



NORWEGIAN HULL CLUB

# Charterers' Rules 2021



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# Part 1 – Introduction

## **1. ENTRY & DURATION**

- 1.1. Any Charterer (other than a bareboat or demise charterer) may apply for entry of a vessel to the Association on a fixed premium basis. Such a fixed premium entry does not entitle the Charterer to become a member of the Association.
- 1.2. The Association may decide in its absolute discretion whether or not to accept an application, and on what terms and conditions, and need not give any reasons for rejecting an application. On acceptance the vessel entered with the Association is referred to as Entered Vessel as defined in Appendix 1.
- 1.3. The policy period shall be 12 months from the commencement date or such other period stated in the Certificate of Insurance.

## **2. CO-ASSUREDS**

- 2.1. Where cover is required for Co-Assureds, each Assured and Co-Assured shall be identified in the policy. Cover will not be provided for liabilities or expenses incurred by associated or affiliated companies of the Assured unless this is provided for in the Certificate of Insurance or applicable underlying underwriting documentation.
- 2.2. The cover afforded to a Co-Assured shall extend only to risks, liabilities and expenses arising out of operations and/or activities that are customarily carried on by Charterers and that fall within the scope of these Rules and any special terms in the Certificate of Insurance or applicable underlying underwriting documentation.
- 2.3. Co-Assureds shall be jointly and severally liable with the Assured to the Association for premium and other debts. Receipt by an Assured or Co-Assured of any payment by the Association shall constitute payment to each insured party.
- 2.4. The total liability of the Association to the Assured and any Co-Assureds in respect of any one event shall not exceed such sum as would have been recoverable from the Association only by the Assured.
- 2.5. Any failure by the Assured or any Co-Assured to comply with any of the obligations under these Rules shall be deemed to be a failure of the Assured and all Co-Assureds.
- 2.6. Any conduct or omission by the Assured or any Co-Assured which would have entitled the Association to reject or reduce any claims shall be deemed to have been the failure of the Assured and all Co-Assureds.

## **3. SCOPE OF COVER**

- 3.1. The Assured is covered in respect of P&I, CLH, and War Risks specified in these Rules and any Additional Cover defined in Appendix 1, which is expressly agreed between the Association and the Assured. The cover is subject to the terms, conditions, limitations and exclusions set out in these Rules.
- 3.2. Unless otherwise agreed in the policy, liabilities, losses, expenses and costs which are covered must arise in direct connection with the operation of the Entered Vessel in the Assured's capacity as Charterer of the Entered Vessel, and occur during the period of entry of the vessel for the relevant risk.

## **4. REINSURANCE**

The Association shall have the right in its sole discretion to effect on behalf of the Association the reinsurance or ceding of any risks insured by the Association with such reinsurers and on such terms as the Association shall consider appropriate.

## **5. PAYMENT OF PREMIUM AND OTHER SUMS DUE**

- 5.1. Unless otherwise agreed in writing, premiums are due on the commencement of cover.
- 5.2. Any sums due and debited to an Assured are payable on demand with interest accruing at such rate as the Association will decide from time to time on any sums not paid on the due date.
- 5.3. In the event of any failure to comply with any of the above requirements, the Assured shall not be entitled to any recovery from the Association in respect of any Event as defined in Appendix 1 occurring whilst any premium or other sum was outstanding, and the Association shall be entitled to cease handling cases the Association is handling for the Assured during that time.
- 5.4. The Assured shall pay the Association on demand the amount of any tax or duty for which the Association is or may become liable relating to premium or other sums paid or payable by the Association.

**6. SET OFF**

6.1. The Association shall be entitled to set off any amount due from an Assured against any amount due to such Assured or Co-Assured.

6.2. Unless the Association agrees, an Assured shall only set off against any amount due to the Association, any sum which has previously been awarded to the Assured from the Association by an arbitration panel appointed under Rule 60.

**7. DEDUCTIBLES**

Compensation including costs and expenses shall be subject to the deductibles set out in the Certificate of Insurance.

**8. LIEN**

The Association shall be entitled to a lien over any bunkers, hire, freight or other property owned by the Assured. The lien hereby granted may be enforced by way of arrest or attachment of property in any appropriate jurisdiction. The Assured hereby irrevocably agrees not to challenge the jurisdiction of any court which considers it has the right to make an adjudication in respect of the Association's arrest or attachment application.

**9. AMENDMENTS TO THE RULES**

If, in the sole discretion of the Association, a substantial alteration of risk occurs for any reason, the Association may make such amendments to the Rules as the circumstances may require, provided at least 1 month's notice of the amendment(s) is given in writing to the Assured.

**10. IDENTIFICATION**

The Association may invoke against the Assured faults and negligence committed by any organisation or individual to whom the Assured has delegated decision-making authority concerning functions of material significance for the insurance, provided that the fault or negligence occurs in connection with the performance of those functions.

## Part 2 – Standard cover

### **11. CHARTERERS LIABILITY TO HULL (CLH)**

- 11.1. The Association shall cover the Assured in respect of those liabilities, losses, costs and expenses incurred by the Assured in respect of:
- 11.1.a. the Assured's liability as Charterer of an Entered Vessel arising from physical damage to and/or loss of the vessel and/or its equipment and/or outfit and/or stores and/or supplies;
- 11.1.b. the Assured's liability to owners for the vessel's proportion of sue and labour expenses;
- 11.1.c. the Assured's liability to owners for demurrage, loss of use and/or hire of the entered vessel or any similar financial loss as a direct consequence of the physical damage to and/or loss of the vessel;
- 11.1.d. the Assured's liability to owners for surveyors' fees and disbursements and/or engineers' fees and disbursements and/or other experts' fees and disbursements and/or legal fees and disbursements and/or similar expenditure arising from alleged physical damage to and/or loss of the Entered Vessel;
- 11.1.e. the use of lawyers, surveyors and other experts, approved by the Association, for a particular CLH matter.

### **12. CARGO LIABILITIES**

The Association shall cover the Assured's liability for cargo loss, shortage, damage or delay arising out of any breach by the Assured or by any person for whose acts he may be liable subject to rule 10 and the cargo liability exclusions and excluded losses set out in Part 5 and the general terms and conditions as set out in Part 6.

### **13. EXTRA CARGO HANDLING COSTS**

The Association shall cover the Assured's liability for additional costs in connection with damaged or rejected cargo, over and above those that would have been incurred if the cargo had not been damaged or rejected, in necessarily and reasonably discharging or disposing of damaged or rejected cargo provided that the Assured is insured for cargo liabilities under Rule 12 and that such expenses are not claimable in General Average or against a third party or are a result of the vessel being overloaded or improperly stowed or result from any of the matters referred to in Rule 33.1.1 - 33.1.22 and Rule 34.1.4. - 34.1.8.

### **14. COLLISIONS**

The Association shall cover the Assured's liability for loss or damage to another vessel, her cargo, equipment, stores and supplies as a consequence of a collision between another vessel and an Entered Vessel.

### **15. LOSS OF OR DAMAGE TO PROPERTY**

The Association shall cover the Assured's liability to pay damages or compensation for or in relation to any loss of or damage to any property whether on land or water and whether fixed or moveable. This does not apply in respect of loss or damage to property which is owned or controlled by the Assured.

### **16. WRECK REMOVAL AND OBSTRUCTION LIABILITIES**

- 16.1. The Association shall cover the Assured's liability:
- 16.1.1. in respect of costs and expenses relating to the raising, removal, destruction, lighting and marking of the Entered Vessel, or any other vessel, or their equipment, bunkers or cargo lost as a result of a casualty when such operations are compulsory by law or necessary to avoid or remove a hazard or obstruction, and the costs are legally recoverable from the Assured, provided that recovery under Rule 16 shall be conditional upon the realized value of the wreck and other property saved being credited to the Association;
- 16.1.2. incurred by reason of the vessel or the wreck of the vessel or parts thereof causing an obstruction as a result of a casualty.

### **17. GENERAL AVERAGE AND SALVAGE**

- 17.1. The Association shall cover:
- 17.1.1. the Assured's liability for general average, special charges and salvage contributions levied upon or

- attributable to freight, hire, bunkers or other property (other than cargo);
- 17.1.2. the Assured's liability to Owners for the vessel's proportion of salvage, salvage charges and of general average as stated in the general average adjustment or as determined by a court, competent tribunal or independent adjudicator appointed by the Association or as otherwise agreed;
- 17.1.3. general average expenditure and special charges incurred by the Assured which should have been paid by cargo interests or some other party to the maritime adventure, but which are not legally recoverable solely by reason of a breach of the contract of carriage.

## **18. QUARANTINE**

The Association shall cover the Assured's liability for costs incurred as a direct consequence of an outbreak of infectious disease onboard the Entered Vessel including quarantine and disinfection expenses and the net loss to the Assured over and above expenses that would have been incurred in respect of fuel, insurance, wages, stores, provisions and port charges, unless such costs were incurred in consequence of the Entered Vessel being ordered to a port or otherwise employed when the Assured knew or should have known that such additional costs or liabilities would be incurred.

## **19. POLLUTION**

- 19.1. The Association shall cover the Assured's liability, costs and expenses arising out of the discharge or escape of oil or other polluting substance from an Entered Vessel including claims arising from measures taken to avoid or minimise pollution. However, there shall be no cover for liabilities or costs of the Assured arising out of or in relation to:
- 19.1.1. the Assured's ownership or rights in the cargo;
- 19.1.2. the presence in or the threatened escape or discharge from any land based dump, site, storage or disposal facility of any substance previously carried on the Vessel as cargo, fuel, stores, waste or otherwise.
- 19.1.3. any certificate of insurance or confirmation of cover being deemed to be evidence of financial responsibility under the United States Oil Pollution Act 1990 and/or any similar federal or state legislation;
- 19.1.4. any certificate of insurance, policy of insurance or confirmation of cover being shown to the United States Coast Guard or any other federal or state agency as evidence of financial responsibility or insurance;
- 19.1.5. costs which would be recoverable in general average if the Assured had incorporated the York-Antwerp Rules 1994 into any applicable contract of carriage.

## **20. FINES**

The Association shall cover the Assured's liability for fines or other penalties imposed directly on the Assured or any person the Assured is liable to reimburse in respect of breach of any immigration law or regulation or for short delivery or over delivery of cargo or for failure to comply with regulations concerning the declaration of goods, other than cargo on board the Entered Vessel, or for declaration of cargo provided the Assured is insured for cargo liabilities under Rule 12 or in respect of the accidental escape or discharge of oil or other polluting substance provided the Assured is insured for pollution liabilities under Rule 19.

## **21. TOWAGE**

- 21.1. The Association shall cover the Assured's liability, other than the costs of the contracted service, under the terms of a contract for:
- 21.1.1. customary towage of an Entered Vessel for the customary towage of an Entered Vessel for the purpose of entering or leaving port or maneuvering within port during the ordinary course of trading or towage of such insured vessels as are habitually towed or pushed in the ordinary course of trading from port to port or place to place; or
- 21.1.2. towage of an Entered Vessel for towage other than customary towage as referred to under Rule 21.1.1, always provided that cover for such liability has been expressly agreed in writing with the Association; or
- 21.1.3. towage of another vessel or object by an Entered Vessel, but always provided that cover for such

liability has been expressly agreed in writing with the Association.

**22. INJURY, ILLNESS AND LOSS OF LIFE**

The Association shall cover the Assured's liability to pay damages or compensation for personal injury, illness or death of any third party, not being an employee or hotel/catering crew unless otherwise agreed in writing, as well as hospital, medical or funeral expenses arising out of such illness, injury or death provided that such liability arises out of negligent acts or omissions on board an Entered Vessel or directly in connection with loading cargo onto or discharging it from an Entered Vessel.

**23. STOWAWAYS**

The Association shall cover the Assured's liability under a Charterparty to an owner or disponent owner for fines and other expenses as a result of stowaways on board the Entered Vessel, provided that the owner or disponent owner were liable for such fines or expenses, those fines and expenses are not legally recoverable from a third party with liabilities being, in any event, limited to those costs that the Assured would have incurred under the Stowaways Clause for Time Charter Parties 2009 as contained in the BIMCO Special Circular No. 1 – January 2010.

**24. LEGAL AND ASSOCIATED COSTS**

The Association shall cover the Assured's legal and associated costs reasonably incurred, in agreement with the Association, in relation to claims for which the Assured is covered under these Rules.

**25. SUE AND LABOUR COSTS**

The Association shall cover the Assured's extraordinary costs reasonably and necessarily incurred after an incident, in order to avoid or minimise any liability or loss which would be covered under these Rules, but only to the extent that such costs have been incurred with the agreement of the Association in writing or to the extent that the Association in its absolute discretion decides that the Assured should receive reimbursement.

**26. INQUIRY COSTS**

The Association shall cover costs incurred by the Assured with the Association's prior approval in respect of a formal inquiry into facts and circumstances concerning liabilities which are recoverable under these Rules.

**27. WAR RISKS**

- 27.1. The Association shall cover the Assured's liabilities, costs or expenses of the risks set out in Rules 11 to 26 (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) when the loss or damage, injury, illness, or death or other accident in respect of which such liability arises or cost or expense is incurred or was caused by:
- a. 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;
  - b. capture, seizure, arrest, restraint or detainment and the consequences thereof or any attempt thereat;
  - c. mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war, except where directly or indirectly caused by or contributed to by or arising from any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter or from any chemical, biological, bio-chemical or electromagnetic weapon.
- 27.2. Cover shall automatically terminate 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 Russian Federation, The People's Republic of China;
- 27.3. Cover may be cancelled by the Association 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 the



Association). The Association may agree, however, to reinstate cover subject to agreement between the Association and the Assured in writing prior to the expiry of such notice of cancellation as to premium and upon such terms, conditions and/or warranties as the Association may stipulate.

## Part 3 – Additional cover

### **28. Additional Cover**

Please contact your underwriter or visit our website for further details on available additional covers. Unless otherwise agreed, any Additional Cover shall be subject to the provisions of these Rules.

## Part 4 – Defence cover

### 29. COVER

- 29.1. When separately agreed, the Association shall reimburse the Assured's reasonable legal costs in relation to disputes which are directly connected with the operation of the Entered Vessel and which are in respect of the following:
- 29.1.1. hire, off-hire, freight, deadfreight, detention, laytime, demurrage, despatch or other claim or dispute relating to the charter party, bill of lading or other contract of carriage;
  - 29.1.2. vessel supplies or repairs;
  - 29.1.3. loading, stowing, trimming, discharging, lightering of cargo on or from the vessel;
  - 29.1.4. loss, damage or delay to the vessel;
  - 29.1.5. general average;
  - 29.1.6. salvage or towage;
  - 29.1.7. charges, disbursements and accounts received from agents, stevedores, customs, brokers, harbour authorities or other agents of the Assured;
  - 29.1.8. insurance contracts for the Entered Vessel other than cover under these Rules;
  - 29.1.9. personal injuries or loss of life;
  - 29.1.10. property damage;
  - 29.1.11. representation of the Assured at official investigations;

### 30. EXCLUDED COSTS

- 30.1. The Association shall not cover under a defence entry costs:
- 30.1.1. which are recoverable or normally would have been recoverable under the P&I, CLH or War Risks cover or any Additional Cover entry;
  - 30.1.2. which are incurred before the Assured notifies the Association of the dispute;
  - 30.1.3. where the Assured fails to carry out any of his obligations under the Rules;
  - 30.1.4. where the dispute is with the Association or the Association's servants, agents or representatives or is between the Assured and Co-Assureds;
  - 30.1.5. where the dispute arises under a management agreement;
  - 30.1.6. where the dispute is in respect of the purchase of the vessel and the vessel is not entered with the Association at the time of the relevant contract;
  - 30.1.7. where the Assured appoints a lawyer or other expert without the prior approval of the Association;
  - 30.1.8. where there is no reasonable relationship between the amount in dispute and the the costs that are likely to be incurred;
  - 30.1.9. where there is no reasonable relationship between the prospects of successfully obtaining an award or judgment and the costs which are likely to be incurred;
  - 30.1.10. where there is no reasonable relationship between the prospects of successfully obtaining payment (due to the financial position of the other party or otherwise) and the costs which are likely to be incurred;
  - 30.1.11. where the Assured has failed to take reasonable care in the chartering of the vessel, or the position adopted by the Assured is unreasonable, or the Assured's conduct has been imprudent or improper;
  - 30.1.12. where the Assured fails to provide information or documentation which is necessary for the dispute to be properly evaluated or handled;
  - 30.1.13. where the Assured refuses to handle or settle the case in accordance with the recommendations of the Association;
  - 30.1.14. where the Assured makes concessions or enters into a settlement without the approval of the Association;
  - 30.1.15. where there is any other reason which the Association decides in its absolute discretion is sufficient reason for cover not to apply.

### 31. MISCELLANEOUS

- 31.1. The Association may, at any stage of a dispute, withdraw or limit the extent of cover for any of the reasons set out in Rule 30.
- 31.2. In the event that cover is withdrawn, the Assured is liable to reimburse the Association for any costs which the Association has previously incurred.
- 31.3. Where costs are only partly covered, the Association shall decide, in its absolute discretion, on the

applicable apportionment of costs.

- 31.4. The Assured shall pay to the Association any sum which the Assured recovers or is entitled to recover in respect of costs, either wholly or in part, pursuant to any award, judgment or settlement agreement.
- 31.5. Subject to Rule 53.4, all monies recovered for an Assured with Defence Cover shall be paid over to the Assured, except that the Association may deduct from such monies and retain any amount due to the Association from the Assured.
- 31.6. In the event that a settlement agreement does not provide or does not provide adequately for recoverable costs, the Association shall be entitled to such sum as it considers should have been attributable to costs pursuant to such agreement.
- 31.7. The Association shall, in its sole discretion, decide whether a dispute involves one or more Deductibles.

## **32. COVER LIMITATION**

- 32.1. Unless otherwise agreed in writing, defence cover per dispute is limited to USD 5 million.

## Part 5 – Limitations & Exclusions

### 33. CARGO LIMITATIONS

- 33.1. The cover under Rule 12 excludes liabilities and costs arising from:
- 33.1.1. delivery of cargo carried under a negotiable bill of lading or similar document of title without production of that bill of lading or similar document by the person to whom delivery is made;
  - 33.1.2. delivery of cargo carried under a non-negotiable bill of lading or similar document to a person not named in such bill of lading or similar document;
  - 33.1.3. delivery of cargo without production of the original transport document where there is a legal obligation for delivery to be made in exchange for such document;
  - 33.1.4. discharge of cargo at a port or place other than that provided in the contract of carriage; 33.1.5. failure to discharge all cargo on board unless the Assured can show that all reasonable discharge methods were attempted;
  - 33.1.6. carriage of cargo on terms less favourable than the Hague or Hague-Visby Rules unless such terms are compulsory by law;
  - 33.1.7. failure to arrive or late arrival of the vessel or failure to accept cargo on board the vessel at any port of loading;
  - 33.1.8. loss, shortage, damage or delay occurring whilst the cargo is in the custody of another carrier or during lightering operations except where the lightering is approved by the Association or occurs in port and is customary;
  - 33.1.9. the issuance of a bill of lading, waybill or other document of title or cargo document which is antedated or post-dated or which contains a description of the cargo or its quality or quantity which the Assured or any person for whom he may be legally liable knows to be incorrect or where an under-deck bill of lading or other document is issued for cargo carried on deck;
  - 33.1.10. deviation or departure from the contractually agreed voyage which deprives the Assured of the right to rely on defences or rights of limitation which would otherwise have been available to him;
  - 33.1.11. the pre-shipment state or condition of the cargo being such as to require its discharge;
  - 33.1.12. carriage under an ad valorem bill of lading or other document of carriage in which a value exceeding USD2,500 per unit, package or piece is declared;
  - 33.1.13. participation in or use of paperless trading;
  - 33.1.14. loss of or damage to heavy-lift cargo unless the cargo has been carried under a contract approved by the Association; and the Assured agrees to pay any additional premium required by the Association.
  - 33.1.15. the carriage of rare and valuable cargo including, but not limited to, bullion, bank notes, bonds or other negotiable instruments, jewellery, rare metals or stones;
  - 33.1.16. on carrying cargo to a contractual port or destination from any intermediate port where the cargo may have been off-loaded from an Entered Vessel or in respect of storage or other charges at any such intermediate port;
  - 33.1.17. carriage of cargo on terms which are contrary to terms required by the Association or which do not include Contractual Terms as defined in Appendix 1;
  - 33.1.18. loss of or damage to any cargo owned or controlled by the Assured;
  - 33.1.19. carriage of nuclear substances, other than those excluded under Rule 39.1, unless the Assured obtains written approval from the Association prior to loading the specific cargo and agrees to pay any additional premium or increased deductible required by the Association;
  - 33.1.20. the issuance or signing of bills of lading or other transport documents by or on behalf of the Assured without express prior written approval by the Association;
  - 33.1.21. delay, except in so far as liability arises because of the application of the Hague or Hague-Visby Rules or any equivalent international convention dealing with carriage of goods by sea and having the status of compulsorily applicable law.

### 34. GENERAL EXCLUSIONS

- 34.1. In addition to those exclusions within Rule 33, the Association shall not cover liabilities, losses or expenses arising from:
- 34.1.1. the wilful misconduct of the Assured (as defined in Appendix 1);
  - 34.1.2. criminal activity of which the Assured was aware or ought to have become aware during the normal course of running his business or which the Assured recklessly disregarded or failed to take reasonable steps to prevent;
  - 34.1.3. any carriage or trade or voyage which the Assured knew to be or which the Assured should have

- known to be unlawful, imprudent, unsafe, unduly hazardous or improper;
- 34.1.4. carriage of cargoes that are not carried and stowed in conformity with all relevant international, national and local conventions and regulations including, but not limited to the International Maritime Dangerous Goods (IMDG) Code, the IMO Code of Safe Practice for Cargo Stowage and Securing(CSS), the IMO Code of Safe Practice for Ships carrying Timber Deck Cargoes (2011 TDC), the International Safety Management Code (ISM) and the International Maritime Solid Bulk Cargoes (IMSBC) Code;
- 34.1.5. the carriage of project cargo or heavy lift cargo without requisite pre- stowage plans, packing/ loading lists, loading sequence assessments and securing arrangement assessments being sent to the Association prior to loading, unless expressly otherwise agreed in writing by the Association;
- 34.1.6. the carriage of project cargo, with prior written approval by the Association in writing, where the following documentation has not been obtained and relied on by the Assured prior to loading:
- a. pre-stowage plan,
  - b. specification of cargo items,
  - c. packing lists/loading lists,
  - d. detailed stowage location plan for each cargo department and/or deck area,
  - e. securing plan for each compartment and/or deck area,
  - f. lashing calculations,
  - g. deck loading calculations,
  - h. details of dunnage and securing equipment brought on board for stowage and securing purposes, with relevant certification;
- 34.1.7. the carriage of heavy lift cargo, when approved by the Association in writing, where the following documentation has not been obtained and relied on by the Assured prior to loading:
- a. pre-stowage plan,
  - b. full specification of cargo unit,
  - c. plan of cargo unit showing dimensions, securing points with strengths, lifting points with strengths, weight, centre of gravity, any packaging and any cradles or skids,
  - d. lifting Plan showing lifting points with strengths, lifting strops with strengths, any spreaders and all associated gear with strengths,
  - e. loading sequence statement,
  - f. health and Safety risk assessment,
  - g. securing plan,
  - h. details of dunnage and securing equipment brought on board for stowage and securing purposes, with relevant certification,
  - i. lashing calculations,
  - j. deck loading calculations;
- 34.1.8. The carriage of cargo on deck unless the cargo is suitable for carriage as loaded on the deck and :
- the contract of carriage is specially cloused to the effect that the cargo is carried on deck and either provides that the carrier is free from all liability for loss or damage to such cargo or provides the carrier with rights, immunities and limitations no less favourable than those contained in the Hague Rules or Hague Visby Rules; or
  - special cover has been agreed by the Association after receiving earliest possible notice from the Assured concerning such carriage; or
  - where the contract of carriage is compulsorily subject to the Hamburg Rules by operation of law, the Assured has complied with the provisions of paragraphs 1 and 2 of Article 9 thereof.
- 34.1.9. non-compliance with any recommendations made by the Association following a survey and with any directions or safety regulations issued by the Association or any applicable public authority except insofar as the Assured can prove that liabilities, losses, expenses or costs would have been incurred in any event and would have been covered by the Association if the Assured had complied with those requirements;
- 34.1.10. a failure by the Assured to exercise due diligence in the chartering of an entered vessel including, but not limited to a failure to take reasonable steps to check the solvency, P&I insurance cover and reputation of any contractual partner in any charterparty and make adequate enquiries to ascertain that the entered vessel is:
- a. fully insured against Owner's P&I risks with a P&I Club which is a member of the International Group or other P&I insurer to which the Association have given their prior written approval;

- b. fully insured against Hull and Machinery risks;
- c. classed with a Classification Society approved by the Association;
- d. compliant with ISM Code;
- e. compliant with ISPS Code (If an Assured is unable to comply with any of these terms, cover under this insurance shall be subject to the prior written agreement of the Association upon such amended terms as they require.)

- 34.1.11. insolvency, irrecoverable debts or financial default of the Assured or any co-Assured, or out of the fraud of agents or of an associated company or of employees of the Assured or any co-Assured acting as agent.
- 34.1.12. cancellation or wrongful repudiation by the Assured of a charterparty or other engagement entered into in respect of the entered vessel;
- 34.1.13. punitive and/or exemplary damages resulting from the multiplication of compensatory damages;
- 34.1.14. bareboat or demise charters;
- 34.1.15. confiscation or expropriation;
- 34.1.16. a charterparty contract on terms not approved by the Association except to the extent that liability would have arisen (for time charterparties) under the terms of the NYPE 1946 form or subsequent amendments and/or usual rider clauses (including but not limited to the Inter Club Agreement) or (for voyage charterparties) under the terms of the Gencon 1976 form or subsequent amendments and/or usual rider clauses or under the terms of any other specimen charterparty approved by the Association for use by the Assured;
- 34.1.17. employment of the entered vessel in trades or areas other than those agreed with the Association.
- 34.1.18. a default judgment or default award.
- 34.1.19. payment by the Association or the provision of cover that may expose the Association to the risk of being subject to a sanction, prohibition or any adverse action by a state or international organization or competent authority.

### **35. GENERAL LIMIT OF LIABILITY**

Where the Assured or a Co-Assured is entitled to limit his liability pursuant to any relevant law, the maximum recovery under the P&I, CLH and War Risks cover or any Additional Cover is the lower of the amounts to which the Assured or Co-Assured may limit his liability or the amount stated in the Certificate of Insurance.

### **36. POLICY LIMIT OF LIABILITY AND REINSURANCE RECOVERIES**

- 36.1. The liability of the Association in respect of all claims arising out of one event including any costs, fees and expenses shall in no circumstances exceed the amount stated in the Certificate of Insurance. Without prejudice to the generality of Rule 4, the Association may reinsure in whole or in part the risk or risks insured by the Association, and, where such reinsurance is arranged, the Assured shall only be entitled to recover any amount in excess of USD10million or 10% of the cover limit per event, whichever is the lower, as and when such funds are received by the Association from the reinsurer(s). This policy limit shall apply to claims, costs, fees, and expenses arising out of one event irrespective of whether they are made by more than one or more Assured or Co-Assured.
- 36.2. The Assured shall not be entitled to recover from the Association any liabilities, costs and expenses which are not recovered by the Association under any reinsurance(s) by it because of a shortfall in recovery from reinsurers thereunder by reason of a sanction, prohibition or adverse action against them or any relevant party by a state, international organization or other competent authority or the risk thereof if payment were made by such reinsurers. For the purpose of this provision, "shortfall" includes any failure or delay in recovery by the Association by reason of the parties or the reinsurers making payment into a designated account in compliance with the requirements of any state, international organization or other competent authority.

### **37. CONTRACTUAL TERMS OR INDEMNITIES**

- 37.1. The Association shall not cover under P&I, CLH and War Risks cover or any Additional Cover, liabilities, losses, costs or expenses which would not have arisen:
  - 37.1.1. but for the terms of a contract or indemnity entered into by or on behalf of the Assured unless the contract or indemnity is previously accepted or approved by the Association or the Association decides

- 371.2. in its sole discretion that the Assured should be reimbursed;  
but for the Assured, or some other person acting on his behalf having used terms in a contract which the Association has prohibited, or omitted to use Contractual Terms as defined in Appendix 1.

### **38. OTHER INSURANCE**

The Association shall not cover liabilities, losses or expenses recoverable under any other insurance or which would have been so recoverable apart from any terms in such other insurance excluding or limiting liability on the grounds of double insurance and if the vessel had not been an Entered Vessel, with cover against the risks set out in these Rules.

### **39. RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIOCHEMICAL AND ELECTROMAGNETIC RISKS**

The Association shall not cover liabilities, losses or expenses directly or indirectly caused by or contributed to by or arising from Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Risks as defined in Appendix 1.

### **40. CYBER ATTACK**

- 40.1. Subject only to paragraph 40.3 below, in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.
- 40.2. Subject to the conditions, limitations and exclusions of the policy to which this clause attaches, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.
- 40.3. Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, paragraph 1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

### **41. SPECIALIST OPERATIONS OR ACTIVITIES**

Unless otherwise agreed in writing, the Association shall not cover under a P&I entry liabilities, losses, expenses or costs incurred by the Assured during the course of performing Specialist Operations or by a drilling or production vessel or arising out of waste disposal activities or sub-sea activities, all as defined in Appendix 1.

### **42. EXCLUDED LOSSES**

- 42.1. The Association shall not cover, except where they form part of a claim under Rule 25 (Sue and Labour costs) or under any other relevant provision of these Rules, or under CLH or War Risks cover or any Additional Cover, liabilities, losses, expenses or costs in respect of:
- 42.1.1. loss or damage to the Entered Vessel or any part the vessel;
  - 42.1.2. the cost of repairs to the Entered Vessel or any charges or expenses in connection with such repairs;
  - 42.1.3. loss of freight or hire for the Entered Vessel or demurrage, detention or delay to the vessel unless they form part of a third party claim recoverable from the Assured in respect of cargo liabilities;
  - 42.1.4. loss of or damage to any equipment on board the Entered Vessel or to any containers, lashings, stores or fuel or other property to the extent that they are owned or leased by the Assured or by any company associated or affiliated with or under the same management as the Assured;
  - 42.1.5. salvage or services in the nature of salvage unless covered under Rule 17;
  - 42.1.6. the cancellation of a charter or other engagement of an Entered Vessel;
  - 42.1.7. loss arising out of irrecoverable debts or out of the insolvency or financial default of any third parties

- such as, but not limited to, owners, charterers or agents;
- 42.1.8. general monetary loss, loss of time, loss through price or currency fluctuations, consequential loss, loss of production, depreciation, loss of opportunity, loss of profit, loss of reputation, loss of market or similar loss resulting from delay or the abandonment of a voyage except where the Assured is liable to a third party for such loss and such liability is covered by the Association under these Rules.
- 42.1.9. claims arising from Specialist Operations brought by any third party for whose benefit 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 operation;
- 42.1.10. the failure to perform Specialist Operations by the Assured or the fitness for purpose or quality of the Assured's work, product or services;
- 42.1.11. loss of or damage to the contract work except that this exclusion shall not apply to loss of life, injury of crew and other personnel on board the vessel, the wreck removal of or oil pollution from the Entered Vessel insofar as covered under the Rules.



## Part 6 – General Terms and Conditions

### **43. DUTY OF DISCLOSURE AND ALTERATION OF RISK**

- 43.1. The Assured shall make full and correct disclosure to the Association, before the contract of insurance is concluded, of every circumstance which is known to an Assured or his agent or which in the ordinary course of business ought to be known by the Assured or agent which would influence the Association in deciding whether and what terms to provide cover.
- 43.2. The Assured shall make full, correct and prompt disclosure to the Association of every change of circumstance which is or ought to be known to the Assured or his agent and which alters the risk covered by the Association.
- 43.3. The Assured shall refrain from causing or agreeing, without the Association's prior written approval, to any change in circumstance which alters the risk covered by the Association.
- 43.4. In the event of any failure to comply with any of the above requirements, the Assured shall not be entitled to any recovery from the Association in respect of any event occurring after the time of the failure, unless the Association in its absolute discretion decides to cover any claim wholly or partly and on such terms as it deems appropriate.

### **44. AMOUNTS SAVED BY THE ASSURED**

When the Assured, as a result of an event for which he is covered by the Association, 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 Association, the Association may deduct from the compensation payable under the Certificate of Insurance an amount corresponding to the benefit obtained.

### **45. PAYMENT FIRST BY THE ASSURED**

- 45.1. Unless the Association shall in its absolute discretion determine otherwise, it is an absolute condition precedent to an Assured's right to recover from the Association in respect of any liability, loss, or expense that he shall first have discharged or paid the same in full.
- 45.2. The Association 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:
- 45.2.1. a final and unappealable judgment or order of a competent court; or
- 45.2.2. a final and unappealable arbitration award, provided settlement of the dispute by arbitration was agreed upon before the dispute arose, or was, with the consent of the Association agreed upon subsequently; or
- 45.2.3. a full and final settlement of the dispute approved by the Association.

### **46. NOTIFICATION OF CLAIMS**

- 46.1. The Assured must notify the Association immediately on learning or receiving any information relating to any incident or event which may give rise to a claim under these Rules.
- 46.2. The Assured must at all times keep the Association fully informed of all matters relating to a claim or any potential claim and promptly forward copies of all relevant correspondence, legal processes and other documents to the Association and anyone acting on its behalf and give such access to witnesses, assistance and information as it may from time to time require.
- 46.3. If the Assured fails to comply with the requirements set out in this Rule the Association is, in its absolute discretion, shall be entitled to refuse to cover all or part of the claim.

### **47. CLAIMS HANDLING**

- 47.1. The Association may in its absolute discretion assume the conduct of any claim by, against or involving the Assured which may be covered under these Rules and may arbitrate, litigate, mediate, settle or otherwise dispose of such claim as the Association sees fit. The Assured shall refrain from admitting liability or settling any claim without the prior approval of the Association.
- 47.2. The Assured shall authorise the Association to employ or appoint lawyers, advisers, experts and other parties on behalf of the Assured, but under the control, direction and instructions of the Association.
- 47.3. The Assured shall seek prior approval from the Association for the appointment of any lawyer or expert by the Assured or his representatives for any claim subject to these Rules and shall ensure that such lawyer or expert is under the control, direction and instructions of the Association.

47.4. The Assured shall obtain information, make calculations, attend meetings, and otherwise provide assistance, at the Assured's own expense, where such work can be performed by him or by persons employed by him or regularly engaged by him to perform such services.

**48. BURDEN OF PROOF**

The Assured shall have the burden of proving that any claim against the Association results from a risk covered under the insurance.

**49. SURVEY BY THE ASSOCIATION**

The Association may at any time arrange for a survey of an entered vessel and/or conduct an audit of the Assured's operating routines and their implementation. In the event that the Assured fails to comply promptly with any recommendation that might be made following such survey or audit, the Association shall be entitled to reserve cover until such recommendation is complied with.

**50. PROVISION OF SECURITY**

The Association is not obliged to provide guarantees, letters of undertaking, bonds or any other security in respect of any claim.

**51. EXCLUSION OF LIABILITY**

51.1. The Association shall not be liable for errors or omissions in the handling of a case which may be committed by the Association's employees or by lawyers, advisers or other experts engaged by the Association on behalf of the Assured.

51.2. The Association shall not be liable for monies which are lost, having being collected by persons engaged by the Association on behalf of the Assured, or entrusted to such persons.

51.3. The Association shall not be liable to pay interest on any sums due from it to the Assured.

**52. ASSIGNMENT**

52.1. The Assured shall not assign or otherwise transfer its rights under its contract of insurance with the Association or otherwise arising pursuant to these Rules, save as provided in Rule 52.2.

52.2. The Association may, in its absolute discretion, consent to an assignment or transfer by an Assured of its rights referred to in Rule 52.1, subject to such terms and conditions as the Association deems fit and subject to the Association's right to deduct from any sum due or to become due from the Association to any assignee or transferee of the Assured's rights such amount as the Association may estimate to be sufficient to discharge any existing or anticipated liability of the Assured to the Association.

**53. WAIVER AND RECOVERY**

53.1. No action by the Association or anyone acting on its behalf in connection with the handling of a claim, including the provision of security and the appointment of lawyers or other experts, shall constitute a waiver of any rights or defences or an admission of liability or confirmation of cover by the Association.

53.2. If the Association provides security, pays any sum or incurs any expense in respect of a claim which turns out not to be covered by the Association the Assured shall indemnify the Association in respect of all liability, loss, expense and costs incurred by the Association.

53.3. Where the Association makes any payment in respect of any liability, loss, expense or costs, the Association shall be subrogated to any rights of recourse which the Assured, co-Assured or affiliate may have against any third party in respect of the liability, loss, expense or costs.

53.4. The balance (if any) of any recovery shall be credited and paid to the Assured up to any amount equivalent to any Deductible.

53.5. The remaining balance (if any) shall be apportioned between the Association and the Assured in proportion to the respective amounts credited to them under Rule 53.4 - Rule 53.5.

**54. OMNIBUS**

54.1. The Association may cover, in its absolute discretion and without having to give reasons for its decision, the Assured's liability, costs and expenses incidental to the business of chartering vessels and which would otherwise not be covered under the Rules.

- 54.2. The exercise of discretion shall be carried out by the Board of Directors of the Association who may delegate to the management of the Association such discretionary powers as it sees fit. Any decision by the Board of Directors or management is final and there shall be no obligation to provide reasons for a decision.

## **55. TIMELIMITS**

- 55.1. The Assured shall have no right to compensation unless he has given notice to the Association of any event which may give rise to a claim on the Association within six months of his becoming aware of it.
- 55.2. The Assured's claim for compensation becomes time-barred after three years. The limitation period commences at the end of the calendar during which the Assured acquired the necessary knowledge of the facts on which the claim is based.
- 55.3. Where a time-bar has not taken effect earlier, the Assured's claim for compensation becomes time barred ten years from the date of the event unless litigation or a general average adjustment is in progress in which case the claim becomes time-barred one year after the issue of the final judgment or adjustment.

## **56. AUTOMATIC CESSATION OF COVER**

- 56.1. An Assured shall immediately cease to be covered by the Association in respect of any vessels entered by him in the following circumstances:
- 56.1.1. the Assured, being an individual, becomes bankrupt, has a receiving order made against him or becomes insolvent;
- 56.1.2. the Assured, being a corporation, is dissolved, wound up, has a receiver or liquidator appointed or commences proceedings under any bankruptcy or insolvency laws to seek protection from its creditors;
- 56.1.3. the Entered Vessel becomes a total loss or is accepted by the hull underwriters or deemed by the Association as a being a constructive, compromised or arranged total loss, except in respect of liability arising out of the casualty which gives rise to the total loss;
- 56.1.4. the Entered Vessel is missing for ten days from the date she was last heard of or is posted at Lloyds as missing;
- 56.1.5. the Entered Vessel is requisitioned by a State or Government Authority;
- 56.1.6. the Entered Vessel ceases to be classified with a classification society approved by the Association or its class is suspended.
- 56.1.7. Notwithstanding and without prejudice to Rules 56.1, 56.1.1, 56.1.2, 56.1.3, 56.1.4, 56.1.5 and 56.1.6 an Assured shall forthwith cease to be insured by the Association, which shall not be liable to pay any claim or provide any benefit where there is a breach of these provisions, in respect of any and all vessels entered by him if any vessel is employed by the Assured in a carriage, trade or voyage which will thereby in any way howsoever expose the Assured, the Association or its reinsurers to the risk of being or becoming subject to any sanction, prohibition or adverse reaction in any form whatsoever under United Nations' resolutions or under the trade or economic sanctions, laws or regulations of the State of the vessel's Flag or the European Union, the United Kingdom, the United States of America, France, the Russian Federation, the People's Republic of China or any state where the Association has a registered office or a permanent place of business.

## **57. TERMINATION OF COVER BY THE ASSOCIATION**

- 57.1. The Association may terminate the entry of any or all vessels entered by the Assured:
- 57.1.1. on immediate notice where the Assured is in breach of his obligations under these Rules in respect of disclosure and alteration of risk, fraudulent or unlawful acts and classification and certification of the vessel;
- 57.1.2. on three days notice where the Assured is in breach of his obligations in respect of payment of premiums or other sums;
- 57.1.3. on seven days notice where the Assured has notified the Association of any change of circumstance which materially alters the risks covered by the Association;
- 57.1.4. on thirty days notice without giving any reason.
- 57.2. Notwithstanding and without prejudice to Rule 57.1., the Association may, in its sole discretion, terminate with immediate effect the entry in respect of any and all vessels entered by him where the

Assured has exposed or may, in the opinion of the Association, expose the Assured, the Association or its reinsurers to the risk of being or becoming subject to any sanction, prohibition or adverse reaction in any form whatsoever under United Nations' resolutions or under the trade or economic sanctions, laws or regulations of the State of the Vessel's Flag or the European Union, the United Kingdom, the United States of America, France, the Russian Federation, the People's Republic of China or any state where the Association has a registered office or a permanent place of business.

**58. EFFECT OF CESSATION AND TERMINATION**

58.1. When the insurance ceases or is terminated the Assured shall remain liable for all outstanding premiums pro rata up to the date of cessation or termination, and all other outstanding sums.

58.2. The Association shall be under no liability whatsoever by reason of any occurrence after cessation or termination.

**59. GOVERNING LAW**

These Rules are governed by Norwegian law save that the provisions of the Insurance Contracts Act 1989 shall not apply.

**60. ARBITRATION**

Unless otherwise agreed, disputes between the Association and an Assured, former Assured, a Co-Assured or former Co-Assured shall be resolved by arbitration in Bergen. Each party shall appoint one arbitrator and those so appointed shall appoint a chairman of the arbitration tribunal. If the arbitrators cannot agree on a chairman or a party fails to nominate his arbitrator, the appointment shall be made by the Chief Justice of Bergen City Court.

# Appendix - Definitions

## **ADDITIONAL COVER**

Cover, not being for P&I, CLH and War Risks, which is listed in Part 4 of the Rules or which is separately agreed.

## **ASSURED**

The person or party who is named as Assured in the Certificate of Insurance.

## **CERTIFICATE OF INSURANCE**

The certificate, including any endorsements, which is issued by the Association as evidence of the underlying contract of insurance.

## **CHARTERER**

A time charterer, a voyage charterer (whether under a contract of affreightment or otherwise), a space charterer or slot charterer in relation to a charterparty of the entered vessel.

## **CHARTERPARTY**

A time charterparty, a voyage charterparty, including contracts of affreightment and booking notes, or a space or slot charterparty.

## **CO-ASSURED**

Any person or company that is so named in the Certificate of Insurance, but only to the extent stipulated therein.

## **CONTRACTUAL TERMS**

Those standard terms that the Association requires the Assured to incorporate into all contracts of carriage, including but not limited to :

- The Hague Rules or the Hague - Visby Rules or corresponding provisions where permitted by relevant law;
- The " New Jason Clause" and "Both to Blame Collision Clause" in international trade.

## **DEDUCTIBLE**

Deduction from any payments made by the Association to the Assured as set out in these Rules or the Certificate of Insurance.

## **DRILLING OR PRODUCTION VESSEL**

A drilling vessel or barge or any other vessel or barge employed to carry out 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. A vessel shall be deemed to be carrying out production operations if, among other things, it is a storage tanker or other vessel engaged in the storage of oil, and either: a)the oil is transferred directly from a producing well to the storage vessel; or b)the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel other than by natural venting.

## **ENTERED VESSEL**

Such vessel, boat, hovercraft or other description of vessel or structure (whether underconstruction or otherwise) as stated to be the entered vessel in the Certificate of Insurance or which is declared to and accepted by the Association under open cover arrangements.

## **EVENT**

Any event, including any occurrence or occurrences arising out of any such event unless the Association elects to treat each occurrence as a separate event. An event shall be deemed to have taken place at the time of the first occurrence which results in a claim or claims.

## **IACS**

International Association of Classification Societies.

## **ISM CODE**

International Safety Management Code

**ISPS CODE**

International Ship and Port Facility Security Code

**P&I**

Protection and Indemnity risks resulting in liabilities, losses or expenses set out in Rules 12 to 26.

**RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC RISKS**

Risks resulting in liabilities, losses or expenses directly or indirectly caused by or contributed to by or arising from:

- a. ionizing radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- b. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- d. the radioactive, toxic, explosive or other hazardous or contaminating properties or 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;
- e. any chemical, biological, bio-chemical or electromagnetic weapon.

**SPECIALIST OPERATIONS**

Operations including and not limited to dredging, blasting, pile-driving, well stimulation, cable or pipelaying, construction, installation or maintenance work, core sampling, depositing of spoil, professional oil spill response or professional oil spill response training and tank cleaning (otherwise than on the Entered Vessel but excluding fire fighting ; and claims that arise.

**SUB-SEA ACTIVITIES**

The operation by the Assured of submarines, mini-submarines or diving bells, or the activities of professional or commercial divers where the Assured is responsible for such activities (other than activities arising out of salvage operations being conducted by an Entered Vessel where divers form part of the crew of that Entered Vessel or of diving bells or other similar equipment or craft operating from the Entered Vessel and where the Assured is responsible for the activities of such divers.

**WASTE DISPOSAL ACTIVITIES**

Waste incineration or disposal operations carried out by the Entered Vessel other than any such operations carried out as an incidental part of other commercial activities not being specialist operations.

**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, loss or damage, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences.

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