

# **DTV - German Standard Terms and Conditions of Insurance for Ocean-Going Vessels 2009**

(DTV-ADS 2009)

## **Standard terms and conditions of the GDV**

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## **Section One: General**

### **I Insured interest**

#### **1 Insured interest**

1.1 The subject matter of the insurance can be any monetary interest an individual has in seeing that a vessel survives the perils of an ocean voyage.

1.2 Unless otherwise agreed, the following are covered by the insurance:

1.2.1 in Hull Insurance – the proprietary interest of the vessel’s registered owner and his liability interest as set down in Clause 65 of these terms and conditions;

1.2.2 in Additional Insurances – the interests enumerated in Clause 67 to Clause 69 of these terms and conditions;

1.2.3 in Loss of Hire Insurance – the interest of the vessel’s owner in the vessel's income;

1.2.4 in the War Clauses – the proprietary interest of the vessel’s registered owner and his liability interest as provided for by Clause 85 in conjunction with Clause 65 of these terms and conditions;

1.2.5 in the Mines Clauses – the proprietary interest of the vessel’s registered owner and his liability interest as provided for by Clause 82.9 in conjunction with Clause 65 of these terms and conditions.

1.3 If other agreed interests are not declared correctly, the insurance is not binding upon the Insurer.

1.4 Additional sums that were insured separately for the shipowner's account in respect of interest, freight and insurance premium in the case of total loss will be agreed from case to case. In the event of total loss, the Insurer is entitled to demand declaration of all additional insurances taken out for the shipowner's account. If additional insurances are covered for higher amounts than those agreed in the policy, the Insurer will be discharged from liability in respect of these higher amounts in the event of total loss.

#### **2 Lack of insured interest**

2.1 For a contract to be valid, an insurable interest must exist.

2.2 The Insurer is, however, still entitled to collect the premium if he was unaware of the reason for the invalidity at the time the contract was concluded, and provided that the Insured neither knew nor ought to have known of this reason at the time of conclusion.

2.3 If the contract is concluded by an agent, the provisions of the above clause (“knew”, “ought to have known”) apply not only to the agent but to the Insured as well.

#### **3 Loss of insured interest**

3.1 If the interest on which the insurance was taken out ceases to exist before the insurance commences, the Insured is not obliged to pay the premium.

3.2 The Insured's obligation to pay the premium is not affected by the fact that the interest on which the insurance was taken out ceased to exist after the insurance commenced.

## **II Insurance for own account, for the account of another**

### **4 Insurance for own account, for the account of another**

4.1 If the contract leaves open whether the Insured is concluding the insurance in his own name on behalf of another person (insurance for the account of another), the insurance will be deemed to be for the account of the Insured (insurance for own account).

4.2 If the insurance is taken out for the account of another – even if the latter is named in person – it will be assumed that the party concluding the contract is doing so not as an agent but in his own name for the account of another.

4.3 Unless otherwise agreed, an Assured will enjoy the same terms and conditions as the Insured under whose contract he is covered. Where third-party liability risks are insured, cover will be restricted in terms of reason and amount to the cover the Insurer would have granted to the shipowner under this insurance – taking account of the limits of indemnity applicable to him – had the claims been brought against the shipowner rather than against the Assured.

4.4 The insurance cover is available to the Insured and to all Assureds together once only per loss event. In the absence of any agreement, the Insured's claim for cover takes precedence over any claims of the Assureds.

### **5 Legal position of the Assured (third- party insured)**

5.1 The Assured is entitled to exercise his rights under the contract. However, only the Insured is entitled to request that a policy be handed over.

5.2 Without the Insured's consent, the Assured may not exercise his rights under the contract and enforce these rights in a court of law unless he is in possession of a policy.

### **6 Legal position of the Insured (policyholder)**

6.1 The Insured is entitled to exercise, in his own name, the rights due to the Assured under the contract.

6.2 Once a policy has been issued, the Insured is entitled to accept payment and transfer the rights of the Assured without the latter's consent only if he is in possession of the policy.

6.3 The Insurer is obliged to indemnify the Insured only if the latter can prove to the former that the Assured gave his approval to the insurance.

### **7 Offsetting of balances**

The Insurer may set off any claim he has in relation to the Insured who effected the insurance against an insurance claim insofar as the Insurer's claim results from the insurance taken out by the Insured for the Assured.

## **8 Knowledge, fault**

8.1 Unless otherwise agreed, where reference is made in these insurance conditions to the Insured's knowledge or fault in respect of certain material facts ("knew", "ought to have known"), this will apply equally to the Assured. The same applies to cases where the Insured is exempt from an obligation to pay the premium on the grounds of a lack of an insured interest. The Insured may only contest the issue with the Insurer on the grounds that he was not responsible for failing to disclose a material fact if neither he nor the Assured was at fault.

8.2 If the insurance was arranged such that it commences prior to conclusion of the contract, the Insurer is not obliged to indemnify if the Insured or the Assured knew or ought to have known at the time the contract was concluded that the insured event had already taken place.

8.3 Where the insurance was concluded without the knowledge of the Assured, it is of no avail whether or not he knew or ought to have known of the occurrence. The same applies if notification of the Insured in good time was not feasible; notification is deemed not to have taken place in good time if it took longer than would be feasible in the ordinary course of business, but takes place, however, at least in the same or a similar manner in which the declaration containing the order to conclude the insurance was dispatched.

8.4 If the Insured concluded the contract without the Assured's instruction and failed to notify the Insurer of this failure, the Insurer is not obliged to accept a plea of ignorance in a claim brought against him.

## **III Term of the insurance**

### **9 Term of the insurance**

9.1 The insurance cover commences at 00.00 hours and terminates at 24.00 hours on the dates specified in the policy.

9.2 Before the term of insurance expires, however, the Insured may notify the Insurer of his desire to extend the period of cover for those vessels which, at the end of the term of insurance, are missing presumed lost or en route, or have suffered an indemnifiable loss en route that has impaired their seaworthiness. In the case of vessels missing presumed lost, extension of the insurance ends when the vessel is located or, at the latest, when the period of presumptive loss as stipulated in Clause 60.2.2 below expires. In the case of damage, the insurance terminates as soon as the repair work is completed or – if the work cannot be carried out immediately – when the damage has been identified. In the case of extension, the Insurer is due an additional premium commensurate with the extension in the term of the cover.

9.3 The insurance contract will terminate before the date specified in the policy:

9.3.1 in the case of total loss of the insured vessel or the cases set out in Clause 60 corresponding to a total loss;

9.3.2 if the insured vessel is sold in accordance with Clause 53 below;

9.3.3 if the class of the vessel expires, is restricted or is withdrawn in accordance with Clause 26 below;

9.3.4 if the Insured terminates the contract following adjustment by the Insurer of the agreed value in accordance with Clause 10 below;

9.3.5 if the Insurer terminates the contract in the case of non-payment of the premium in accordance with Clause 20 below;

9.3.6 if the Insurer serves notice to terminate the contract on the grounds of an infringement of the pre-contractual duty to disclose information, in accordance with Clause 22 below;

9.3.7 if the Insurer serves notice to terminate the contract with 14 days' notice within 14 days of the transfer of responsibility for manning, fitting out and inspecting a vessel to another company in accordance with Clause 25 below, or of a change of classification society in accordance with Clause 26 below of these terms and conditions;

9.4 Insurance cover for the acts of violence specified in Clause 37 below will end before the date specified in the policy if the Insurer serves notice to terminate the contract in accordance with Clause 37.2; thereafter, the remaining insurance contract can be terminated by the Insured in accordance with Clause 37.3;

9.5 if the Insurer serves notice to terminate the contract in case war and piracy risks are covered in accordance with Clause 87 below;

9.6 The insurance can be arranged such that it incept on a date prior to conclusion of the contract. In this case, the Insurer is not obliged to indemnify if the Insured knew or ought to have known at the time the contract was concluded that the insured event had already taken place; the Insurer is entitled to collect the premium if he was unaware at the time the contract was concluded that the insured event had already taken place.

If the contract is concluded by an agent, the provisions of the above clause (“knew”, “ought to have known”) apply not only to the person of the agent but to the person being represented as well.

#### **IV Insured value, underinsurance, overinsurance, double insurance, agreed value**

##### **10 Insured value and agreed value**

10.1 The values of the insured interests (insured values) are the full values of these interests.

10.2 These values are considered to be the insured values in the event of an insured loss.

10.3 If the insured value has been set at a specific amount by way of an agreement (the agreed value), the latter will determine the insured value.

10.4 If, however, the agreed value exceeds the real insured value by 20% or by another percentage figure stipulated in the policy, the Insurer is entitled to declare that the agreed value be lowered to match the real insured value ascertained at the time of the original assessment, unless the Insured can prove that

10.4.1 he had no knowledge of this at the time of the agreement, or that

10.4.2 the Insurer was aware of this.

10.5 After the reduction in the agreed value, the premium will be adjusted commensurate with the new value.



10.6 The Insured is entitled to serve notice to terminate the contract within 14 days of receiving notification of the decision to lower the value.

10.7 If the sum insured is less than the agreed value, the Insurer is obliged to indemnify – even when the agreed value has been lowered – only in the proportion the sum insured bears to the agreed value.

10.8 If a special value has been agreed for partial losses (see Clause 62), the Insurer will indemnify for partial loss/damage up to this agreed special value.

## **11 Underinsurance**

If the sum insured is less than the insured value, the uninsured part of the insured value will be regarded as being self-insured by the Insured himself. In particular, the Insurer will be liable for the loss and expenses only in the ratio of the insured amount to the insured value.

## **12 Overinsurance**

12.1 The insurance contract is invalid if the sum insured exceeds the insured value. The provisions set out in Clause 2.2. of these terms and conditions apply accordingly to the Insured's obligation to pay the premium.

12.2 The insurance contract is invalid if it is deemed that the Insured has concluded the insurance contract with the intention of gaining an unlawful pecuniary advantage from the overinsurance. The Insurer is, however, still entitled to collect the premium provided that he was unaware of the reason for the invalidity at the time the contract was concluded.

## **13 Insurer's liability in the case of double insurance**

13.1 If an interest has been insured against the same peril with more than one insurer such that the sums insured together exceed the insured value, the insurers are liable jointly and severally in such a way that each insurer is liable to the Insured in the amount owed under its contract. In the aggregate, however, the Insured may not demand compensation in excess of the total loss amount.

13.2 In relation to each other, the individual insurers are liable for shares proportionate to the amounts contractually owed by each of them to the Insured. If any of the contracts is governed by foreign law, the insurer to whom the foreign law applies may assert a claim for contribution against the other insurers only if he himself is liable for contribution under the law applicable to him.

13.3 The relevant insurance contract is invalid if it is deemed that the Insured concluded said contract with the intention of gaining an unlawful pecuniary advantage from the duplicate insurance; the Insurer is, however, still entitled to collect the full premium if he was unaware of the reason for the invalidity at the time the contract was concluded.

## **14 Notification and cancellation of the double insurance**

14.1 The Insured must notify the Insurer immediately upon becoming aware of the double insurance.

14.2 If the Insured concluded the contract which resulted in the double insurance without being aware of the existence of the other insurance, he may – provided that the insurance has not yet

commenced – request either insurer to lower the sum insured (and, correspondingly, the premium) in proportion to the amount that the one insurer has to bear relative to the other. This entitlement lapses if not exercised by the Insured immediately upon becoming aware of the duplicate insurance.

## **15 Good faith**

All parties must act in the utmost good faith at all times.

## **V Policy, co-insurance, premiums**

### **16 Policy**

16.1 At the Insured's request, the Insurer is obliged to issue a signed certificate documenting the insurance contract (policy).

16.2 The policy contains the name and address of the Insured, any Assureds and, where nominated, the Insurer's agent, the name of the insured vessel, the IMO number, the insured interest, the risks covered with reference to the pertinent General Terms and Conditions of Insurance, any additional agreements, the sums insured and agreed values, the agreed deductibles, and details of the start and end of the insurance cover. It must bear the Insurer's signature and be returned immediately for correction should amendments be necessary. Amendments must be documented in endorsements signed by the Insurer.

16.3 If a policy has been issued, the Insurer is not obliged to indemnify until presented with this policy. The payment to the holder of the policy discharges the Insurer from further liability.

16.4 If the policy is lost or destroyed, the Insurer is obliged to indemnify once the policy has been declared invalid, or security has been given; security by way of a guarantee is excluded. The same applies to the Insurer's obligation to issue a replacement policy, the cost of which must be borne by the Insured.

### **17 Contents of the policy**

The contents of the policy are regarded as approved by the Insured unless contested immediately upon issue. The right of the Insured to refuse approval on account of an error remains unaffected.

### **18 Cover note**

18.1 The content of a cover note that was not produced by the Insurer himself is material in terms of the content of the insurance contract only if it is countersigned by the Insurer.

18.2 If a policy has been issued in addition to the cover note, only the policy is material in terms of the content of the insurance contract.

## **19 Leading insurer – co-insurance**

19.1 If several insurers underwrite a policy, they are obliged to indemnify severally for their respective shares only, i.e. not jointly. This applies even if the policy or cover note was underwritten by one insurer on behalf of the others.

19.2 The leading insurer is deemed to have received authorisation from the co-insurers to

19.2.1 make agreements with the Insured; excepted from the above are, however, increases to sums insured above and beyond the contractual limit of indemnity, as well as extensions to the term of the insurance,

19.2.2 sign mortgage clauses,

19.2.3 receive pledging notices,

19.2.4 declare abandonment (see Clause 42),

19.2.5 settle claims and recovery actions,

19.2.6 provide security in accordance with Clause 32 of these terms and conditions. The leading insurer is authorised but not obliged to provide security not only for his own share but also for the shares of the co-insurers. In this case, the co-insurers are obliged to provide security for their own shares vis-à-vis the leading insurer in the same manner as the leading insurer did for them.

19.2.7 conduct recourse proceedings,

19.2.8 litigate on behalf of the co-insurers; this applies equally to cases brought before courts of law and to those before arbitration tribunals. However, a verdict against the leading insurer for his part alone, or a settlement made after litigation or any arbitration award must be recognised by the co-insurers as binding for their shares as well.

19.3 The leading insurer is not authorised to declare the transfer of rights on behalf of the co-insurers in accordance with Clause 60.3 below.

19.4 Notifications and declarations of intent received by the leading insurer are deemed to have been received by the co-insurers as well.

## **20 Payment of the premium**

20.1 The Insured must pay the premium in advance for each 3-month period. The Insurer may demand immediate payment of premiums if the insurance ends.

20.2 Additional premiums are payable together with the following quarterly instalment.

20.3 The Insurer must have received payment of the premium within 10 days of the commencement of the three-month period. If the payment is effected through a broker, the premium must be received by him within the above-mentioned period and passed on immediately, but it must be received by the Insurer, however, within a further seven days at the latest.

20.4 If the Insured is responsible for not making the payment in good time, he will be regarded as having defaulted the moment he receives a written reminder. The Insurer may send the Insured a written request for payment, specifying a deadline of at least 14 days within which payment must be made.

20.5 If the Insured is still in default after the two weeks have passed, the Insurer is discharged of his obligation to indemnify any insured event that occurs before the payment is made.

20.6 If the premium has not been received by the end of the aforementioned period, the Insurer is entitled to terminate the insurance contract subject to a further two weeks' notice. If the Insurer serves notice to terminate the contract, the insurance will end 14 days after the Insured received notice, or earlier as the case may be.

20.7 If the Insurer pays out the sum insured or, pursuant to Clause 61.2.2, the difference between the sum insured and the value agreed between the Insurer and the Insured, or the proceeds from auctioning the vessel, the annual premium is payable. That proportion of the annual premium not yet paid in advance is payable in full, albeit less any returns claimable by the Insured. If the contract has been concluded for more than one year, the annual premium is deemed to be the premium of the current insurance year.

20.8 The Insured may offset any counterclaims not yet due against the premium payable only if the Insurer has given his consent in writing.

20.9 The Insurer is entitled to offset any claims due against the next premium instalment payable.

## **21 Lay-up**

21.1 If the Insured notifies the Insurer of his intention to lay up the vessel, cover will be provided in accordance with the provisions set out in the following.

21.2 Lay-up within the meaning of this policy is a vessel

21.2.1 that is to be laid up at a location agreed in advance with the Insurer,

21.2.2 that is unladen,

21.2.3 on which or to which no work involving a fire hazard is to be carried out,

21.2.4 that is manned at least according to the minimum provisions governing safe manning,

21.2.5 that is to be laid up for a minimum of 30 full days, and

21.2.6 for which the agreed value for hull insurance has not been reduced for the duration of the lay-up.

21.3 Insurance cover for laid up vessels remains fully in force, but is limited by way of amendment to Clause 23 of these terms and conditions to the territory of the location of lay-up agreed with the Insurer.

21.4 Before the vessel sets sail again, the Insured must:

21.4.1 in the case of a period of lay-up of up to classification society and the vessel's engine manufacturers on resuming operations, and also document compliance with them;

21.4.2 in the case of a period of lay-up of more than three months, pay for an expert to inspect the vessel prior to resuming operations, the inspection taking place at the earliest 15 days before the vessel is due to resume operations, and provide the Insurer with the expert's report;

21.4.3 remedy any damage or defects identified by the expert in accordance with Clause

21.4.2 above.

21.5 As soon as the Insured provides notification that the period of lay-up is to end and the vessel sets sail again, the territorial scope of the insurance cover corresponds once again to the navigational limits originally agreed.

21.6 The returns agreed with the Insurer will be granted for the period of lay-up. Lay-up returns are payable quarterly on a retroactive basis.

## **VI Duty of disclosure, alteration of risk**

### **22 Insured's pre-contractual duty of disclosure**

22.1 Before concluding the contract, the Insured must disclose all material facts and circumstances relevant to the risk – unless these circumstances are generally known – and must answer completely and truthfully all questions posed by the Insurer. A material fact is a circumstance that would influence the Insurer in accepting, declining or rating the insurance. In case of doubt, a material fact is understood as one that the Insurer has queried expressly or in writing. If the Insured appoints an agent to conclude the contract and the latter is aware of a material fact, the Insured himself will be deemed to have been aware of said material fact.

22.2 The Insurer is not obliged to indemnify if the Insured discloses incomplete or inaccurate information. Moreover, the Insurer may terminate the insurance within one month of becoming aware of the failure to disclose or of the inaccurate disclosure of the material fact.

This also applies if information was not disclosed on account of the Insured's ignorance of the fact and this was due to gross negligence on his part.

If the loss event has already occurred, the Insurer may not refuse cover if the Insured can prove that the incomplete or inaccurate information disclosed influenced neither the loss event occurring nor the size or scale of the payment obligation.

If the Insurer refuses to indemnify in respect of a claim, the Insured may serve notice to terminate the insurance. This right to terminate the contract expires if it is not exercised within one month of the Insured receiving notification of the Insurer's decision to refuse indemnification.

22.3 The Insurer is obliged to indemnify if he was aware of the material facts or that such facts had been inaccurately disclosed.

The same applies if the Insured can prove that neither he nor his agent was responsible for the incomplete or inaccurate disclosure of the information.

22.4 If the Insurer is obliged to indemnify in the absence of fault on the part of the Insured or his agent, the Insurer will be due an additional premium, to be agreed commensurate with the aggravated risk. The same applies if neither contracting party was aware without fault of a material fact prior to conclusion of the contract.

22.5 The right of the Insurer to rescind the contract on the grounds of fraudulent misrepresentation of material circumstances remains unaffected.

### **23 Trading limits**

Depending on the trading area agreed, the following applies:

#### **23.1 European trading**

The insurance covers voyages between all European places and all places located on the Mediterranean Sea and on the Black Sea, limited

23.1.1 to the north, by 70° Lat. N., but excluding Greenland.

Excepted from this limitation are:

voyages to all places in Norway, into the Kola Bay and to Murmansk, provided that the vessel does not navigate or remain north of 72° 30' Lat. N. or east of 35° Long. E.,

voyages from and to the White Sea, provided that on the outward voyage the vessel does not pass Honningsvaag prior to 10 May and does not commence the return voyage from the last port of call on the White Sea after 31 October.

23.1.2 in the area of the Baltic Sea: for vessels that exceed 90,000 dwt, operations east of 28° 45' Long. E.

23.1.3 to the south, by the Atlantic coast of Africa up to and including Casablanca.

23.1.4 to the west, by and including Iceland, but excluding the Canary Islands and the Azores.

23.2 Worldwide trading

The insurance covers voyages to and from all places. Excluded, however, are voyages:

23.2.1 north of 70° Lat. N.

Excepted from this limitation are:

voyages to all ports and places in Norway, into the Kola Bay and to Murmansk, provided that the vessel does not navigate or remain north of 72° 30' Lat. N. or east of 35° Long. E.,

voyages from and to the White Sea, provided that on the outward voyage the vessel does not pass Honningsvaag prior to 10 May and does not commence the return voyage from the last port of call on the White Sea after 31 October.

23.2.2 in the area of the Baltic Sea: for vessels that exceed 90,000 dwt, operations east of 28° 45' Long. E.

23.2.3 in the territorial waters of Greenland.

23.2.4 south of 50° Lat. S.

Excepted from this limitation are:

voyages to and from ports or places in Argentina, Chile and the Falkland Islands, and voyages from and to places of the permitted trading area.

23.2.5 North America (east):

23.2.5.1 north of 52° 10' Lat. N. and between 50° Long. W. and 100° Long. W.

23.2.5.2 in/on: the Gulf of St. Lawrence, the St. Lawrence River and its tributaries (east of Les Escoumins), the Strait of Belle Isle (west of Belle Isle), the Cabot Strait (west of a line between Cape Ray and Cape North) and the Strait of Canso (north of the Canso Causeway) between 21 December and 30 April each year.

23.2.5.3 on the St. Lawrence River and its tributaries (west of Les Escoumins) between 1 December and 30 April each year.

23.2.5.4 on the St. Lawrence Seaway and on the Great Lakes.

23.2.6 North America (west):

23.2.6.1 north of Lat. 54° 30' Lat. N. and between 100° Long. W. and 170° Long. W.

23.2.6.2 to any ports or places on the Queen Charlotte Islands or the Aleutian Islands.

23.2.7 Indian Ocean:

in the territorial waters of the Kerguelen, the Crozet, and the Prince Edward Islands

23.2.8 East Asia:

23.2.8.1 in the Sea of Okhotsk north of 56° Lat. N. and east of 140° Long. E. between 1 November and 1 June each year.

23.2.8.2 in the Sea of Okhotsk north of 53° Lat. N. and west of 140° Long. E. between 1 November and 1 June each year.

23.2.8.3 in East Asian waters north of 46° Lat. N. and west of the Kuril Islands and west of the Kamchatka Peninsula between 1 December and 1 May each year.

23.2.9 In the area of the Bering Sea:

in the Bering Sea, except on through voyages, and provided that:

23.2.9.1 the vessel does not enter, navigate or remain north of 54° 30' Lat. N.,

23.2.9.2 the vessel only enters and exits west of Buldir Island or through the Amchitka, Amukta or Unimak Passes,

23.2.9.3 the vessel is equipped and properly fitted with two independent marine radar sets, a Global Positioning System receiver (or Loran-C radio positioning receiver), a radio transceiver and GMDSS, a weather facsimile recorder (or alternative equipment for receiving weather and routing information) and a gyrocompass, and

23.2.9.4 the vessel is in possession of appropriate navigational charts and pilot books that are correct and up-to-date.

23.3 Breach of the agreed trading limits will be deemed to be an alteration of risk.

## **24 Alteration of risk**

24.1 The Insured may alter the risk and allow alteration by a third party without this affecting the special rights and obligations of either party.

24.2 If the Insured alters the risk or becomes aware of a change of risk, he must inform the Insurer without delay.

24.3 If the Insured fails to disclose an alteration of risk, the Insurer will be discharged from liability unless the non-disclosure was neither intentional nor grossly negligent, or the aggravation of risk had no effect on the occurrence of the loss or damage or the extent of the Insurer's obligations thereunder.

24.4 The Insurer will be due an additional premium commensurate with the altered risk unless said alteration was in the Insurer's own interest or made on humanitarian grounds, or was caused by an insured event which might result in loss of/damage to the vessel.

24.5 The following, in particular, are to be regarded as alteration of risk:

24.5.1 docking or entering slipways with cargo;

24.5.2 uncustomary towage services either rendered or received, except in cases of distress;

24.5.3 breach of the agreed trading warranties;

24.5.4 loading or discharge operations at sea from or into another ocean-going vessel;

24.5.5 waiver of rights of recourse above and beyond customary practices;

24.5.6 deployment of the vessel in military manoeuvres;

24.5.7 change of flag.

## **25 Change of management**

25.1 If the manning, fitting-out or inspection of the vessel is transferred to new management, the Insured must notify the Insurer in advance of the change.

25.2 The Insurer may cancel the policy on 14 days' notice within 14 days of receiving such notification.

25.3 In the event of the Insurer serving notice of cancellation, the provision set out in Clause 9.2 above remains unaffected.

25.4 The premium will be adjusted in the same way as in the case of sale of the vessel.

25.5 If the Insured fails to disclose the change of management, the Insurer will be discharged from liability unless the non-disclosure was neither intentional nor grossly negligent, or the change of management had no effect on the occurrence of the loss or damage or the extent of the Insurer's obligations thereunder.

## **26 Classification**

26.1 The Insured must notify the Insurer of a change of classification society prior to the change taking place. The Insurer is entitled to cancel the policy for the vessel in question by issuing two weeks' notice within 14 days of receiving such notification.

26.2 If the class of vessel expires, is restricted or withdrawn, the insurance will end on the date on which the vessel continues or resumes its voyage without the consent of the classification society.

26.3 The Insurer is authorised by the Insured to obtain information directly from the classification society on all findings related to the insured vessel and to inspect the files and documents of the classification society. Upon the Insurer's request, the Insured must provide written authority for the Insurer to inspect the files and documents of the classification society.



## **VII Scope of the Insurer's liability**

### **27 General**

Unless otherwise agreed, the Insurer covers all risks to which the vessel is subject for the duration of the insurance. In particular, he is liable for loss and/or damage arising from the entry of sea water, collision with other vessels, running aground, shipwreck, fire, explosion, lightning, earthquake, ice, or due to theft, looting or other acts of violence. The Insurer's liability is, however, limited to that set out in these terms and conditions; in particular, liability does not extend to encumbrance of the insured vessel with maritime liens, or to any loss and/or damage caused by delays in the voyage.

### **28 General-average absorption**

28.1 If the Insured declares general average, cover extends to general-average contributions, any sacrifices of the insured vessel that is part of the general average, and any expenses incurred by the Insured in measures intended to avert an insured loss/damage.

28.2 The Insurer will also indemnify the Insured for that proportion of the general-average contributions incumbent on the insured vessel in respect of

28.2.1 salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as referred to in Art. 13 Clause 1 b) of the 1989 International Convention on Salvage are taken into account, and

28.2.2 general-average expenditure reasonably incurred in preventing and minimising damage to the environment allowable under Rules VI and XI (d) of the 1994 York- Antwerp Rules have been taken into account.

28.3 The Insurer will also indemnify the Insured for that proportion of the costs incumbent on the insured vessel in accordance with Clause 28.2.2 up to the amount agreed in the policy. If costs incurred pursuant to Clause 28.2 are supplemented by other indemnifiable expenses or losses, the overall insurance cover will be limited by the sum insured.

Clauses 28.2.1 and 28.2.2 will apply accordingly if the general-average statement was not based on the 1994 York-Antwerp Rules.

28.4 Under no circumstances will the Insurer indemnify the Insured for the insured vessel's proportion of general average in respect of special compensation payable to a salvor under Art. 14 of the 1989 International Convention on Salvage, or of costs or expenses based on any SCOPIC clause or any other provision in any statute, rule, law or contract which is similar in substance.

28.5 If the vessel sails without cargo or with owner's cargo only, the policy conditions in respect of general average as well as the 1974 York-Antwerp Rules 1974, with the exception of Rules XX and XXI, will apply accordingly.

28.6 If separate insurance cover has been agreed for this purpose, the Insured may – upon waiving his right to enforce general- average contributions from the other parties – demand that the Insurer indemnify him for all general-average expenses reasonably incurred thus far, up to the agreed limit of indemnity. Adjustment is agreed in accordance with the 1994 York- Antwerp Rules, with the exception of Rules XX and XXI; adjustment expenses are indemnifiable up to the agreed limit. If the Insured makes this demand, he is not entitled to assert any further general- average claims against the Insurer.

The policy deductible does not apply to claims pursuant to the above clause.

The Insurer waives his right to assign claims the Insured has against other members of the general-average community.

## **29 Contributions to general average**

29.1 The Insurer's liability for contributions to general average is determined by the general-average adjustment. If the adjustment is based on the York-Antwerp Rules, the version of 1994 will apply in cases of doubt.

29.2 General average must be adjusted by a person appointed in accordance with the law and/or local practices.

29.3 General average must be adjusted at the port of destination or, if this place is not reached, at the place where the voyage terminates. If an appropriate person pursuant to Clause 29.2 above is not available at this location, the nearest place at which such a person resides will be used instead. If the parties agreed in advance that general average is to be adjusted in another place, this location will be decisive.

29.4 General average must be adjusted in accordance with the provisions applicable to general-average adjustments at the place in question. General average must be adjusted in accordance with the provisions applicable to general-average adjustments at the vessel's home port or of the York-Antwerp Rules if the parties agreed to do so in advance. Costs arising from the fact that goods discharged at a port of distress were insured against fire for the account of the various members of the general-average community are still indemnifiable by the Insurer even if they are not covered by the provisions governing the general-average adjustment.

29.5 The Insured must safeguard the interests of the Insurer when adjusting for general average. In particular, the Insurer is obliged to indemnify only costs properly and reasonably incurred by the Insured in resolving any disputes with members of the general-average community.

29.6 The adjustment is decisive even if its governing provisions were applied incorrectly or contained actual errors, unless such inaccuracies were the fault of the Insured himself.

29.7 If the Insured is entitled to claim against a member of the general-average community due to an inaccuracy in the adjustment, this right will transfer to the Insurer upon indemnification of the Insured. The provisions set out in Clauses 50 and 51 apply accordingly to the transfer of such rights.

## **30 General-average sacrifices and expenses**

30.1 In the event of general average, the Insurer is liable for sacrifices of the insured vessel in accordance with his liability for partial losses, and for expenses incurred by the Insured in accordance with the relevant provisions.

30.2 The Insured's claim to general average allowance will pass to the Insurer the moment it arises if the latter is liable for sacrifices. However, if this allowance exceeds the indemnity plus the expenses for asserting the claim for compensation, the Insured must pay the Insurer any excess. The provisions set out in Clauses 50 and 51 apply accordingly to the transfer of such rights.

## **31 Insured expenses and costs**

31.1 The Insurer also indemnifies:

31.1.1 expenses incurred by the Insured after the occurrence of an insured event for the prevention or mitigation of an indemnifiable loss, to the extent that, under the circumstances, the Insured was justified in regarding them as necessary;

31.1.2 expenses incurred by the Insured, after the occurrence of an insured event, on the instruction of the Insurer or an agent named by him in the policy;

31.1.3 expenses incurred in investigating and determining the loss indemnifiable by the Insurer, to the extent that they were considered necessary under the circumstances. However, the Insurer is not obliged to indemnify the Insured for expenses arising from the appointment of third parties unless the Insured was contractually bound to appoint such third parties or was requested to do so by the Insurer.

31.2 The Insurer must bear the expenses and costs described in Clauses 31.1.1 and

31.1.2 even if the measures undertaken were unsuccessful; upon the request of the Insured, the Insurer must advance the sum needed to cover these expenses. In the case of underinsurance where compliance with the Insurer's instructions for preventing and mitigating the loss is under dispute, the Insurer must advance the sum required to cover the expense of following the instructions even if this outlay is not recovered; the Insurer is obliged to reimburse all expenses incurred through compliance with his instructions if he was not justified in regarding them as necessary under the circumstances and the measures were unsuccessful.

31.3 If the expenses involve salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment, as referred to in Art. 13 Clause 1 b) of the 1989 International Convention on Salvage, and general-average expenditure incurred in preventing and minimising damage to the environment allowable under Rules VI and XI (d) of the 1994 York-Antwerp Rules, have been taken into account, the overall insurance cover will be limited by the sum agreed in the insurance contract.

The Insurer will not indemnify the Insured in respect of special compensation payable to a salvor under Art. 14 of the 1989 International Convention on Salvage, or of costs or expenses based on any SCOPIC clause or any other provision in any statute, rule, law or contract which is similar in substance.

## **32 Provision of bail**

If the Insured is under obligation to provide security for an insured loss, or if the provision of security for such a loss is necessary in order to prevent impending arrest, the Insurer will undertake to issue a guarantee in accordance with the conditions of the policy or to pay the required amount to be deposited.

## **33 Compliance with ship safety regulations, seaworthiness**

33.1 Compliance with ship safety regulations (applies insofar as Clause 33.2 – Seaworthiness; hazardous cargo, bulk cargo – has not been explicitly included in the insurance).

33.1.1 The term “ship safety regulations” refers to any applicable provisions contained in the international conventions, laws, directives and rules of classification companies which serve to safeguard the safe operation of the vessel.

33.1.2 The Insurer is not obliged to indemnify if the Insured fails to comply with any ship safety regulation. The Insurer will not, however, be discharged from liability if the Insured can prove that

failure to comply with the regulation had no bearing on the type or scale of the loss or damage that occurred, and was the result neither of a deliberate nor grossly negligent act.

33.1.3 If failure to comply with the ship safety regulations was the fault of the captain, the Insured will be discharged from any responsibility if he can prove that the omission was the result neither of a deliberate nor grossly negligent act during management of the ship's operations.

33.2 Seaworthiness; hazardous cargo, bulk cargo (applicable only where explicitly included in the insurance agreement in writing).

#### 33.2.1 Seaworthiness

33.2.1.1 The Insurer is not liable for loss or damage resulting from the vessel having put to sea in a non-seaworthy state, especially from her not having been properly fitted out, manned, or loaded, or without the documents necessary for the vessel, the crew, or her cargo, or without the highest class of a recognised classification society and without the sailing permission certificate of the See-Berufsgenossenschaft (Board of Ship Safety and Social Security) or – if under foreign flag – of the competent authority.

33.2.1.2 This provision does not apply if the lack of seaworthiness is due to reasons beyond the Insured's control.

33.2.1.3 If the lack of seaworthiness is the fault of the captain, the Insured will be discharged from responsibility if he can prove that he did everything in his power to ensure that the vessel put to sea in a seaworthy state and ensured that the ship's masters and officers observed and were able to implement the current rules and regulations of good seamanship.

#### 33.2.2 Hazardous cargo, bulk cargo

33.2.2.1 The Insurer is not obliged to indemnify the Insured for loss or damage resulting from goods which are precluded from carriage or which are only admitted for carriage in accordance with the German regulations for the carriage of hazardous goods if these regulations were violated in connection with the carriage and the loss or damage is due to such violation, unless the Insured can prove that he has complied with the regulations and did everything in his power to secure the observance thereof in connection with the carriage or neither knew nor ought to have known of such carriage.

33.2.2.2 If the cargo is loaded in a foreign port under regulations that exist in that port for hazardous cargo, the Insured has the option of complying either with these regulations or with the German regulations.

33.2.3 In the case of loss or damage caused by the shipment of bulk cargo, the provisions of Clauses 33.2.2.1 and 33.2.2.2 above apply accordingly with regard to the legal regulations and orders of authorities, and to the rules and instructions of the classification society.

## **34 Faults of the Insured**

34.1 The Insurer is discharged from any liability if the insured event is caused by a deliberate or grossly negligent act on the part of the Insured.

34.2 The Insured is not responsible for the conduct of the vessel's crew per se.

34.3 If Clause 33.1 (Compliance with ship safety regulations) is a component of the insurance contract, Clauses 34.1 and 34.2 are not valid if Clause 33.1 is applicable.

### **35 War and piracy**

35.1 Unless where insured in accordance with the provisions of Section Six, the following risks are excluded from cover:

35.1.1 war, civil war or warlike events,

35.1.2 perils arising – irrespective of a state of war

– from the hostile use of weapons of war,

35.1.3 perils arising from the presence of weapons of war as a consequence of one of these risks.

35.1.4 Piracy. Where not insured in accordance with the provisions of Section Six, the Insurer and the Insured may agree to cover the perils of piracy up to the agreed limit against payment of an additional premium.

35.2 The Insurer is not released from his obligation to indemnify if the risk alters due to the fact that the vessel was unable to commence or continue its voyage, or had to call at a port of refuge as a result of the risk of war.

35.3 The Insurers of this policy will not indemnify if, based upon merit or size, risks insured under this policy are covered by a war insurance clause or are not covered solely because the war clause does not provide cover due to the existence of the cover provided for by this policy.

### **36 Special weapons and cyber attacks**

36.1 The insurance does not cover loss, damage, liability and expense directly or indirectly caused by, arising from, or contributed to by one or more of the risks designated below:

36.1.1 any chemical, biological, bio-chemical, electromagnetic, nuclear or atomic weapon;

36.1.2 the use or operation, as a means for inflicting harm, of any computer, computer system, computer software program, computer virus or process or any other electronic system.

If the above clauses form part of a war insurance clause under Section Six of these terms and conditions, Clause 36.1 does not apply to other indemnifiable losses arising from the use of any computer, computer system, computer software or other electronic system in connection with launch or guidance systems or equipment used to launch or fire weapons or flying objects.

### **37 Violent acts and piracy**

37.1 Insurance cover against the risk of acts of violence by terrorist or political groups, industrial unrest, riots and other civil commotions and of piracy – the latter only provided that it is covered under No. 35.1.4 above – exists only insofar as said risks are not already covered under another insurance policy.

37.2 Insurance against the risks set out in Clause 37.1 above may be cancelled at any time either individually or collectively with 14 days' notice.

37.3 Following this, the Insured may terminate the entire contract with one week's written notice to the Insurer.

### **38 Acts of authorities**

38.1 The insurance does not cover the risks of confiscation or other acts of seizure carried out by authorities.

38.2 The Insurer remains liable for a loss caused by a court order or by the enforcement thereof, provided he is obliged to indemnify the Insured for the claim brought against him in the course of the legal proceedings.

38.3 The insurance includes loss of or damage to the vessel directly caused by any governmental authority acting under the sovereign power to prevent or mitigate an environmental pollution hazard, or threat thereof, resulting directly from a peril covered under this policy, provided such act of governmental authority has not resulted from want of due diligence by the Insured whilst preventing or mitigating such hazard or threat of pollution of bodies of water.

### **39 Nuclear energy**

39.1 The insurance does not cover loss, damage, liability or expense directly or indirectly caused by, arising from, or contributed to by one or more of the risks designated below:

39.1.1 ionising radiation or radioactive contamination caused by nuclear fuel or nuclear waste, or from the combustion of nuclear fuel;

39.1.2 radioactive, toxic, explosive or other hazardous or contaminating properties of a nuclear installation, reactor or other radioactive materials.

39.2 The Insured may come to an agreement with the leading insurer, effective for all co- insurers, that the Insurer – against payment of an additional premium – will provide cover up to an agreed limit for damage to the insured vessel itself as a consequence of an event covered by the hull policy arising from radioactive isotopes for commercial, agricultural, medical, scientific or other peaceful use being carried as cargo

- on board the insured vessel, or,
- in the event of a collision, on board the opposing vessel.

Notably, the Insurer will indemnify the Insured for damage caused by radioactive contamination, i.e. where the vessel, its appurtenances or installations have come into contact with radioactive material.

39.3 The indemnification includes, pursuant to Clause 39.2 above, isolation and decontamination expenses arising from an insured event, as well as expenses incurred in moving isolated or decontaminated objects to a disposal site (decontamination costs).

The insurance does not cover:

39.3.1 the cost of constructing storage facilities;

39.3.2 on-going storage costs;

39.3.3 expenses incurred in moving decontaminated objects from the first to a second intermediate or final storage point, and any technical processing necessary.

39.4 Contrary to Clauses 39.2 and 39.3, however, the Insurer is not obliged to indemnify for loss or damage if the German regulations or the rules and instructions of the classification society for the carriage of radioactive material have been violated and the loss or damage is due to such

violation. The Insurer is not discharged from liability if the Insured can prove that he has complied with the foregoing regulations, rules and instructions and has done everything in his power to secure compliance thereof during the carriage, or neither knew nor ought to have known of such carriage.

39.5 The Insurer is discharged from liability to such extent as the Insured receives or would receive compensation from a third party if this insurance had not been effected.

#### **40 Deductible**

40.1 If a deductible was agreed in the policy, it is applicable to each and every insured event. Several claims for damage by heavy weather or ice occurring during a single sea-passage between two successive ports will be treated as being due to one casualty and the deductible will be applied once only.

40.2 The deductible is not applicable:

40.2.1 in the event of the total loss of the insured vessel or equivalent cases set out in Clause 59 of these terms and conditions;

40.2.2 to general-average contributions,

40.2.3 to sacrifices,

40.2.4 to third-party claims,

40.2.5 to the expenses and costs set out in Clause 31 above.

40.3 If deductibles for ice damage have been arranged, these are additionally applicable.

#### **41 Limits of liability**

41.1 The Insurer's liability for losses occurring during the insured voyage is limited to the sum insured. A voyage begins when the vessel puts to sea from a port or leaves its berth or place within the port area and ends when it arrives in port or another place of destination. The period of time between two separate voyages counts towards the previous voyage.

41.2 General-average contributions, general-average expenses (with the exception of the amounts set out in Clause 28.2 above), as well as expenses and costs the insurer must bear in accordance with Clause 31 above are reimbursed even if, together with other payments, they exceed the sum insured.

41.3 If expenses have been incurred in averting or minimising a loss or in repairing or replacing an insured object that has been damaged, if contributions to general average have been made, or if the Insured has made a personal undertaking to compensate for such amounts, the Insurer is liable to indemnify any loss or damage caused by a subsequent insured event without regard to any expenses and contributions he may have had to pay earlier.

41.4 If the compensation and the expenses or contributions exceed the sum insured, taking into account the fact that the Insured must pay damages to a third party, the provisions of Clauses 41.2 and 41.3 will not apply.

#### **42 Abandonment**

42.1 In the event of an insured loss, the Insurer is entitled to discharge himself from all further liabilities by payment of the sum insured (abandonment).

42.2 Notwithstanding any discharge of liability, the Insurer nonetheless remains obliged to indemnify the Insured for costs of averting or minimising the loss or in repairing or replacing the insured object, properly incurred before he was notified of the Insurer's intention to discharge himself from liability by payment of the sum insured. This also includes insured costs, which the Insured has undertaken to pay.

42.3 The Insurer's right to discharge himself from liability by payment of the sum insured ceases if the Insured fails to receive notification of this intent, as detailed in Clause 42.2, Sentence 1, within five working days of the Insurer becoming aware of the loss event and its direct consequences.

42.4 Payment of the sum insured does not earn the Insurer rights to the insured objects.

## **VIII Notice of loss, loss prevention, breach of obligations**

### **43 Notice of loss**

The Insured must immediately notify the Insurer and any representative named and included in the insurance contract of any loss event material to the risk insured, even if the event does not constitute grounds for a claim.

### **44 Averting and mitigating the loss**

When a loss event occurs, the Insured must attempt to avert and mitigate loss and damage to the greatest extent possible. He must observe the instructions of the Insurer and indeed request such instructions as far as circumstances allow.

### **45 Communication of information and preservation of evidence**

45.1 When a loss event has occurred, the Insurer may request the Insured to provide him with all information required to assess the insured loss or the extent of the indemnification due. The Insurer may expect the Insured to take any reasonable measures in order to procure documents; he may further request that a note of protest be produced if he can demonstrate a legitimate interest in this document.

45.2 The Insured is obliged to procure and safeguard all evidence that may be of relevance to the later clarification of events leading up to the loss, or which are necessary for the assertion of claims of recourse.

### **46 Legal consequences of a breach of obligations**

Unless otherwise agreed, if the Insured fails, either wilfully or through gross negligence, to satisfy any of the obligations stated in these terms and conditions or otherwise agreed in the insurance contract, the Insurer is released from his obligation to indemnify without having needed to explain the legal consequences of such a breach to the Insured. Notwithstanding the above, however, the Insurer will remain obliged to indemnify provided that the breach of obligation had no influence on the occurrence or determination of the insured event, or on the determination or the scale of the indemnity payable by the Insurer.



## **IX Lodgement of claims, communication of information, payment of the indemnity**

### **47 Lodging of the claim**

47.1 The Insured must claim for an insured loss in writing within fifteen months of the termination of the insurance and, if the ship is missing presumed lost, before expiry of the period of presumptive loss. The postmark on the letter evidences adherence to the time limit.

47.2 The Insured will forfeit his right to compensation if the claim is not made in good time.

47.3 These provisions do not apply to the Insured's contributions to general average.

### **48 Loss account, due date for payment of the indemnity**

48.1 In the event of loss or damage being investigated by German Federal Agency for Maritime Investigations or by a similar foreign authority, the Insurer – prior to paying an indemnity – is entitled to request the presentation of the final verdict of the Maritime Court or the decision of the foreign authority.

In cases of total loss and missing vessels, payment of the indemnity is subject to the presentation of such documents.

48.2 For the remainder, the Insured may not demand payment until one month after providing the Insurer with a loss account and furnishing all the documents requested by the Insurer. If the size of the indemnity payment cannot be finalised within a month of the claim being lodged, the Insured may demand payment of three quarters of the minimum amount likely under the circumstances, this amount being set off against the total payment due.

48.3 The loss account must contain an orderly schedule of the amounts payable by the Insurer for the individual losses and expenses.

### **49 Loss arising from delay in payment**

In the event of dispute between the Insurer and the Insured being settled by a court of law or court of arbitration, the Insurer – apart from his liability for interest as provided for by law – will not be liable to the Insured for any loss arising from delay in payment unless the Insurer has delayed the fulfilment of his obligations deliberately or due to gross negligence.

## **X Transfer of rights of recourse**

### **50 Protection and transfer of rights of recourse**

50.1 In the event of a loss, the Insured must protect rights of recourse against third parties who are or might be liable for the loss or damage.

50.2 If the Insured is entitled to claim against a third party, these rights will transfer to the Insurer upon indemnification of the Insured. In this event, the Insured is obliged to provide the Insurer with the information required to assert these rights, to submit – provided they are in his possession – all

documents supporting the claim, and, upon request of the Insurer, to issue a document on the transfer of the rights. The Insurer must bear the costs.

50.3 Clause 50.1 above applies accordingly in the case of general average. However, the Insured's claim to general-average allowance will pass to the Insurer the moment it arises if the latter is liable for sacrifices. If the allowance exceeds the damages and expenses paid by the Insurer, the excess is payable to the Insured.

## **51 Loss mitigation after subrogation**

Even after the right of recourse has transferred to the Insurer, the Insured is obliged to mitigate the loss as far as possible, if need be, by withholding payments such as freight. He is obliged to assist the Insurer in asserting the claim and to forward immediately any material information, messages and documents. The Insurer must bear the relevant costs and advance these upon request.

## **XI Insolvency of the Insurer**

### **52 Insolvency of the Insurer**

52.1 The insurance relationship will terminate one month after insolvency proceedings are instituted against the Insurer's assets. Until this time, it will remain effective with regard to the insolvency assets.

52.2 The provisions of the German Insurance Contracts Act on the implications of instituting insolvency proceedings remain unaffected.

## **XII Sale of vessels and vessel parts**

### **53 Sale of vessels and shares in vessels**

53.1 If an insured vessel is sold, the insurance will terminate; if several vessels are insured under the same contract, the insurance will terminate only for the vessel that was sold.

If the vessel is sold while it is en route, the insurance remains in force until the time it would have ended with the vessel reaching its next port of destination in accordance with Clause 9 of these terms and conditions.

The premium due for the later period will be refunded; the Insurer is, however, entitled to collect a premium for the additional time of coverage in accordance with Art. 34, Section 2 of the Ship Rights Act or on the basis of a mortgage clause.

53.2 If a share in a ship is sold, the buyer will assume from the seller all rights and obligations arising from the insurance contract for the period of ownership; the buyer and the seller are jointly and severally liable for payment of the premium.

The insurer is required to bear the consequences of the sale in respect of claims against him on the basis of the insurance contract only as of such time as he becomes aware of the sale; the provisions of Arts. 406 to 408 of the Bürgerliches Gesetzbuch (German Civil Code) apply correspondingly.

## **Section Two: Hull Insurance (Where Agreed)**

### **54 Appurtenances and installations; parts removed from the vessel**

54.1 Appurtenances are included in the insurance even if they are not the property of the Insured.

54.2 Installations and equipment are covered against partial loss or damage only where this was caused by fire or explosion.

54.3 Parts of the insured vessel and its appurtenances that are temporarily removed from the vessel remain insured. Any pre-existing insurance takes precedence over this insurance.

### **55 Wear and tear, old-age, rust, corrosion, cavitation**

55.1 The Insurer is not liable for loss or damage caused by ordinary wear and tear, or by age, rust or any kind of corrosion or cavitation.

55.2 If the loss or damage may be attributed partly to one or more causes enumerated in Clause 55.1 above and partly to an insured peril, the Insurer will indemnify proportionately to such extent that the Insured can prove that the insured peril was contributory. This does not apply if an insured peril was the proximate cause of the loss or damage.

### **56 Ice damage**

56.1 Insurance cover for loss and/or damage caused by ice (ice damage) depends on the ice class granted to the vessel by the competent classification society. If the vessel was granted an ice class by any of the classification societies listed in the annex to these terms and conditions, the ice classes mentioned in the following refer to the class designations listed in this annex. If the vessel was granted an ice class by another classification society, the insurance provides cover for ice damage only if the parties have agreed to which of the following ice classes the class designation assigned to the vessel corresponds.

56.2 Vessels without an ice class

56.2.1 Vessels without an ice class are ships that were not built to at least Ice Class I. Vessels such as these are subject to the deductibles to be agreed in the policy in respect of voyages to and from, or presence in the region east of a line drawn between Lindesnaes and Hanstholm including the Kiel Canal. These ice deductibles also apply to voyages in the following regions after the agreed policy deductibles have been taken into account:

56.2.1.1 in the region east of a line drawn between Lindesnaes and Hanstholm including the Kiel Canal, north up to a line drawn between Gefle and Turku, and east up to a line drawn between Helsinki and Tallinn.

56.2.1.2 in regions north of a line drawn between Gefle and Turku, but not further north of a line drawn between Helsinki and Tallinn and not further east of a line drawn between Vyborg and Narva.

56.2.2 The Insurer is not liable for loss or damage for voyages to and from, or presence in the regions north of a line drawn between Örnsköldsvik and Vaasa, and east of a line drawn between Vyborg and Narva.

The Insurer is, however, liable for loss or damage in accordance with Clause 56.2.1 above if the vessel entered into these areas owing to circumstances which the Insured or, if the vessel was sailing on charter, the charterer neither foresaw nor could have been expected to foresee.

56.3 Vessels with ice classes listed in the annex to these terms and conditions.

56.3.1 Insurance cover extends to voyages to and from, or presence in the regions north of a line drawn between Stockholm and Dagerort, and east of a line drawn between Dagerort and Ventspil, as well as to voyages to and from, or presence on all canals, rivers and lakes in Sweden.

56.3.2 The Insured's deductible will be agreed on a case-by-case basis depending on the respective ice class. The deductible is subtracted from the remaining amount of the ice damage after the policy deductible has been taken into account.

56.3.3 Ice class V and higher

Vessels with Ice Class V or an ice class rated as higher than Ice Class V according to the terms and conditions of the classification society are not subject to any further deductible for ice damage above and beyond the deductible already agreed in the policy.

## **57 Set-off of salvage remuneration**

The Insurer is liable for loss or damage that occurred when the insured vessel was being used for salvage purposes provided that the remuneration for the salvage operations is not being used as set-off against the loss.

## **58 Machinery**

58.1 The term "machinery" includes in particular:

The main propulsion system including transmission, shaft and propeller, auxiliary machines and aggregates, power supply and transformer systems, deck engines including cargo pumps. It does not include pipes with fittings or storage tanks, service tanks and associated equipment.

58.2 The Insurer will not indemnify loss or damage resulting from gross neglect of the insured installations over a lengthy period of time, in particular from non-compliance with maintenance and control regulations or special recommendations aimed at preventing damage.

58.3 In the event of a claim for partial loss or damage to the machinery recoverable under this insurance policy that is attributable in part or in whole to operating errors on the part of the ship's crew, the Insured will, in addition to any deductibles agreed, also bear, in respect of each casualty or occurrence, the deductible agreed in the policy.

## **59 Error or defect in construction, materials and manufacturing; shaft breakage**

59.1 The Insurer will also indemnify for damage suffered by the vessel and its machinery arising from

59.1.1 latent defects resulting from errors or faults in materials or manufacturing,

59.1.2 errors or defects in construction,

59.1.3 breakage of the vessel's shaft.

59.2 The Insurer will not indemnify for the actual defective parts themselves unless they were classified by a classification company.

59.3 The Insurer will not indemnify loss or damage resulting from gross neglect of the machinery over a lengthy period of time, in particular from non-compliance with maintenance and control regulations or special recommendations aimed at preventing damage.

## **60 Total loss and equivalent cases**

60.1 In the case of total loss, the Insured may request payment of the sum insured. The value of any salvaged property and compensatory receivables prior to payment of the sum insured must, however, be deducted from the Insurer's payment. If the Insurer and the Insured cannot reach agreement on the value of the salvaged property, the Insurer is entitled to request that the value of the goods be ascertained by public auction.

60.2 The Insured may also request payment of the sum insured

60.2.1 if the vessel is seized from the Insured without prospect of return, in particular, has sunk without trace, or its original state has been destroyed;

60.2.2 if no news has been received from the vessel within two months of the day of the last communication (ship missing presumed lost). The two-month time period for communication with the vessel will be replaced by a 12-month period if communications may have been delayed due to war.

60.3 If the Insurer has indemnified the Insured in accordance with Clause 60.2 above, he is entitled to decide whether all rights and remedies to the vessel should transfer to him or not. In this event, the Insured is obliged to provide the Insurer with the information required to assert these rights, to submit – provided they are in his possession – all certificates documenting the claim, and to submit all papers – certified by a notary public – documenting the transfer of rights. The Insurer must bear these costs. If the Insured is required to perform certain actions or make certain declarations in order for the rights to be transferred, the former is obliged to perform such actions and make such declarations. If the Insurer has failed to exercise his right of choice by the time the claim is accepted, these rights will not transfer.

60.4 Even after subrogation, the Insured is obliged to minimise the loss if the Insurer himself is unable to do so. He must notify the Insurer without delay of any information of material importance to the assertion of these rights and provide him, where requested, with all assistance necessary to acquire and recover the vessel. The Insurer must bear the relevant costs and advance these upon request.

## **61 Vessel “unfit for repair”**

61.1 A vessel is considered “beyond repair” if it can neither be repaired at its current location nor be moved to a location where repair would be possible.

A vessel is considered “unworthy of repair” if the repair costs, including any salvage remuneration and the cost of moving the ship to another repair yard, exceed the sum insured.

The expert assigned the task of investigating the loss is responsible for determining whether the vessel is beyond or unworthy of repair. Either party may request that this process take place via the experts procedure described in Clause 63 below.

61.2 Once the vessel has been declared beyond repair or unworthy of repair, the Insurer may elect to pay either

61.2.1 the sum insured, if he decides to transfer the rights and remedies to the vessel to himself in accordance with Clause 60.3, or

61.2.2 the difference between the sum insured and the value he has agreed with the Insured for the damaged ship, if he decides not to transfer the rights to the vessel to himself. If such an agreement cannot be reached, the Insured is obliged to sell the vessel by public auction. In this case, the Insurer will pay the difference between the sum insured and the proceeds from auctioning the vessel.

## **62 Partial loss**

62.1 The existence of partial loss or damage must be ascertained prior to any repair work being carried out. If the cause or extent of the loss is disputed, either party is entitled to request their ascertainment by an expert. The procedure will take place in accordance with the provisions set out in Clause 63 below.

62.2 If, subsequent to damage having occurred, the vessel obtains a certificate of seaworthiness from the competent classification society, the repair may be deferred, provided that the damage is ascertained immediately. The Insurer is not liable for any increased expenditure resulting from deferred repair. In all other cases, the vessel must be repaired as soon as the partial loss or damage is identified, subject always to the provisions of Clause 62.8. The Insured must safeguard the interests of the Insurer in respect of the repair work carried out.

62.3 Before conclusion of a repair contract, the Insured must submit to the Insurer various repair offers, whereupon

62.3.1 the Insurer may request the Insured to move the vessel to another place for final repair;

62.3.2 the Insurer may veto the place of repair or the repair yard chosen by the Insured;

62.3.3 the Insurer may request that the Insured obtains further offers for the repair of the vessel or the Insurer may procure such offers himself (tendering).

62.4 The Insurer is entitled to supervise the repair work. The Insurer may request the Insured to keep him informed about the progress of the repair work and, when the work is completed, to provide him with expense receipts for the necessary work, in particular, to notify him of any discounts or rebates applicable to the amounts enumerated in the receipts.

62.5 The indemnity payable by the Insurer is limited to the expenses incurred for the repair work carried out. If these costs in total exceed the estimated amount, the indemnity payable will be limited to the estimate.

62.6 The Insurer will indemnify the costs of painting caused by the insured damage. The costs of scraping and toxic painting will be paid in proportion to the time which corresponds to the remaining period of the paint's durability. Otherwise, claims recoverable under this insurance are payable without deductions "new for old".

62.7 The Insurer must also bear the costs of the vessel's movement to the place of repair and, where necessary, back again. The same applies to any expenses incurred by the Insured in obtaining financing for the repair work must be ascertained prior to any repair work being carried out. If the

cause or extent of the loss is disputed, either party is entitled to request their ascertainment by an expert. The procedure will take place in accordance with the provisions set out in Clause 63 below.

62.8 It is a prerequisite to the Insured's claim for compensation that the repairs be carried out. However, if the Insured has a legitimate interest and if there are important reasons for which he cannot be called to account, he may declare immediately after his claim has been ascertained that he does not intend to have the vessel repaired; sale of the vessel prior to the repair work is deemed to be an important reason in this context unless the insurance contract has been assigned to the buyer. In this case, the indemnity payable by the Insurer is limited to the loss amount determined.

### **63 Experts' procedure**

63.1 If the cause or extent of the loss is disputed, either party is entitled to request their ascertainment by an expert.

63.2 In this case, each party must nominate an expert without delay. Upon naming an expert, each party is entitled to request the other in writing to do the same. If the second expert is not named within four weeks of receipt of the written request, the requesting party is entitled to have the expert named by the Chamber of Industry & Commerce (alternatively by the Consulate General of the Federal Republic of Germany) of the district in which the vessel is currently located. 63.3 Before the survey begins, the two experts must appoint a third party as an umpire. If the parties cannot agree on a choice of an umpire, either or both parties can request that the representative be appointed by the Chamber of Industry & Commerce (alternatively by the Consulate General of the Federal Republic of Germany) of the district in which the vessel is currently located.

63.3 Before the survey begins, the two experts must appoint a third party as an umpire. If the parties cannot agree on a choice of an umpire, either or both parties can request that the representative be appointed by the Chamber of Industry & Commerce (alternatively by the Consulate General of the Federal Republic of Germany) of the district in which the vessel is currently located.

63.4 The reports produced by the experts contain all information which, depending on the task at hand, is required to determine the cause of the loss and to assess the extent of the indemnification due.

63.5 The experts must present each party with their findings simultaneously. If the findings diverge, the Insurer must forward the reports to the umpire without delay. The umpire then settles the disputed issues within the bounds of the findings made by the experts and presents both parties with his decision at the same time.

63.6 Each party assumes the costs of his own expert. Each party pays half the costs of the umpire. This applies even if the two parties agree mutually on an experts procedure. If the Insurer requests the procedure, he must bear the entire costs of the proceedings.

63.7 The findings of the experts or of the umpire are binding unless it is obvious that they deviate substantially from the actual facts of the case.

63.8 If the experts or the umpire are unable or unwilling to produce findings, or if they delay proceedings unduly, different experts must be appointed.

### **64 Tenders**

64.1 The Insurer will compensate the Insured for the time lost solely as the result of tenders taken in accordance with Clause 62.3.3 above, paying the daily allowance agreed in the policy. Such an

allowance will, however, only be granted if the repair is carried out in accordance with a tender accepted by the Insurer.

64.2 Any amount recovered by the Insured for the same period as above –

64.2.1 in respect of fuel, stores, wages and maintenance allowed in general average or provided for in the terms and conditions of this contract;

64.2.2 resulting from a legal or contractual claim against third parties – will be deducted from the tender allowance.

64.3 If, contrary to the request of the Insurer, the Insured fails to obtain tenders or fails to give the Insurer the opportunity to procure tenders himself, the Insurer's indemnity payment will be reduced by an agreed percentage figure of the ascertained claim recoverable under the policy.

64.4 If, despite obtaining tenders, the offer approved by the Insurer is not accepted, the Insurer's indemnity will be limited to such offer, plus the costs saved.

## **65 Liability to third parties**

65.1 The Insurer will indemnify the Insured for third-party liability claims based on statutory liability provisions and caused by movements of the vessel or by any navigational measures directly connected therewith.

65.2 In the event of towage of the insured vessel, the Insurer will indemnify the Insured in accordance with Clause 65.1 above also in cases where the liability of the Insured is based on the conditions of the Towage Contract, provided the Insured's liability as defined in the conditions of the Towage Contract is in accordance with local custom and, further, provided tug and tow formed one nautical unit at the time the loss or damage occurred.

65.3 The Insurer will also indemnify for loss of or damage to property of a shipyard in accordance with Clause 65.1 above provided that the Insured is liable as per the terms and conditions of the Dock and Repair Contract and, further, provided that the Insured's liability as defined in the conditions of such contract is in accordance with local custom.

65.4 Insurance cover does not extend to

65.4.1 liability claims arising from

65.4.1.1 death or injury to persons and other bodily injury,

65.4.1.2 damage caused by the release of liquid or gaseous substances, and of chemicals and other hazardous goods governed by Classes 1-9 of the IMDG Code, unless such loss or damage was proximately caused by collision of the insured vessel with another vessel and resulted in loss of or damage to such other vessel or property on board of such other vessel,

65.4.1.3 loss of or damage to property on board the insured vessel,

65.4.1.4 other forms of environmental impairment to nature and the landscape pursuant to Art. 2 of the German Environmental Impairment Act, in particular to reefs,

65.4.1.5 expenses incurred by third parties for loss prevention measures for which liability cover is not provided.

65.4.2 liabilities of the Insured to reimburse a non- carrying vessel in respect of loss of or damage to cargo carried on board the insured vessel under the "both-to-blame" principle.



65.5 The Insurer's liability extends to:

65.5.1 investigation of the matter of liability,

65.5.2 reimbursement of any compensation which the Insured is required to pay on the grounds of any admission given or approved by the insurer, of any out-of-court settlement concluded or approved by the Insurer, or of any judicial ruling,

65.5.3 defence against unfounded third-party claims.

65.6 In the case of an insured event, the Insured must observe the instructions of the Insurer.

If the Insured becomes involved in a legal dispute with an injured party or the latter's estate over a claim arising out of an insured event, the Insurer will conduct the defence in the Insured's name at his own expense.

The Insurer is authorised to issue, in the name of the Insured, any statements which he considers expedient to the settlement or defence of the claim.

65.7 If the amount of a claim exceeds the limit of indemnity, the Insurer is obliged to pay only that proportion of the costs of legal proceedings that corresponds to the ratio of the limit of indemnity to the total amount of the claim. The same applies to legal disputes in which third-party liability claims are made for which no insurance cover exists.

65.8 By way of amendment to Clause 41, the Insurer is separately liable for third-party liability claims brought against the Insured up to the sum insured.

65.9 In the case of joint liability of the freight interest, indemnity payments will be made in the proportion which the hull value bears to the total amount of the hull value plus the freight interest. The agreed value for hull insurance is considered to be the insurable value of the hull. If a partial liability clause has been agreed, this clause will be applied accordingly.

## **66 Sister ship**

With regard to the indemnity payable by the Insurer in cases of salvage, assistance and third-party liability claims, vessels and other property of the Insured will be treated as being the property of a third party.

## **Section Three: Additional Insurances (Where Agreed)**

### **67 Supplementary hull insurance in the case of total loss**

67.1 In the cases of abandonment (Clause 41 above), total loss (Clauses 60.1 and 60.2 above), vessel beyond or unworthy of repair (Clause 61.1 above), the Insurer will pay the sum insured on the interest agreed in the policy. To this extent, the insured interest is deemed to be established.

67.2 The Insurer will also indemnify for claims brought by third parties insured under the hull policy for the amount by which the third-party indemnity exceeds the agreed value for hull insurance, but only in the proportion of the sum insured under this contract to the total sum insured on collision excess-of-loss basis.

67.3 The Insurer who provides cover in accordance with this provision grants the hull insurer precedence over all salvages and recourse proceeds of whatever nature. This precedence is, however, limited by the claims and expenses paid by the hull insurer.

67.4 In the case of a loss, the Insured is obliged to declare all existing insurances for interests of this nature.

## **68 Freight in the case of total loss**

In the cases of abandonment (Clause 41 above), total loss (Clauses 60.1 and 60.2 above), vessel beyond or unworthy of repair (Clause 61.1 above), the Insurer will pay the sum insured agreed in the policy for freight. To this extent, the insured interest is deemed to be established.

## **69 Insurance premium in the case of total loss**

69.1 The insurance covers the Insured's interest in the insurance premium for hull and secondary interests in the case of total loss and equivalent cases.

69.2 The Insurer will indemnify for:

69.2.1 abandonment of the hull insurer in accordance with Clause 42,

69.2.2 total loss (Clauses 60.1 and 60.2),

69.2.3 vessel beyond or unworthy of repair (Clause 61.1).

69.3 The Insurer will also indemnify for claims brought against the Insured by third parties for damage insured under the hull policy which resulted in the vessel being confiscated for good or abandoned to the third party.

69.4 The sum insured is the portion of the premium not yet paid in advance (see Clause 20.7) when the insured loss occurred.

## **Section Four: Loss of Hire Insurance (Where Agreed)**

### **70 Insured perils**

70.1 The Insurer will indemnify for loss of income from the insured vessel for the period during which the vessel is unable to earn the full freight or hire due to an indemnifiable hull loss.

70.2 The insurance also covers cases:

70.2.1 where the loss under the hull insurance is within the deductible;

70.2.2 where the loss of income is due to the vessel having run aground without a hull loss having materialised.

## **71 Exclusions**

Cover does not extend to:

- 71.1 loss of income arising from total loss and equivalent cases (Clauses 60.1 and 60.2 above) or where the vessel is beyond or unworthy of repair (Clause 61.1 above);
- 71.2 periods during which the vessel is laid up in accordance with Clause 21 above.

## **72 Scope of cover**

- 72.1 The indemnity payable by the Insurer is calculated according to the number of days during which the vessel was unable to generate income (loss of income) and the income lost per day.
- 72.2 The loss of income is calculated in days, hours and minutes. Periods during which the loss of income was only partial will be converted into a corresponding number of full days of lost income.
- 72.3 The Insurer's total liability for loss of income from any one loss event (maximum limit of indemnity) and from the aggregate of all loss events in any one insurance year is limited to the sum insured per day multiplied by the number of days specified in the policy, for each insured event and for all claims in any single insurance year.
- 72.4 The sum insured within the meaning of Clause 72.3 above is the amount the vessel would have earned under the respective freight or hire contract, net of all expenses. If the vessel was not operating under a freight or hire contract when the loss event occurred, the sum insured will be calculated according to the average income during the period of loss of income of vessels of a similar design and size, net of all expenses.
- 72.5 If a fixed amount per day has been agreed in the policy terms, this will be the sum insured per day (agreed value). The agreed value can be reduced in accordance with Clause 10.4 above.

## **73 Deductible**

- 73.1 The deductible specified in the policy is deemed to apply to each and every occurrence of loss or damage. The Insurer is not liable for any loss of income during the deductible.
- 73.2 Several cases of loss or damage due to heavy weather occurring during a single sea passage between two successive ports will be treated as being due to one and the same loss event. The same applies to several cases of ice damage or grounding in shallow waters on such a voyage.

## **74 Assessing loss of income**

Assessing a loss event under this insurance cover must take place in the same way as is usual under the hull insurance policy. The Insurer is entitled to appoint a separate expert to assess losses occurring under this insurance cover.

## **75 Choice of repair yard**

- 75.1 The Insurer may request the Insured to present him with various repair tenders from repair yards of his choice. If the Insured fails to obtain such tenders, the Insurer is entitled to do so himself.

75.2 The Insured alone decides which of the yards is to effect the repair work. Whatever the case, the Insurer's liability is limited to the shortest repair (in terms of time) tendered, the costs of which the Insurer will bear in full within the terms of the hull insurance. If the Insured authorises the repairs to be effected by this yard, the Insurer will indemnify him for loss of income even if the repair work takes longer than originally stated by the yard.

## **76 Extraordinary expenses**

76.1 Where cover is not already provided by the hull policy or another insurance taken out on the vessel, the Insurer will also indemnify for extraordinary expenses incurred in averting or minimising insured losses insofar as such measures were considered appropriate in the circumstances or were incurred on the instruction of the Insurer. Extraordinary expenses within the meaning of this insurance do not include expenses which, under the circumstances, were foreseeable before commencement of the voyage.

76.2 The indemnity for extraordinary expenses is limited to the amount the Insurer would have had to pay under the terms and conditions had the extraordinary expenses not been incurred. This does not apply if the expenses were incurred on the instruction of the Insurer or were incurred with the Insurer's consent.

If the extraordinary expenses resulted in loss of income, which the Insured would have had to bear alone either fully or in part, being avoided, the Insured will bear the extraordinary expenses himself either fully or on a pro rata basis.

## **77 Simultaneous repairs**

77.1 If the Insured – in addition to any repairs covered by this insurance or during other periods of loss of income covered by the insurance – carries out other repair work that is not covered by this insurance or another income protection policy, the Insurer will indemnify for half the loss of income for the joint repair time outside the policy deductible, provided that this work

77.1.1 is necessary in order to comply with conditions imposed by the classification society or

77.1.2 is necessary in order to maintain or re-establish the vessel's seaworthiness, except for work that would not have necessitated a visit to a repair yard had it been effected separately.

77.2 If repair work covered by this insurance is effected together with repair work covered by another income protection policy, the Insurer will indemnify for half the loss of income for the joint repair time outside the policy deductible.

77.3 Calculation of the joint repair time is based on the repair time that would have been incurred had the repairs been effected separately. The joint repair time is the repair time which overlaps.

## **78 Voyage to the repair yard in the case of joint repair work**

If the Insured intends to have work covered by this insurance effected together with other repairs as set out in Clause 77 above, the Insurer will indemnify for the loss of income incurred through the voyage to the repair yard with corresponding application of Clause 77 above. Voyage times that lie within the policy deductible will not be divided up.

## **79 Loss of income after completion of the repair work**

After the end of the repair work, the Insurer will indemnify for any loss of income incurred during the period required by the vessel

79.1 to resume the voyage or another occupation under the transportation or lease contract in force when the loss event occurred,

79.2 to reach the first port of loading under a transportation or lease contract already concluded but not yet in force when the loss event occurred. The time the vessel would have required to reach the port of loading if the casualty which led to the loss of time had not occurred is deducted from the Insurer's indemnity.

## **80 Repairs after the end of the insurance contract**

80.1 The Insurer is liable for loss of income caused by repair work effected after expiry of the insurance contract only if these repairs are completed within two years of the insurance contract expiring.

80.2 Loss of income arising from deferred repairs effected after expiry of the insurance contract will be indemnified in accordance with Clause 72.4 above only if the amount calculated in accordance with Clause 72.4 is lower than any fixed daily amount agreed in accordance with Clause

72.5 of the policy terms and conditions.

## **81 Sale of the insured vessel**

If the Insured sells the vessel to a third party other than for breaking up and without repairs that would have led to a loss of income claim under this insurance having been effected, the Insurer is liable for the loss of income that would have been incurred had the Insured effected the repairs immediately before selling the vessel.

## **Section Five: Mines Clauses (Where Agreed)**

### **82 Mines clauses**

82.1 The following definitions apply to these clauses:

82.1.1 War events: war, civil war and war-like operations;

82.1.2 Weapons of war: mines, torpedoes, ammunition and other explosive war materials, as well as barriers and obstacles used or erected during a war, a civil war or a war-like operation.

82.2 The Insurer will indemnify for damage caused by derelict weapons left behind after a war event.

82.3 The Insurer will not indemnify for damage arising from the use of weapons of war during a war event still in progress.

82.4 If the perils set out in Clauses 82.2 and

82.3 above occur in a certain region, the Insurer may exclude this peril from this particular region (“restricted area”) by giving 14 days’ notice to the Insured. Following this, the Insured may terminate the entire contract with one week’s written notice to the Insurer.

The decision to terminate on the part of the leading underwriter is binding for all other parties involved. If a broker receives a notice of cancellation from the Insurer, this declaration is considered as having been received by the Insured as well.

82.5 The principle of preponderance of probability applies to this clause with respect to the cause of the loss.

82.6 The Insurer of this policy will not indemnify if risks insured under this policy are, based upon their merits or their size, covered by another insurance.

82.7 The premiums and terms and conditions for vehicles and equipment deployed in special operations in waters that have not been cleared of the weapons of war described in Clause 82.1.2 above will be agreed from case to case.

82.8 Restricted areas are detailed in the appendix to the policy.

82.9 Clauses 54 to 57 and Clauses 60 to 66 of Section Two apply accordingly to cover under the Mines Clause.

## **Section Six: War Clauses (Where Agreed)**

### **83 Scope of cover**

83.1 The insurance covers voyages worldwide, with the exception of voyages to or from the excluded regions enumerated in the appendix to the policy.

83.2 Insurance cover for voyages to or from these excluded regions will be granted by agreement on a case-by-case basis in accordance with special conditions and premiums, provided that the Insured notifies the Insurer of the voyage to or through these waters without delay, prior to commencing the voyage.

### **84 Insured perils**

84.1 The Insurer provides cover for loss of or damage to the insured vessel arising from:

84.1.1 events resulting from war, civil war, revolution, rebellion, uprising and civil commotion, or war operations conducted by or against a belligerent power, as well as the hostile use of weapons of war, irrespective of whether war is declared or not;

84.1.2 capture, seizure, confiscation, arrest or acts of legitimate or assumed authorities and the consequences thereof and attempts thereat, unless where specifically covered elsewhere in these terms and conditions of insurance;

84.1.3 derelict mines, torpedoes, bombs and other derelict weapons of war;

84.1.4 strikers, locked out workmen, or persons involved in labour disturbances or other civil commotions not already mentioned in Clause 84.1.1;

84.1.5 terrorists or other persons acting from a political motive or with malicious intent;

84.1.6 pirates. If the vessel is seized by pirates for a period of more than 12 months, the Insured may request payment of the sum insured.

84.1.7 detonation of explosives or use of weapons of war by persons acting with malicious intent.

84.2 The Insured will be deemed to have suffered a total loss in respect of his vessel if he is unable to sail the vessel for a continuous period of more than 12 months, due to:

84.2.1 capture, seizure, arrest, acts of authorities, confiscation or disposition,

84.2.2 the consequences of an act of war or act of national defence, as a result of which the vessel is trapped in a port, canal, waterway, or other means of access to the open sea.

## **85 Corresponding application of the provisions of Section Two**

Clauses 54 to 57 and Clauses 60 to 66 of Section Two apply accordingly to cover under the War Clause.

## **86 Special exclusions for the war insurance**

The insurance does not cover loss and/or damage

86.1 where and insofar as they were caused by:

86.1.1 any detonation of any weapon of war which releases atomic or nuclear radiation, generates a nuclear reaction, or is powered by nuclear energy (nuclear weapon);

86.1.2 break-out of war, whether war be declared or not, between one or more of the following nations:

the United Kingdom of Great Britain and Northern Ireland, the United States of America, France, Germany, the People's Republic of China and any CIS member state;

86.1.3 requisitioning;

86.1.4 capture, seizure, confiscation, arrest or acts of authorities, confiscation or disposition by or upon the instruction of a competent authority of the country in which the vessel is registered or in which the shipowner is domiciled,

86.1.5 capture, confiscation, seizure, arrest, acts of authorities, confiscation or disposition due to quarantine laws or as a result of a breach of customs and excise laws, unless where specifically covered elsewhere in these terms and conditions of insurance;

86.1.6 measures of ordinary legal authorities, non- provision of bail, non-payment of fines or any other financial reason,

86.2 where and insofar as they were directly or indirectly caused by or are causally related to:

86.2.1 ionising radiation or radioactive contamination caused by nuclear fuel or nuclear waste, or from the combustion of nuclear fuel;

86.2.2 radioactive, toxic, explosive or other hazardous or contaminating properties of a nuclear installation, reactor or other radioactive materials;

86.2.3 any chemical, biological, bio-chemical, electromagnetic, nuclear or atomic weapon;

86.3 where and insofar as the Insured has or would have cover under another insurance were this war insurance not to exist.

## **87 Cancellation of the war insurance**

87.1 The war insurance may be cancelled by the Insurer or the Insured at any time with seven days' prior notice. Insurance cover ends at 12:00 hours on the seventh day after the date on which notice was served. In the case of cancellation by the Insurer, however, he hereby agrees to continue the insurance cover if a new premium and/or renewal terms and conditions are agreed.

87.2 The war insurance will terminate without notice being served by either contractual party should one of the following events occur:

87.2.1 break-out of war, whether war be declared or not, between one or more of the following nations:

the United Kingdom of Great Britain and Northern Ireland, the United States of America, France, Germany, the People's Republic of China and any member of CIS;

87.2.2 if the vessel is requisitioned.

## **88 Scope of liability and special provisions in the case of a claim**

88.1 After an insured loss but prior to any claim on the insurance becoming due, the Insurer may discharge himself from all further liabilities by payment of the sum insured (declaration of abandonment).

88.2 Assessing and settling a loss event under this insurance cover must take place in the same way as is customary in Section One and Section Two of the hull insurance policy. The Insurer is entitled to appoint a separate expert to assess losses occurring under this insurance cover.

## **Section Seven: Concluding Provisions**

### **89 Time bar**

All claims arising from this insurance contract become time-barred after 5 years. The period of prescription begins at the end of the year in which the insurance expires or during which the loss of an overdue vessel is presumed.

### **90 Applicable law**

This insurance contract is subject to German law.



## **91 Place of jurisdiction**

The sole jurisdiction for the resolution of all legal disputes arising out of the insurance contract rests with the court at the insurer's

– in the case of co-insurance, the leading insurer's – general legal venue.