parties.

13.12 The cover provided to Joint Assureds and Co-Assureds does not extend to any Liabilities or disputes either among such Joint Assured and Co-Assureds, or with the insurer.

### 13.13 Charterer named as Joint Assured or Co-Assured

Unless otherwise agreed by the insurer and specified in the certificate, where a charterer is named as a Joint Assured or Co-Assured, the insurer and all Joint Assureds or Co-Assureds, including such charterer, warrant that the charterer is either:

- (1) affiliated to or associated with the Assured or such of any Joint Assureds as is agreed by the insurer; a charterer shall be affiliated to or associated with an Assured if both the Assured and the charterer are under common ownership or the Assured or the charterer respectively either owns at least 50% of the shares in and voting rights of the other or owns a minority of the shares in the other and can procure that it is managed and operated in accordance with its wishes; or
- (2) has contracted with the Assured or a Joint Assured for the provision of services to or by The Ship and that contract:
  - (a) has been approved by the insurer; and
  - (b) is on Knock-for-Knock terms; and the charterer is only covered for Liabilities which are to be borne by the Assured or other Joint Assured under the terms of the relevant contract and would, if borne by the Assured or that Joint Assured, be recoverable by either from the insurer.

#### 13.14 **Waiver of subrogation**

Where a charterer or other party is named as a Joint Assured or Co-Assured and a waiver of subrogation is required under a contract, rights of subrogation against such Joint Assured or Co-Assured are waived only where the insurer has agreed such a waiver; any such waiver applies only in respect of those Liabilities which are borne by the Assured or other Joint Assured under the terms of the relevant contract and not to any Liabilities which are to be borne by the charterer or other party.

#### 13.15 **Group entries**

The insurer may accept a Ship for insurance on the basis that it is part of a Group Rating Agreement and assess contributions accordingly.

13.16 One person must be designated group principal and any communication from or on behalf of the insurer to the group principal is deemed to be within the knowledge of all Insured Parties in the group and any communication from and action taken by the group principal is deemed conclusively to be made with the full approval of any and all Insured Parties within that group.

13.17 All persons entering Ships under a Group Rating Agreement and the group principal remain jointly and severally liable to pay all amounts due to the insurer in respect of any and all Ships in the same group.

#### 13.18 **Affiliated and associated companies**

In the case of a claim which would be recoverable from the insurer being enforced against an affiliated or associated company of an Assured, but not of a Joint Assured or a Co-Assured, such company shall, if the Assured so requires in writing, be entitled to recover such sum from the insurer but only to the extent to which the insurer would have been entitled to recover if the claim had been enforced against him.

#### 13.19 **Breach of warranty**

In the event of any breach by the Assured of the warranties set out in Rules 10.2, 11.3, 11.4 and 13.4, all Insured Parties' insurance shall terminate automatically from the time of the breach. In such circumstances the Assured shall be, and remain, liable for all contributions up to the time of the breach.

13.20 In the event of any breach by a Joint Assured or Co-Assured of the warranties set out in Rules 13.3 and 13.13, the Joint Assured's or Co-Assured's insurance shall terminate automatically from the time of the breach. If a Joint Assured is in breach, he shall be, and remain, liable for all contributions up to the time of the breach.

#### 14.1 **Assignment**

No insurance given by the insurer and no interest under the Rules or under any contract between the insurer and any Assured may be assigned without the agreement of the insurer who has the right to give or refuse such consent. Any assignment made without such agreement shall, unless the insurer otherwise determines, be of no effect and the assignee shall have no rights against the insurer.

14.2 In the event that the insurer gives its consent, it is entitled in settling any claim presented by the assignee to deduct or retain such amount as may be reasonably necessary to discharge any actual or potential Liabilities of the assignor to the insurer.

### **Rule 15: Ship standards and surveys**

#### 15.1 **Classification and condition of ships**

Unless otherwise agreed by the insurer, the following are conditions of the insurance of every Ship:

- (1) The Ship must be and remain fully classed with an IACS classification society
- (2) any matter in respect of which the classification society might make recommendations about action to be taken must be promptly reported to the society
- (3) the Assured must comply with all the Rules, recommendations and requirements of the classification society within the time or times specified by that society

- (4) the insurer may inspect any document, and/or obtain any information relating to the maintenance of The Ship's class, in the possession of any classification society with which The Ship is or at any time has been classed, and the Assured authorises such society to disclose such documents and/or information to the insurer for whatever purposes they may consider necessary
  - (5) the Assured must comply with all statutory requirements of The Ship's flag state relating to the construction, adaptation, condition, fitment, equipment, manning and operation of The Ship and must at all times maintain the validity of such statutory certificates as are required or issued by or on behalf of The Ship's flag state, including those in respect of the ISM and ISPS codes.
- 15.2 Unless and to the extent the insurer otherwise decides, an Assured is not entitled to any recovery in respect of any Liabilities arising during a period when any of the conditions in Rule 15.1 have not been complied with.
- 15.3 Surveys**
- The insurer may, as a condition of acceptance or renewal of cover, appoint a surveyor to inspect an Applicant's or Assured's Ship. In the light of such survey, the insurer may decline the application, refuse to renew the insurance or impose conditions on the terms of insurance as it see fit.
- 15.4 Routine or claim surveys and reviews**
- The insurer may at any time, or following an incident, or within a reasonable time of the incident, which will or may cause the Assured to incur Liabilities for which he may be insured by the insurer, appoint a surveyor to inspect an Assured's Ship or undertake a review of the Assured's operations within a specified period. If The Ship is not made available for survey, or the review does not take place, within such period, no claim for recovery as a result of any incident arising after the expiry of such period will be allowed unless the insurer otherwise determines.
- 15.5 Surveys following lay-up**
- In the event that an Assured has laid his Ship up for more than 90 consecutive days he must, unless otherwise agreed by the insurer, notify them of his intention to trade The Ship at least seven days before she resumes trading. The insurer may then require the Assured to have that Ship inspected by a surveyor appointed by them. In the event that the Assured does not notify the insurer of his intention to trade The Ship, no claim for recovery will be allowed unless the insurer otherwise determines
- 15.6 Effect on terms of insurance**
- In the light of any survey or review the insurer may:
- (1) terminate the Assured's insurance; or
  - (2) amend, vary or impose conditions on the terms of insurance as it sees fit.
- 15.7 Effect of non compliance**
- Any recommendations made by the insurer or a surveyor following any survey or review must be carried out within the time specified by, and to the satisfaction of, the insurer and no recovery shall be allowed in respect of any incident arising after any such recommendations have been made until they have been complied with..

## **Rules 16 – 17: Period of insurance**

- 16.1 If an Assured does not wish to continue the insurance in respect of The Ship he must give notice in writing to the insurer not later than 30 days before the expiry of the period of insurance.
- 16.2 The Ship may not be withdrawn at any other time or in any other manner except with the consent of the insurer.
- 16.3 Insurer's notice**
- The insurer may, in respect of The Ship, at any time and without giving any reason:
- (1) give to an Assured seven days' notice that he is not entitled to any recovery in respect of any claim arising during the period from expiry of that notice until such further time as the insurer specifies; or
  - (2) terminate the insurance on 30 days notice in writing given no later than 30 days prior to the expiry of the period of insurance.

#### 16.4 Pro-rata premium

Subject to Rule 18.2, an Assured is only liable for premiums in respect of The Ship for the current policy year pro-rata for the period from the time stated in the Assured's Policy of Insurance until noon GMT:

- (1) on the day ownership was legally transferred;
- (2) on the day The Ship became an actual or constructive total loss or such later date as the insurer may determine;
- (3) on the date of cessation of insurance.

#### 17.1 Cessation of insurance

An Assured shall cease to be insured by the insurer in respect of any and all Ships if:

- (1) being an individual, he dies, becomes of unsound mind, or bankrupt or makes any arrangement with his creditors generally; or
- (2) being a company, a resolution is passed for its voluntary winding-up or an order is made for its compulsory winding-up or it is dissolved or seeks protection from its creditors under any applicable bankruptcy or insolvency laws or any similar event occurs in any applicable jurisdiction.

#### 17.2 An Assured shall cease to be insured by the insurer in respect of any Ship if:

- (1) he sells or assigns the whole or any part of his interest in The Ship, unless the insurer has consented to such assignment and to an assignment of the relevant insurance pursuant to Rule 14.1;
- (2) The Ship becomes, or is accepted by hull underwriters as, an actual or constructive total loss, or there is a compromise reached with hull underwriters, or constructive total loss, except as regards Liabilities flowing directly from the casualty which gave rise to the actual or constructive loss of The Ship, or such later date as the insurer may determine; the insurer may, however, agree to extend the period of insurance on such terms as it thinks fit;
- (3) notice is given under Rules 16.1 to 16.3 and is not withdrawn by agreement before the expiry of the period of insurance;
- (4) the insurance terminated or ceases in accordance with Rules 15 or 16.3.

#### 17.3 Cancellation of insurance

If an Assured fails to pay when due and demanded by the insurer any sum owing from him including any sum for which he is liable under Rule 13.17:

- (1) unless and to the extent the insurer otherwise decides, an Assured will not be entitled to any recovery in respect of any claim arising from the date of such failure until the date such sum owing to the insurer is paid in full; and
- (2) his insurance will be cancelled, whether or not it may already have ceased for some other reason, if after service on him of a notice stating that there are sums owing and requiring payment, he fails to pay any sum in full within 30 days of service of the notice.

#### 17.5 Effect of cessation of insurance

When an Assured ceases to be insured in respect of any Ship or at all ('the date of cessation') then:

- (1) such Assured and his successors are, and remain, liable for all contributions in respect of the whole of the policy year in which the date of cessation occurs and in respect of previous policy years unless Rules 16.4, 18.2 and 18.3 are applicable or such liability may have been otherwise agreed under Rule 19; and
- (2) the insurer remains liable for all claims under the Rules arising out of any event occurring prior to the date of cessation, but is under no liability for anything occurring after the date of cessation.

#### 17.6 When an Assured ceases to be insured under Rule 16.4 he remains liable for contributions for the policy year in which the cessation occurs pro-rata only for the period beginning with the date the insurance begins and ending with the date of termination.

17.7 When an Assured ceases to be insured by virtue of Rule 17.2(2), he continues to be insured by the insurer in respect of wreck Liabilities in accordance with Rules 3.8.6 and 3.11, and on such other terms as may be agreed by the insurer.

#### 17.8 Effect of cancellation of insurance

When an Assured's insurance is cancelled under Rule 17.3 then:

- (1) if the cancellation occurs while the Assured is, but for the cancellation, insured, such Assured and his successors are, and remain, liable for all contributions in respect of the policy year during which the date specified in the notice ('the date of cancellation') occurs pro-rata only for the period starting with the date the policy begins and ending with the date of cancellation and in respect of previous policy years irrespective of whether or not notice has been given under Rule 17.3
- (2) if the cancellation occurs after the Assured has ceased to be insured for some other reason, such Assured and his successors remain liable for all premium as provided for in Rule 17.5(1)
- (3) the insurer ceases to be liable for any claims in respect of any Ships insured by such Assured:
  - (a) which may arise by reason of any event occurring after the date of cancellation
  - (b) which have accrued or arisen during a policy year for which sums remained owing but unpaid by the Assured in full or in part at the date of cancellation
  - (c) which may have accrued or arisen in any year other than one referred to in (3)b above, whether or not the insurer may have admitted liability for such claims or may have known, at the date of cancellation, that a claim was likely to accrue.

### Rules 18 – 19: Premiums

18.1 The Assured agrees to pay all premium determined by the insurer, in such manner and at such time as the insurer may reasonably require.

#### 18.2 Laid-up returns

If a Ship is laid-up in a safe port without any Cargo on board for 30 or more consecutive days after finally mooring there, the Assured is, subject to Rule 18.3, allowed a pro-rata return of premium up to a maximum rate of 75 per cent. Any lay-up return is reduced pro-rata for any period of shifting within the port during lay-up.

##### Exclusion to Rule 18.2

Unless otherwise agreed by the insurer, there shall be no return if:

- (1) there are Crew members on board The Ship other than for security or for maintenance necessary for the safety of The Ship; or
- (2) repairs are carried out other than for the safety of The Ship.

18.3 If an Assured does not notify and submit his claim for reimbursement to the insurer in writing within three months under Rule 16.4, no allowance or return shall be made unless the insurer otherwise determines.

#### 19.1 Payment

Any premium or other sums due shall be designated in such currency, and be payable in such manner, as the insurer may reasonably require.. If any sum due is not paid on the specified date, time being of the essence, such Assured shall pay interest on the amount outstanding from that date until the date of payment at such rate as the insurer determines. The insurer may, however, waive payment of interest in whole or in part.

#### 19.2 Lien

The insurer is entitled to, and the Assured grants, a lien on The Ship in respect of any amount owed by the Assured to the insurer.

## **Rules 20 – 22: General terms and conditions**

20. Whenever the insurer's agreement or approval is required by the Rules, it must be given in writing, and no agreement or approval shall be of any effect in the absence of such written agreement

### **21.1 Notices**

All notices and documents required by the Rules to be given to the insurer must be in writing.

21.2 All notices and documents required by the Rules to be served on an Assured may be served as the insurer decides either personally, or by post, fax or e-mail to him:

- (1) at his address as recorded by the insurer; or
- (2) at any other address he has notified the insurer as being his address for service; or
- (3) at any address of a broker or agent through whom any Ship has been insured.

21.3 Every notice and document served personally is deemed served on the day of service; if served by post, fax or e-mail is deemed served on the second day after posting or sending. Proof of posting is sufficient proof of service by post, while the insurer's record of any electronic communication is sufficient proof of service by other means.

### **21.4 Website**

The insurer may send or supply any notice or document to Assureds by making it available on the insurer's website, and it is deemed delivered when the relevant Assureds are notified that it is available on the website.

### **22.1 Law and jurisdiction**

All Insured Parties submit to the jurisdiction of the Supreme Court of Victoria (in accordance with Rule 1.4) in respect of any action brought by the insurer to recover any sums which it may consider to be due from an Insured Party. However the insurer is entitled to commence and maintain any action to recover any sums which it considers to be due from an Insured Party in any jurisdiction.

22.2 If any dispute other than a dispute within the scope of Rule 22.1 arises between an Insured Party and the insurer out of or in connection with the Rules, the parties will attempt to settle it by mediation in accordance with the CEDR model mediation procedure except that any mediator shall be resident in Australia. The mediation will take place in Melbourne. The mediation agreement shall be governed by the laws in force in the State of Victoria. The Supreme Court of Victoria shall have exclusive jurisdiction to settle any claim, dispute or difference which may arise out of, or in connection with, the mediation.

22.3 If the dispute is not settled by mediation within 14 days of commencement of the mediation or within such further period as the parties may agree in writing, the dispute shall be referred to and finally resolved by arbitration in Melbourne before two arbitrators, one to be appointed by each of the parties, and an umpire to be appointed by the two arbitrators. The submission to arbitration and all the proceedings therein shall be subject to the Commercial Arbitration Act 1984 (Vic) and any statutory modification thereof provided that if the amount in dispute is less than AUD\$50,000 the arbitration shall be determined by a sole arbitrator to be agreed between the parties but if not agreed then appointed by the President for the time being of the Maritime Law Association of Australia and New Zealand.

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