

LONDON MARINE CONSTRUCTION ALL RISKS WORDING (01/09/07)

SCHEDULE

<u>Note:</u> For items marked * the default provision in the relevant clause shall apply in the absence of any other figure agreed in this Schedule.		Clause number [Default provision *]
<u>Assured:</u> Name and address of Builder:	{Missing}	Clause 56.5
Name and address of Yard:	{Missing}	Clause 56.23
Name and address of Buyer:	{Missing}	Clause 56.6
<u>Vessel:</u> Hull number / project name:	{Missing}	Clause 56.21
<u>Period:</u> Commencement date:	{Missing}	Clause 43.2.2 or 56.16.1 as applicable
Termination date:	{Missing}	Clause 43.2.2 or 56.16.2 as applicable
Estimated Launch Date:	{Missing}	Clause 56.13
<u>Sum Insured</u> (insured value):	{Missing}	Clause 43.2.5 or 56.20 as applicable
<u>Escalation percentage</u> *:	{Missing}	Clause 44.2  [110% of the Sum Insured]

Going-in Value (Pre-existing Vessel) - where applicable:	{Missing}	Clause 43.2.1
<u>Limit of liability:</u> Collision liability legal costs *:	{Missing}	Clauses 6.3 and 45.1.3 [25% of the Sum Insured]
Material (not forming part of the Works Value – Actual total loss, Abandonment) *:	{Missing}	Clauses 29.2, 31.4 and 45.1.6 [10% of the Sum Insured]
Trials *:	{Missing}	Clause 45.1.7 [10% of the Sum Insured]
Failure to launch *:	{Missing}	Clause 45.1.8 [10% of the Sum Insured]

<u>Allocated Series Cost</u> *:	{Missing}	Clause 56.3 [None]
<u>Deductibles:</u>		
Section A - Construction	{Missing}	Clause 5
Section B - Liability	{Missing}	Clause 8
Section C - War	{Missing}	Clause 14
Section D - Strikes etc.	{Missing}	Clause 19
<u>Profit percentage</u> *:	{Missing}	Clause 56.17 [10% of the costs]
<u>Navigation distance</u> *:	{Missing}	Clause 49.1.2 [250 nautical miles]
<u>Optional buybacks:</u>		
Defects:	Insured / Not insured (delete as applicable)	Clause 57 [Not insured]
Profit on partial loss:	Insured / Not insured (delete as applicable)	Clause 58 [Not insured]
Expediting Expenses:	Insured / Not insured (delete as applicable)	Clauses 45.1.9 and 59 [Not insured] [10% of the Sum Insured]
Limit of liability *:	{Missing}	
Trials amendment	Insured / Not insured (delete as applicable)	Clause 60 [Not insured]

<u>Extended cover for Items</u> *:	{Missing}		Clauses 50.1 and 50.3  [None]
<u>Premium:</u>	{Missing}		
<u>Section C</u>	{Missing}		Clause 15.3
<u>Section D</u>	{Missing}		Clause 20.2
<u>Premium payments:</u>	Amount	Due date	Clause 47.1
First instalment *:	{Missing}	{Missing}	[within 45 days]
Subsequent instalments:	{Missing}	{Missing}	[on due date]
<u>Additional premiums</u> to be paid within *:	{Missing}		Clause 47.2  [60 days]

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## 1. General

### Application

- 1.1 This Clause 1 and Parts I to IV shall apply to this insurance. Clauses 57 to 60 of Part V shall only apply where and to the extent that the Underwriters have expressly so agreed in the Schedule.
- 1.2 Clause 43 (Pre-existing Vessel) shall apply where the Vessel is a Pre-existing Vessel that is to undergo conversion, repair, lengthening or any other work, as more particularly described in Clause 43.
- 1.3 This insurance is not evidence of financial responsibility under the Oil Pollution Act 1990 or any similar Federal or State laws and may not be shown or tendered to the United States Coast Guard or any Federal or State agency as evidence of financial responsibility or evidence of insurance. The Underwriters do not agree to be guarantors.

### Law and Jurisdiction

- 1.4 This insurance is subject to English law and practice and to the exclusive jurisdiction of the English High Court of Justice
  - 1.4.1 except as provided in Clause 37 (Arbitration); and
  - 1.4.2 except as may be expressly provided herein to the contrary.
- 1.5 Subject to the overriding provisions of Clause 1.4, disputes between the Assured and the Underwriters may, if not settled amicably by negotiation, be referred by agreement of the Assured and the Underwriters to mediation or other form of alternative dispute resolution.

### Invalidity/Unenforceability

- 1.6 If any provision of this insurance is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this insurance which shall remain in full force and effect.

## Miscellaneous

- 1.7 Headings or references to headings are for information only and shall not be used in construing these provisions.
- 1.8 Words commencing with capital letters (save in headings or references to headings) shall have the meanings assigned to them in Clause 56 (Definitions).

## PART I - STANDARD COVER

### SECTION A - CONSTRUCTION

#### **2. Perils**

- 2.1 Subject always to Clause 3 (Section A exclusions), the insurance under Section A is against all risks of physical loss of or physical damage to the Subject Matter Insured caused and discovered during the Period of the Insurance.

- 2.2 For the avoidance of doubt, the Subject Matter Insured shall not be regarded as physically lost or physically damaged solely by virtue of the existence therein of any defect in design, plan or specification, defect in workmanship, defect in material or latent defect.

### **3. Section A exclusions**

In no case shall the insurance under Section A cover the cost of replacing, repairing or rectifying any:

- 3.1 defect in design, plan or specification;
- 3.2 defect in workmanship;
- 3.3 defect in material;
- 3.4 latent defect.

However, these exclusions shall not extend to the cost of repairing physical loss or physical damage caused by such defect and discovered during the Period of the Insurance, to the extent that the cost of repairing such physical loss or physical damage exceeds the cost that would have been incurred to replace, repair or rectify the said defect had it been discovered immediately prior to the occurrence of the physical loss or physical damage caused thereby.

### **4. General average and salvage**

- 4.1 The insurance under Section A covers the Vessel's proportion of salvage, salvage charges and/or general average, without reduction in respect of any under-insurance, but in the case of general average sacrifice of the Vessel, the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.
- 4.2 General average shall be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides, the adjustment shall be according to the York-Antwerp Rules.
- 4.3 When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules 2004 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the

adventure originally contemplated, the voyage shall thereupon be deemed to be terminated.

4.4 The Underwriters shall in no case be liable under this Clause 4 where the loss was not incurred to avoid or in connection with the avoidance of a peril insured under this insurance.

4.5 The Underwriters shall in no case be liable under this Clause 4 for or in respect of:

4.5.1 special compensation payable to a salvor under Article 14 of the International Convention on Salvage 1989 or under any other provision in any statute, rule, law or contract which is similar in substance;

- 4.5.2 expenses or liabilities incurred in respect of damage to the environment, or the threat of such damage, or as a consequence of the escape or release of any pollutant substance from the Vessel, or the threat of such escape or release.
- 4.6 Clause 4.5 shall not however exclude any sum which the Assured shall pay:
  - 4.6.1 to salvors for or in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage 1989 have been taken into account
  - 4.6.2 as general average expenditure allowable under Rule XI(d) of the York-Antwerp Rules 2004, but only where the contract of affreightment provides for adjustment according to the York-Antwerp Rules 2004.
- 4.7 Should the Vessel receive salvage services from another vessel belonging wholly or in part to the Assured or under the same management, the Assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of owners not interested in the Vessel; but in such cases the amount payable for the services rendered shall be referred to a sole arbitrator in accordance with Clauses 37.5 to 37.8 (Arbitration).

## **5. Section A deductible**

- 5.1 No claim arising from a peril insured under Section A shall be payable under Section A unless the aggregate of all such claims arising out of each separate Occurrence (including claims under Clauses 4 (General average and salvage) and 25 (Duty of the Assured (sue and labour))) exceeds the Section A deductible agreed in the Schedule in which case this sum shall be deducted. Nevertheless the expense of sighting the bottom after stranding, if reasonably incurred specially for that purpose, shall be paid even if no physical damage be found.
- 5.2 This Clause 5 shall not apply to Abandonment or a claim for total or constructive total loss of the Vessel or, in the event of such a claim, to any associated claim under Clause 25 (Duty of the Assured (sue and labour)) arising from the same Occurrence.

## SECTION B - LIABILITY

### **6. Collision**

6.1 The Underwriters shall indemnify the Assured for any sum or sums paid by the Assured to any other person or persons by reason of the Assured's interest in the Vessel and by reason of the Assured becoming legally liable by way of damages:

6.1.1 for loss of or damage to any other vessel or property on any other vessel;

6.1.2 for delay to or loss of use of any such other vessel or property thereon;

6.1.3 for general average of, salvage of, or salvage under contract of, any such other vessel or property thereon;

6.1.4 in respect of the liability of any such other vessel arising out of the escape or release of any pollutant substance from any such other vessel,

where such payment by the Assured is in consequence of the Vessel coming into collision with any other vessel during the Period of the Insurance.

6.2 The indemnity provided by this Clause 6 shall be subject to the following provisions:

6.2.1 Where the Vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 6 shall be calculated on the principle of cross-liabilities as if the respective owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision.

6.2.2 In no case shall the Underwriters' total liability under Clauses 6.1 and 6.2 exceed their proportionate shares of the Sum Insured in respect of any one collision.

6.3 The Underwriters shall also indemnify the Assured for legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability, provided always that their prior written agreement to the incurring of such legal costs shall have been obtained and that the total liability of the Underwriters under this Clause 6.3 shall in no case (unless the Underwriters' specific written agreement shall have been obtained) exceed 25% of the Sum Insured.

6.4 The Underwriters shall in no case be liable under this Clause 6 for any sum which the Assured shall pay for or in respect of:

6.4.1 removal or disposal of any obstruction, wreck, cargo or any other thing whatsoever;

6.4.2 any real or personal property or thing whatsoever except any other vessel or property on any other vessel;

6.4.3 the cargo or other property on, or the engagements of, the Vessel;

6.4.4 loss of life, personal injury or illness;

6.4.5 pollution or contamination, or threats thereof, of any real or personal property or thing whatsoever (except any other vessel with which the Vessel is in collision or

property on such other vessel or the liability arising out of the escape or release of any pollutant substance from such other vessel) or damage to the environment, or threat thereof, save that this exclusion shall not exclude any sum which the Assured shall pay for or in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as referred to in Article 13 paragraph 1(b) of the International Convention on Salvage 1989 have been taken into account;

- 6.4.6 loss of or damage to property (not being a vessel) owned, leased or occupied by any Assured or any Additional Assured.
- 6.5 Should the Vessel come into collision with another vessel belonging wholly or in part to the Assured or under the same management, the Assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of owners not interested in the Vessel; but in such cases the liability for the collision shall be referred to a sole arbitrator in accordance with Clauses 37.5 to 37.8 (Arbitration).

## **7. Protection and indemnity**

- 7.1 The Underwriters shall indemnify the Assured for any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable, by reason of the Assured's interest in the Vessel, for any claim, demand, damages and/or expenses, where such liability is in consequence of any of the matters or things described in Clauses 7.1.1 to 7.1.5 and arises from an Occurrence during the Period of the Insurance:
  - 7.1.1 loss of or damage to any fixed or moveable object or property or other thing or interest whatsoever, other than the Vessel, arising from any cause whatsoever in so far as such loss or damage is not covered by Clause 6 (Collision);
  - 7.1.2 any attempted or actual raising, removal or destruction of any fixed or moveable object or property or other thing, including the wreck of the Vessel, or any neglect or failure to raise, remove, or destroy the same;
  - 7.1.3 liability assumed by the Assured under contracts of customary towage for the purpose of entering or leaving port or manoeuvring within the port;
  - 7.1.4 loss of life, personal injury, illness or payments made for life salvage;
  - 7.1.5 the escape or release from the Vessel of any pollutant substance or the threat of such escape or release (subject always to Clause 7.5).
- 7.2 The Underwriters shall indemnify the Assured for any of the following arising from an Occurrence during the Period of the Insurance:
  - 7.2.1 the additional cost of fuel, insurance, wages, stores, provisions and port charges reasonably incurred solely for the purpose of landing from the Vessel sick or injured persons or stowaways, refugees, or persons saved at sea;

- 7.2.2 additional expenses brought about by the outbreak of infectious disease on the Vessel or ashore;
  
- 7.2.3 fines imposed on the Vessel, on the Assured, or on any master, officer, crew member or agent of the Vessel who is reimbursed by the Assured, for any act or neglect or breach of any statute or regulation relating to the operation of the Vessel, provided that the Underwriters shall in no case be liable to indemnify the Assured for any fines which result from any act, neglect, failure or default of the Assured, their agents or servants other than any master, officer or crew member;

- 7.2.4 the expenses of the removal of the wreck of the Vessel from any place owned, leased or occupied by the Assured;
  - 7.2.5 legal costs incurred by the Assured, or which the Assured may be compelled to pay, in avoiding, minimising or contesting liability or taking proceedings to limit liability with the prior written agreement of the Underwriters in respect of a liability covered by this Clause 7.
- 7.3 The Underwriters shall in no case be liable under this Clause 7 for any liability, cost or expense arising in respect of:
- 7.3.1 any direct or indirect payment by the Assured or any Additional Assured under workmen's compensation or employers' liability acts and any other statutory or common law, general maritime law or other liability whatsoever in respect of accidents to or illness of workmen or any other persons employed in any capacity whatsoever by the Assured or any Additional Assured or others in, on or about or in connection with the Vessel or its cargo, materials or repairs;
  - 7.3.2 liability assumed by the Assured or any Additional Assured under agreement expressed or implied in respect of death or illness of or injury to any person employed under a contract of service or apprenticeship by the other party to such agreement;
  - 7.3.3 punitive or exemplary damages, however described;
  - 7.3.4 cargo or other property carried, to be carried or which has been carried on the Vessel, but this Clause 7.3.4 shall not exclude any claim in respect of the extra cost of removing cargo from the wreck of the Vessel;
  - 7.3.5 loss of or damage to property owned by the Assured or any Additional Assureds or others employed in connection with the Vessel or property for which any of them is responsible, which is on the Vessel;
  - 7.3.6 loss of or damage to the Subject Matter Insured, but this exclusion shall not extend to claims under Clauses 7.1.2 or 7.2.4;
  - 7.3.7 liability arising under a contract or indemnity in respect of containers, equipment, fuel or other property on the Vessel and which is owned or leased by the Assured or any Additional Assured;

- 7.3.8 loss of or damage to cash, negotiable instruments, precious metals or stones, valuables or objects of a rare or precious nature, belonging to persons on the Vessel, or non-essential personal effects of any master, officer or crew member;
- 7.3.9 fuel, insurance, wages, stores, provisions and port charges arising from delay to the Vessel while awaiting a substitute for any master, officer or crew member;
- 7.3.10 fines or penalties arising from overloading or illegal fishing.

- 7.4 The Underwriters shall indemnify the Assured for any of the following in the event of a claim recoverable under Clause 7.1.5 (subject always to Clause 7.5):
- 7.4.1 the costs of any measures reasonably taken to prevent the escape or release from the Vessel of any pollutant substance;
  - 7.4.2 the costs of any measures reasonably taken for the purpose of preventing or minimising pollution or any resulting loss or damage together with any liability for loss of or damage to property caused by measures so taken;
  - 7.4.3 the costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority, for the purpose of preventing or minimising pollution, provided always that such compliance is not a requirement for the normal operation or salvage or repair of the Vessel.
- 7.5 It is a condition precedent to the liability of the Underwriters under Clause 7.1.5 and Clause 7.4 that all of the following conditions are met and are shown by the Assured to have been met:
- 7.5.1 the escape or release of any pollutant substance or the threat of such escape or release was caused by an Occurrence; and
  - 7.5.2 the Occurrence commenced on an identified specific date during the Period of the Insurance; and
  - 7.5.3 the Occurrence was discovered by the Assured within 72 hours of commencement; and
  - 7.5.4 the Occurrence did not result from the Assured's intentional violation of any statute, rule, ordinance or regulation.
- 7.6 Where the Assured or any Additional Assured or the Underwriters can or could have limited their liability, the indemnity under this Clause 7 in respect of such liability shall in no case exceed the Underwriters' proportionate shares of the amount of such limitation.
- 7.7 In no case shall the Underwriters' liability under this Clause 7 arising out of each separate Occurrence exceed their proportionate shares of the Sum Insured.

**8. Section B deductible**

No claim arising from a peril insured under Section B shall be payable under Section B unless the aggregate of all such claims arising out of each separate Occurrence (including claims under Clause 25 (Duty of the Assured (sue and labour))) exceeds the Section B deductible agreed in the Schedule, in which case this sum shall be deducted.

SECTION C - WAR

**9. Attachment**

9.1 Subject always to Clause 9.2, the insurance under Section C shall attach on the Launch Date (and not before) and then only to the Vessel as at the Launch Date. The insurance under Section C shall only apply to Items as they are placed on the Vessel on or after the Launch Date.

- 9.2 The insurance under Section C shall not attach if, between the commencement of the Period of the Insurance and the Launch Date, there has occurred any event which would have automatically terminated the insurance under Section C in accordance with Clause 15 (Termination).

#### **10. Perils**

Subject always to Clause 13 (Section C exclusions), the insurance under Section C covers:

- 10.1 physical loss of or physical damage to the Subject Matter Insured caused by war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power;
- 10.2 loss of or physical damage to the Subject Matter Insured caused by capture, seizure, arrest, restraint or detainment, arising from perils covered under Clause 10.1, and the consequences thereof or any attempt thereat;
- 10.3 physical loss of or physical damage to the Subject Matter Insured caused by derelict mines, torpedoes, bombs or other derelict weapons of war.

#### **11. General average and salvage, protection and indemnity/collision liability**

Subject always to Clause 13 (Section C exclusions), the insurance under Section C also covers:

- 11.1 general average and salvage under Clause 4 (General average and salvage) which is excluded by Clause 22 (War exclusion);
- 11.2 the liability under Section B which is excluded by Clause 22 (War exclusion).

#### **12. Detainment**

- 12.1 In the event that the Vessel shall have been the subject of capture, seizure, arrest, restraint or detainment covered under Clause 10.2 (Perils), and the Assured shall thereby have lost the free use and disposal of the Vessel for a continuous period of 12 months, then for the purpose of ascertaining whether the Vessel is a constructive total loss, the Assured shall be deemed to have been deprived of possession of the Vessel without any likelihood of recovery.
- 12.2 The inability of the Vessel to sail from any port, canal, waterway or other place to the high seas for a continuous period of 12 months as a result of the closure of the connecting channel to all vessels of such size or draft shall amount to "restraint" in accordance with

Clause 10.2 (Perils), provided that such closure has arisen through the blockage of the port, canal, waterway or other place by a warlike act or act of national defence.

**13. Section C exclusions**

In no case shall the insurance under Section C cover:

13.1 loss, damage, liability or expense arising from:

13.1.1 the outbreak of war (whether there be a declaration of war or not) between any of the following countries:

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

- 13.1.2 confiscation, expropriation, requisition or pre-emption;
- 13.1.3 capture, seizure, arrest, restraint or detainment by or under the order of the government or any public or local authority of the country in which the Vessel is owned or registered;
- 13.1.4 arrest, restraint or detainment under quarantine regulations or by reason of infringement of any customs or trading regulations;
- 13.1.5 the operation of ordinary judicial process, failure to provide security or to pay any fine or penalty or any financial cause;
- 13.1.6 the loss of or frustration of any voyage or contract for sale or other adventure;
- 13.2 loss, damage, liability or expense covered under Section A, Section B or Section D or which would be recoverable thereunder but for the deductible clauses therein.

#### **14. SECTION C DEDUCTIBLE**

- 14.1 No claim arising from a peril insured under Section C shall be payable under Section C unless the aggregate of all such claims arising out of each separate Occurrence (including claims under Clauses 11 (General average and salvage, P&I and collision liability) and 25 (Duty of the Assured (sue and labour))) exceeds the Section C deductible, if any, agreed in the Schedule in which case this sum shall be deducted.
- 14.2 This Clause 14 shall not apply to Abandonment or a claim for total or constructive total loss of the Vessel or, in the event of such a claim, to any associated claim under Clause 25 (Duty of the Assured (sue and labour)) arising from the same Occurrence.

#### **15. Termination**

- 15.1 The insurance under Section C may be cancelled by either the Underwriters or the Assured giving 7 days' notice (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by or to the Underwriters). The Underwriters shall however reinstate the insurance under Section C subject to agreement between the Underwriters and the Assured prior to the expiry of such notice of cancellation as to any new rate of premium and/or conditions and/or warranties.

15.2 Whether or not such notice of cancellation has been given the insurance under Section C shall TERMINATE AUTOMATICALLY:

15.2.1 upon the outbreak of war (whether there be a declaration of war or not) between any of the following countries:

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

15.2.2 in the event of the Vessel being requisitioned, either for title or use.

- 15.3 In the event either of cancellation by notice or of automatic termination of the insurance under Section C by reason of the operation of this Clause 15, pro rata net return of premium under Section C shall be payable to the Assured, provided always that the premium under this Section C was separately identified from the premium under Section A, Section B and Section D of this insurance, prior to such cancellation by notice or such automatic termination.

## SECTION D - STRIKES, TERRORIST, POLITICAL MOTIVE AND MALICIOUS ACTS

### **16. Perils**

Subject always to Clause 18 (Section D exclusions), the insurance under Section D covers physical loss of or physical damage to the Subject Matter Insured caused by the perils listed in Clause 23 (Strikes, terrorist, political motive and malicious acts exclusion).

### **17. General average and salvage, protection and indemnity/collision liability**

Subject always to Clause 18 (Section D exclusions), the insurance under Section D also covers:

- 17.1 general average and salvage under Clause 4 (General average and salvage) which is excluded by Clause 23 (Strikes, terrorist, political motive and malicious acts exclusion);
- 17.2 the liability under Section B which is excluded by Clause 23 (Strikes, terrorist, political motive and malicious acts exclusion).

### **18. Section D exclusions**

In no case shall the insurance under Section D cover:

- 18.1 loss, damage, liability or expense covered under Section A, Section B or Section C or which would be recoverable thereunder but for the deductible clauses therein;
- 18.2 loss, damage, liability or expense arising from the loss of or frustration of any voyage or contract for sale or other adventure.

### **19. Section D deductible**

- 19.1 No claim arising from a peril insured under Section D shall be payable under Section D unless the aggregate of all such claims arising out of each separate Occurrence (including claims under Clauses 17 (General average and salvage, P&I/collision liability) and 25 (Duty of the Assured (sue and labour)) exceeds the Section D deductible, if any, agreed in the Schedule in which case this sum shall be deducted.

19.2 This Clause 19 shall not apply to Abandonment or a claim for total or constructive total loss of the Vessel or, in the event of such a claim, to any associated claim under Clause 25 (Duty of the Assured (sue and labour)) arising from the same Occurrence.

## **20. Termination**

20.1 The insurance under Section D may be cancelled by either the Underwriters or the Assured giving 7 days' notice (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by or to the Underwriters). The Underwriters shall however reinstate the insurance under Section D subject to agreement between the Underwriters and the Assured prior to the expiry of such notice of cancellation as to any new rate of premium and/or conditions and/or warranties.

- 20.2 In the event of such cancellation of the insurance under Section D, pro rata net return of premium under Section D shall be payable to the Assured, provided always that the premium under this Section D was separately identified from the premium under Section A, Section B and Section C of this insurance, prior to such cancellation.

## PART II - GENERAL EXCLUSIONS

### **21. General exclusions**

In no case shall this insurance cover loss, damage, liability or expense caused:

- 21.1 by wilful misconduct of the Assured;
- 21.2 by insolvency;
- 21.3 solely by ordinary wear and tear;
- 21.4 by delay, except such expenses as would be recoverable in principle in English law and practice under the York-Antwerp Rules 2004.

### **22. War exclusion**

In no case shall the insurance under Section A, Section B or Section D cover loss, damage, liability or expense caused by:

- 22.1 war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power;
- 22.2 capture, seizure, arrest, restraint or detainment (violent theft, barratry and piracy excepted), and the consequences thereof or any attempt thereat;
- 22.3 derelict mines, torpedoes, bombs or other derelict weapons of war.

### **23. Strikes, terrorist, political motive and malicious acts exclusion**

In no case shall the insurance under Section A, Section B or Section C cover loss, damage, liability or expense caused by:

- 23.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions;

- 23.2 violent theft by persons from outside the Vessel;
- 23.3 piracy;
- 23.4 barratry of master, officers or crew;
- 23.5 any terrorist;
- 23.6 any person acting maliciously or from a political motive;
- 23.7 the use of any weapon or the detonation of an explosive by any person acting maliciously or from a political motive.

However, the exclusion in Clause 23.7 shall not extend to physical loss of or physical damage to the Vessel caused by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution hazard or damage to the environment or the threat thereof, resulting directly from physical loss or physical damage to the Vessel for which the Underwriters are liable under Section A, Section C or Section D of this insurance, provided such act of governmental authority has not resulted from want of due diligence by the Assured or any of them to prevent or mitigate such hazard or damage or threat thereof. Master, officers, crew or pilots shall not be considered as the Assured within the meaning of this Clause should they hold shares in the Vessel.

**24. Radioactive contamination, chemical, biological, bio-chemical and electromagnetic weapons exclusion**

In no case shall the insurance under Section A, Section B, Section C or Section D cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from:

- 24.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- 24.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- 24.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- 24.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this Clause 24.4 shall not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
- 24.5 any chemical, biological, bio-chemical or electromagnetic weapon.

**PART III - CLAIMS**

**25. Duty of the Assured (sue and labour)**

- 25.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.
- 25.2 Subject to the provisions of this Clause 25 and to Clauses 5 (Section A deductible), 8 (Section B deductible), 14 (Section C deductible) and 19 (Section D deductible), the Underwriters shall contribute to charges properly and reasonably incurred by the Assured, their servants or

agents for such measures. General average, salvage charges (except as provided for in Clause 25.4), special compensation and expenses as referred to in Clause 4.5 (General average and salvage), collision defence or attack costs and costs as referred to in Clause 7.4 (Protection and indemnity) are not recoverable under this Clause 25. For the avoidance of doubt, Expediting Expenses are not recoverable under this Clause 25.

- 25.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the Subject Matter Insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.
- 25.4 When the Underwriters have admitted a claim for total loss of the Vessel or there has been an Abandonment under this insurance and expenses have been reasonably incurred in saving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the Vessel, excluding all special compensation and expenses as referred to in Clause 4.5 (General average and salvage).
- 25.5 The sum recoverable under this Clause 25 shall be in addition to the loss otherwise recoverable under this insurance but shall in no case exceed the Sum Insured.

## **26. Notice of claim**

- 26.1 In the event of an Occurrence whereby loss, damage, liability or expense may result in a claim under this insurance, notice shall be given to the Underwriters:
- 26.1.1 as soon as possible after the date on which the Assured or the Assured's project management become aware of such loss, damage, liability or expense; and
- 26.1.2 in case of physical loss of or physical damage to the Subject Matter Insured, prior to the commencement of any repair work.
- 26.2 If notice is not given to the Underwriters within 180 days of the Assured or the Assured's project management becoming aware of such loss, damage, liability or expense, no claim shall be recoverable under this insurance in respect of such loss, damage, liability or expense, unless the Underwriters agree to the contrary in writing.
- 26.3 Subject always to Clause 26.2, if notice is not given to the Underwriters prior to the commencement of repair work to physical loss of or physical damage to the Subject Matter Insured, no claim shall be recoverable under this insurance in respect of such physical loss or physical damage, save to the extent that the Assured can establish that the Underwriters have not suffered any prejudice as a result of not having been so notified.

26.4 It is a condition precedent to the liability of the Underwriters under Section B, Clause 11.2 (Section C, P&I and collision liability) and Clause 17.2 (Section D, P&I and collision liability) that:

26.4.1 prompt notice must be given to the Underwriters of every casualty, event or claim upon the Assured which may give rise to a claim under Section B, Clause 11.2 or Clause 17.2 and of every event or matter which may cause the Assured to incur liability, costs or expense for which they may be insured under Section B, Clause 11.2 or Clause 17.2;

26.4.2 the Assured shall not admit liability for or settle any claim for which they may be insured under Section B, Clause 11.2 or Clause 17.2 without the prior written agreement of the Underwriters.

26.5 It is a condition precedent to the liability of the Underwriters under Clauses 7.1.5 and 7.4 (Protection and indemnity) that written notice of the Occurrence is given to the Underwriters within 30 days of the Assured's or the Assured's project management's discovery of the Occurrence.

**27. Partial loss**

27.1 The measure of indemnity in respect of partial loss shall, where the Subject Matter Insured has been repaired, be the reasonable cost of the repairs, but shall in no case exceed the Sum Insured in respect of any one Occurrence.

27.2 For the avoidance of doubt, the reasonable cost of the repairs shall not include:

27.2.1 the Assured's profit on such cost;

27.2.2 Expediting Expenses.

**28. Constructive total loss**

28.1 The measure of indemnity in respect of a constructive total loss shall be the Sum Insured.

28.2 In ascertaining whether the Subject Matter Insured is a constructive total loss, the Sum Insured less the Profit Percentage thereon shall be taken as the repaired value and nothing in respect of the damaged or break-up value shall be taken into account.

28.3 No claim for a constructive total loss based upon the cost of recovery and/or the reasonable cost of the repairs (calculated in accordance with Clause 27 (Partial loss)), shall be recoverable under this insurance unless such cost(s) would exceed the Sum Insured less the Profit Percentage thereon.

28.4 In making the determination under Clause 28.3:

28.4.1 only the cost(s) relating to physical loss or physical damage arising from the same Occurrence shall be taken into account; and

28.4.2 no account shall be taken of:

28.4.2.1 Expediting Expenses; or

28.4.2.2 the Assured's profit on the cost of recovery of and/or the reasonable cost of the repairs to the Subject Matter Insured.

**29. Actual total loss**

- 29.1 The measure of indemnity in respect of an actual total loss shall be the Works Value plus the Profit Percentage thereon at the time of loss.
- 29.2 In the event of an actual total loss, the Underwriters shall also indemnify the Assured for the cost of material (not forming part of the Works Value) where the Assured is under a legal obligation to purchase the material, notwithstanding the actual total loss. The liability of the Underwriters shall not exceed the lesser of the contractual liability of the Assured in respect of such material or the cost of such material. In no case shall the Underwriters' liability under this Clause 29.2 exceed 10% of the Sum Insured or such other percentage agreed in the Schedule.

### **30. Unrepaired damage**

- 30.1 The measure of indemnity in respect of a claim for unrepaired damage shall be the reasonable cost of the repairs calculated in accordance with Clause 27 (Partial loss), but shall in no case exceed the Contract Deduction in respect of such damage.
- 30.2 In no case shall the Underwriters be liable for unrepaired damage in the event of a subsequent Abandonment or of a subsequent total loss (whether or not covered under this insurance) sustained during the Period of the Insurance or any extension thereof.
- 30.3 The Underwriters shall in no case be liable for unrepaired damage for more than the Sum Insured at the time this insurance terminates or is cancelled.
- 30.4 Any dispute between the Assured and the Underwriters as to whether the Underwriters' agreement is or is not reasonably withheld to the amount by which the sum payable by the Buyer to the Builder is reduced by reason of physical damage to the Vessel not repaired by the Builder at the time this insurance terminates or is cancelled shall be referred to arbitration in accordance with Clauses 37.1 to 37.4 (Arbitration).

### **31. Abandonment**

- 31.1 In the event of physical loss of or physical damage to the Vessel and in the event that:
    - 31.1.1 the cost of recovery and/or the reasonable cost of the repairs (calculated in accordance with Clause 27 (Partial loss)) of the Vessel required to recover and/or repair the Vessel to a stage equivalent to that at the time of loss exceed(s) the Works Value at the time of loss, but do(es) not exceed the Sum Insured; and
    - 31.1.2 there is an Abandonment,
- the measure of indemnity shall be the Works Value plus the Profit Percentage thereon at the time of loss.
- 31.2 Any dispute between the Assured and the Underwriters as to whether the Underwriters' agreement is or is not reasonably withheld to an agreement between the Builder and the Buyer that the Builder is relieved of the obligation to build or deliver the Vessel to the Buyer, by reason of physical loss of or physical damage to the Vessel, shall be referred to arbitration in accordance with Clauses 37.1 to 37.4 (Arbitration).

31.3 In making the determination under Clause 31.1.1:

31.3.1 only the cost(s) relating to physical loss or physical damage arising from the same Occurrence shall be taken into account; and

31.3.2 no account shall be taken of:

31.3.2.1 Expediting Expenses; or

31.3.2.2 the Assured's profit on the cost of recovery and/or the reasonable cost of the repairs to the Vessel.

31.4 In the event of an Abandonment, the Underwriters shall also indemnify the Assured for the cost of material (not forming part of the Works Value) where the Assured is under a legal obligation to purchase the material, notwithstanding the Abandonment. The liability of the Underwriters shall not exceed the lesser of the contractual liability of the Assured in respect of such material or the cost of such material. In no case shall the Underwriters' liability under this Clause 31.4 exceed 10% of the Sum Insured or such other percentage agreed in the Schedule.

### **32. Trials**

In case of failure of trials resulting from physical loss or physical damage to the Vessel due to a peril insured under this insurance, the Underwriters shall pay the expenses reasonably incurred in re-running trials to the extent that such expenses are necessary to effect the repairs, but in no case shall the Underwriters be liable for expenses incurred in re-running trials undertaken solely by reason of contractual provisions between the Builder and the Buyer.

### **33. Failure of launch**

In case of failure of launch of the Vessel, the Underwriters shall pay the expenses reasonably incurred solely in connection with completion of the launch of the Vessel.

### **34. Deductibles**

In the event of a claim under more than one section of this insurance arising out of the same Occurrence, then only the highest applicable deductible shall be deducted.

### **35. Claims under more than one section exclusion**

The insurance under Section B, Section C and Section D excludes any sum recoverable under Section A of this insurance.

### **36. Payment of claims**

Unless otherwise agreed in writing, claims shall be paid to the broker which placed this insurance and such payment, whether in account or otherwise, shall be a complete discharge of the Underwriters' obligations under this insurance in respect of the amount so paid (and whether or not more than one Assured or Additional Assured may have an interest in such payment).

### **37. Arbitration**

Abandonment/unrepaired damage

- 37.1 Any dispute between the Assured and the Underwriters concerning whether the Underwriters' agreement is or is not reasonably withheld for the purposes of Clause 30.4 (Unrepaired damage) or Clause 31.2 (Abandonment) shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force and in accordance with Clauses 37.2 to 37.4.

- 37.2 The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.
- 37.3 The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice in writing that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice in writing that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he or she had been appointed by the agreement of both parties.
- 37.4 Nothing in this Clause 37 shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

#### Sister ship salvage/collision

- 37.5 The amount payable in respect of salvage services as described in Clause 4.7 (General average and salvage) or the liability for any collision as described in Clause 6.5 (Collision) shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force and in accordance with Clauses 37.6 to 37.8.
- 37.6 The matters described in Clause 37.5 shall be referred to a sole arbitrator to be selected either by the Assured or the Underwriters from the persons currently on the panel of Lloyd's Salvage Arbitrators with a right of appeal from an award made by the arbitrator to either party by notice in writing to the other party within 28 days of the date of publication of the arbitrator's award.
- 37.7 The arbitrator on appeal shall be the person currently acting as the Lloyd's Appeal Arbitrator.
- 37.8 Both the arbitrator and the arbitrator on appeal shall have the same powers as an arbitrator and an arbitrator on appeal under LOF 2000 or any standard revision thereof.

### **38. Subrogation**

38.1 In the event of loss, damage, liability or expense covered under this insurance, the Underwriters shall be subrogated to all rights and remedies of the Assured and any Additional Assureds:

38.1.1 save against the Builder (subject to Clause 38.2) and the Buyer, against whom such rights and remedies are waived by the Underwriters; and

38.1.2 save against any Additional Assured (subject to Clause 38.2) whose written contract with the Assured provides that the Underwriters shall waive such rights and remedies, but only to the extent of the waiver (if any) provided by such written contract.

38.2 Where an Assured or any Additional Assured is, under a separate insurance, insured against liability for loss of or damage to the Subject Matter Insured, such Assured or Additional Assured agrees on its own behalf and on behalf of the insurers of such liability insurance:

38.2.1 that the Underwriters shall not waive any rights of subrogation against such Assured or Additional Assured; and

38.2.2 to provide a copy of the policy or other document evidencing such liability insurance to the Underwriters upon their written request; and

38.2.3 that the Underwriters may bring proceedings against such Assured or Additional Assured in respect of loss of or damage to the Subject Matter Insured.

However, the Underwriters shall not seek to recover more from such Assured or Additional Assured than the applicable limit or limits of such liability insurance.

### **39. Recoveries**

39.1 The Assured shall, whether or not the Underwriters have paid a claim or agreed to pay a claim or potential claim under this insurance, take reasonable steps to:

39.1.1 assess as soon as possible whether there are any prospects of a recovery from third parties in respect of matters giving rise to a claim or to a potential claim under this insurance;

39.1.2 protect any claims against such third parties if necessary by the commencement of proceedings and the taking of appropriate steps to obtain security for the claim from third parties;

39.1.3 keep the Underwriters and the appointed average adjuster (if any) advised of the recovery prospects and any action taken against third parties;

39.1.4 co-operate with the Underwriters in the taking of such steps as may be reasonably required to pursue any claims against third parties.

39.2 The Underwriters shall pay the reasonable costs incurred by the Assured pursuant to this Clause 39 in the same proportion as the insured losses bear to the total of the insured and uninsured losses (as defined in Clause 39.4.2).

- 39.3 Where the Assured have incurred reasonable costs pursuant to Clause 39.1.2 and where no claim is recoverable under this insurance, provided always that the Underwriters' written agreement to the reimbursement of such costs shall have been obtained prior to the incurring of such costs, the Underwriters shall reimburse such costs to the extent agreed, notwithstanding that no claim is recoverable under this insurance.
- 39.4 In the event of recoveries from third parties in respect of claims which have been paid in whole or in part under this insurance, such recoveries shall be distributed between the Underwriters and the Assured as follows:

39.4.1 the reasonable costs and expenses incurred in making such recoveries from the third party shall be deducted first and returned to the paying party;

39.4.2 the balance shall be apportioned between the Underwriters and the Assured in the same proportion that the insured losses and uninsured losses bear to the total of the insured and uninsured losses. For the purposes of Clause 39.2 and this Clause 39.4.2, "uninsured losses" shall mean loss of or damage to the Subject Matter Insured and any liability or expense which would have been recoverable under this insurance, but for the application of deductible(s) and the limits of this insurance.

39.5 For the purposes of this Clause 39, "third parties" shall not include the Builder or the Buyer or any Additional Assured against whom the Underwriters have waived rights of subrogation in accordance with Clause 38 (Subrogation).

#### **40. Residual value**

40.1 Where the Underwriters pay for a total loss pursuant to Clause 28 (Constructive total loss) or Clause 29 (Actual total loss) or in respect of an Abandonment pursuant to Clause 31 (Abandonment), the Underwriters shall be entitled to take over the Assured's interest in the Subject Matter Insured.

40.2 Without prejudice to the generality of Clause 40.1, the Underwriters shall in such event be entitled to the residual value of some or all of the Subject Matter Insured and/or may require the transfer of title to them or to their order of some or all of the Subject Matter Insured.

### **PART IV - GENERAL PROVISIONS AND DEFINITIONS**

#### **41. Assured**

Where the Assured consists of the Builder and the Buyer:

41.1 any act or any failure to act (whether before or after the Period of the Insurance commences) by or on behalf of the Builder which prevents recovery by the Builder (or would prevent recovery if a claim were made by the Builder) under this insurance shall also prevent any recovery under this insurance by the Buyer;

41.2 any act or any failure to act (whether before or after the Period of the Insurance commences) by or on behalf of the Buyer which prevents recovery by the Buyer (or would prevent recovery if a claim were made by the Buyer) under this insurance shall also prevent recovery under this insurance by the Builder;

41.3 any communication to or from the Underwriters from or to the Builder or their agents shall be deemed to have been made on behalf of or to the Buyer;

41.4 any communication to or from the Underwriters from or to the Buyer or their agents shall be deemed to have been made on behalf of or to the Builder.

## **42. Additional Assureds**

- 42.1 Additional Assureds shall be insured under this insurance to the extent of their respective rights and interests in the Subject Matter Insured, but in no case shall any Additional Assured be insured under this insurance to any greater extent than provided for in their written contract with the Assured. For the purposes of Section B, "Assured" shall include an "Additional Assured" where such Additional Assured becomes legally liable by reason of their interest in the Vessel.
- 42.2 Any act or any failure to act (whether before or after the Period of the Insurance commences) by or on behalf of the Assured which prevents recovery by the Assured (or would prevent recovery if a claim were made by the Assured) under this insurance shall also prevent recovery under this insurance by any Additional Assured.
- 42.3 The rights of any Additional Assured shall only be exercised through the Assured.
- 42.4 Additional Assureds shall at all times comply with and be subject to the terms and conditions of this insurance applicable to the Assured (save Clause 47 (Premium payment)). However, a failure to comply by an Additional Assured shall not prejudice the rights of other Additional Assureds or the Assured, save where such other Additional Assureds or the Assured are privy to such failure.
- 42.5 Any agreement between the Underwriters and the Assured relating to this insurance shall be binding on Additional Assureds and neither the Underwriters nor the Builder nor the Buyer shall be obliged to provide notice of such agreement to Additional Assureds.
- 42.6 Any communication to or from the Underwriters from or to the Assured or their agents shall be deemed to have been made on behalf of or to the Additional Assureds.

## **43. Pre-existing Vessel**

- 43.1 This Clause 43 shall apply to this insurance if the Vessel is a Pre-existing Vessel that is to undergo conversion, repair, lengthening or any other work.
- 43.2 The following words shall have the meanings assigned to them by this Clause. Clauses 56.16 ("Period of the Insurance"), 56.20 ("Sum Insured"), 56.21 ("Vessel") and 56.22 ("Works Value") shall be deleted and replaced by Clauses 43.2.2, 43.2.5, 43.2.6 and 43.2.7 respectively.
- 43.2.1 "Going-in Value" means the sum agreed in the Schedule as the insured value of the Pre-existing Vessel at the commencement of the Period of the Insurance. The Going-in Value shall not be included in Material Cost.

43.2.2 "Period of the Insurance" under Section A, Section B and Section D means the period commencing on:

43.2.2.1 the handover to and acceptance by the Builder of the Pre-existing Vessel at the Yard; or

43.2.2.2 in respect of Preparatory Work, the commencement of the Preparatory Work at the Yard; or

43.2.2.3 such earlier date(s), if any, agreed in the Schedule,

whichever shall first occur.

"Period of the Insurance" under Section C means the period commencing as described in Clause 43.4; and

ceasing, under Sections A, B, C and D, on:

43.2.2.4 re-delivery of the Vessel to the Buyer; or

43.2.2.5 the date agreed in the Schedule; or

43.2.2.6 such date at which this insurance shall be cancelled in accordance with Clause 47 (Premium payment); or

43.2.2.7 such date at which this insurance shall be terminated automatically in accordance with Clause 52 (Automatic termination),

whichever shall first occur.

43.2.3 "Pre-existing Vessel" means the ship, vessel, craft or other structure to undergo conversion, repair, lengthening or any other work.

43.2.4 "Preparatory Work" means fabrication, manufacturing and other work undertaken at the Yard and the storage of Items at the Yard prior to the arrival of the Pre-existing Vessel at the Yard.

43.2.5 "Sum Insured" means the sum agreed in the Schedule as the insured value of the Subject Matter Insured. Should the aggregate of the Works Value and the Going-in Value exceed the Sum Insured, the Sum Insured shall, subject to Clause 44.2 (Sum insured), be increased in the manner set out in Clauses 44.1 (Sum insured) and 43.3.

43.2.6 "Vessel" means the project bearing the hull number or project name identified in the Schedule and includes the Pre-existing Vessel.

43.2.7 "Works Value" means the total of:

43.2.7.1 the Allocated Series Cost spent by the Assured; and

43.2.7.2 the Contractor Cost spent by the Assured; and

43.2.7.3 the Labour Cost spent by the Assured; and

43.2.7.4 the Material Cost spent by the Assured,

but in no case shall the Works Value include the Going-in Value and in no case shall the Works Value exceed the Sum Insured.

43.3 Clause 44.1 (Sum insured) is deleted from the time the Pre-existing Vessel arrives at the Yard. From that time, if the aggregate of:

43.3.1 the Works Value plus the Profit Percentage thereon; and

43.3.2 the Going-in Value,

at any time exceeds the Sum Insured, the Assured shall advise the Underwriters as soon as possible of the amount of such excess and shall pay pro rata additional premium thereon and the Underwriters shall accept their proportionate shares of such increase.

43.4 Clause 9 (Attachment) shall be deleted and replaced by the following:

43.4.1 Subject always to Clause 43.4.2, the insurance under Section C shall attach on the handover to and acceptance by the Builder of the Pre-existing Vessel at the Yard (and not before) and then only to the Vessel. The insurance under Section C shall only apply to Items as they are placed on the Vessel on or after handover to and acceptance by the Builder of the Pre-existing Vessel at the Yard.

43.4.2 The insurance under Section C shall not attach if, between the commencement of the Period of the Insurance and the handover to and acceptance by the Builder of the Pre-existing Vessel at the Yard, there has occurred any event which would have automatically terminated the insurance under Section C in accordance with the provisions of Clause 15 (Termination).

43.5 Clause 27.1 (Partial loss) shall be deleted and replaced by the following:

43.5.1 The measure of indemnity in respect of partial loss of the Subject Matter Insured, but not including the Pre-existing Vessel, shall, where repairs have been undertaken, be the reasonable cost of the repairs, but shall in no case exceed the Sum Insured in respect of any one Occurrence.

The measure of indemnity in respect of partial loss of the Pre-existing Vessel shall, where repairs have been undertaken, be the reasonable cost of the repairs less the customary deductions. Customary deductions shall not be made where the Assured can establish that the repairs were to those areas of the Pre-existing Vessel intended to form part of the Vessel on completion. The measure of indemnity in respect of partial loss of the Pre-existing Vessel shall in no case exceed the Sum Insured in respect of any one Occurrence.

#### **44. Sum Insured**

44.1 If the Works Value plus the Profit Percentage thereon at any time exceeds the Sum Insured, the Assured shall advise the Underwriters as soon as possible of the amount of such excess and shall pay pro rata additional premium thereon and the Underwriters shall accept their proportionate shares of such increase.

44.2 The Sum Insured shall in no case exceed 110% or such other percentage (if any) agreed in the Schedule of the sum agreed in the Schedule at the inception of this insurance, unless the Underwriters' prior written agreement has been obtained and any amended terms of cover and any additional premium required by the Underwriters have been agreed.

**45. Limit of liability**

45.1 In no case shall the Underwriters' liability arising out of each separate Occurrence exceed their proportionate shares of the total of:

45.1.1 the Sum Insured in respect of loss of or damage to the Vessel (whether caused by a peril insured under Section A, Section C or Section D);

- 45.1.2 the Sum Insured in respect of general average and salvage under Clause 4 (General average and salvage) or Clauses 11.1 or 17.1;
  - 45.1.3 the Sum Insured in respect of liability under Clause 6 (Collision) and 25% (unless the Underwriters' specific written agreement shall have been obtained) of the Sum Insured in respect of legal costs under Clause 6.3;
  - 45.1.4 the Sum Insured in respect of liability under Clause 7 (Protection and indemnity), subject always to the provisions of Clause 7.6;
  - 45.1.5 the Sum Insured in respect of sue and labour expenditure under Clause 25 (Duty of the Assured (sue and labour));
  - 45.1.6 10% (or such other percentage agreed in the Schedule) of the Sum Insured in respect of material under Clauses 29.2 (Actual total loss) and 31.4 (Abandonment);
  - 45.1.7 10% (or such other percentage agreed in the Schedule) of the Sum Insured in respect of trials under Clause 32 (Trials) (whether or not amended by Clause 60 (Trials amendment));
  - 45.1.8 10% (or such other percentage agreed in the Schedule) of the Sum Insured in respect of failure to launch under Clause 33 (Failure to launch);
  - 45.1.9 10% (or such other percentage agreed in the Schedule) of the Sum Insured in respect of Expediting Expenses under Clause 59 (Expediting Expenses).
- 45.2 In no case shall the Underwriters' liability hereunder be increased by reason of the inclusion of more than one Assured or Additional Assured under this insurance.

#### **46. Separate insurances**

If more than one Vessel is insured under this insurance, each Vessel is deemed to be separately insured, as if there were a separate contract of insurance in respect of each Vessel.

#### **47. Premium payment**

- 47.1 The Assured undertakes that the premium shall be paid:
  - 47.1.1 in full to the Underwriters within 45 days (or such other period agreed in the Schedule) of the inception of this insurance; or

47.1.2 where payment by instalment premiums has been agreed:

47.1.2.1 the first instalment premium shall be paid within 45 days (or such other period agreed in the Schedule) of the inception of this insurance;

47.1.2.2 and the second and any subsequent instalment(s) shall be paid by the date(s) they are due.

- 47.2 The Assured undertakes that any additional premium payable under Clauses 15.1 (War termination), 20.1 (Strikes, terrorist termination), 44 (Sum Insured), 49 (Navigation) and 50 (Items) shall be paid in full to the Underwriters within 60 days of agreement of the additional premium or such other period agreed in the Schedule.
- 47.3 If the premium (or the first instalment premium) has not been so paid to the Underwriters by the 46th day (or the day after such period agreed in the Schedule) from the inception of this insurance (and, in respect of the second and any subsequent instalment premiums, by the date(s) they are due) or if the premium payable in accordance with Clause 47.2 has not been paid within such period(s) agreed in the Schedule, the Underwriters shall have the right to cancel this insurance by notifying the Assured via the broker in writing.
- 47.4 The Underwriters shall give not less than 15 days' prior notice of cancellation in writing to the Assured via the broker. If the premium or instalment premium due is paid in full to the Underwriters before the notice period expires, such notice of cancellation shall automatically be revoked. If not, this insurance shall automatically terminate at the end of the notice period.
- 47.5 In the event of cancellation of this insurance by the Underwriters under this Clause 47, premium shall be due to the Underwriters on a pro rata basis for the period that the Underwriters are on risk but the full premium shall be payable to the Underwriters in the event of loss, damage, liability or expense arising out of an Occurrence commencing or occurring prior to the date of termination which gives rise to a recoverable claim under this insurance.
- 47.6 Where the premium is to be paid to the Underwriters through a Market Bureau, payment to the Underwriters shall be deemed to occur on the day of delivery of a premium advice note to such Bureau.

#### **48. Due diligence**

- 48.1 It is the duty of the Assured to exercise due diligence in the conduct of all operations relating to the Subject Matter Insured and in the utilisation of all safety practices and equipment considered prudent for such operations, such duty including but not limited to:
- 48.1.1 the exercise of due diligence in the selection and employment of Contractors, Sub-contractors and others in connection with the Subject Matter Insured; and
- 48.1.2 the exercise of due diligence in relation to such precautions as may be reasonably required to prevent loss, damage, liability or expense in connection with the Subject Matter Insured.

48.2 In the event of any breach of the duty under Clause 48.1, the Underwriters shall in no case be liable for any loss, damage, liability or expense attributable to such breach.

**49. Navigation**

49.1 The Vessel shall not at any time:

49.1.1 be towed outside the port or place of construction; or

49.1.2 proceed under its own power to a distance by water of more than 250 nautical miles from the Yard, or such other distance agreed in the Schedule,

unless the Underwriters' prior written agreement shall have been obtained and any amended terms of cover and any additional premium required by the Underwriters have been agreed.

49.2 In the event of a breach of Clause 49.1, the Underwriters shall in no case be liable for any loss, damage, liability or expense arising out of any Occurrence commencing or occurring during the period of such breach.

## **50. Items**

50.1 Items shall not at any time leave the Yard, save when on the Vessel, unless the Underwriters' prior written agreement shall have been obtained and any amended terms of cover and any additional premium required by the Underwriters have been agreed.

50.2 In the event of a breach of Clause 50.1, the Underwriters shall in no case be liable for any loss, damage, liability or expense in respect of Items whilst outside the Yard.

50.3 Any material may be included as Items prior to its arrival at the Yard or prior to its allocation to the Vessel, but only where the Underwriters' prior written agreement shall have been obtained and any amended terms of cover and any additional premium required by the Underwriters have been agreed.

## **51. Other insurances**

51.1 The insurance under Section A, save that provided under Clause 33 (Failure of launch), shall be primary to any other insurances in respect of loss of or damage to the Subject Matter Insured and the Underwriters shall not seek any contribution from the insurers of such other insurances. For the avoidance of doubt, Clause 38.2 (Subrogation) shall not be affected by this Clause 51.

51.2 In no case shall the insurance under Clause 33 (Failure of launch), Section B, Section C or Section D cover loss, damage, liability or expense recoverable under any other insurance or which would have been so recoverable but for the existence of the insurance under Clause 33 (Failure of launch), Section B, Section C or Section D.

## **52. Automatic termination**

Unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically:

- 52.1 at the time of any transfer by the Assured of ownership of the Subject Matter Insured, save in respect of a transfer of ownership from the Builder to the Buyer in so far as such change occurs prior to delivery from the Builder to the Buyer; or
- 52.2 at the time of an Abandonment; or
- 52.3 when the Underwriters have admitted a claim for total loss of the Vessel.

### **53. Assignment**

No assignment of or interest in this insurance or in any moneys which may be or become payable under this insurance is to be binding on or recognised by the Underwriters unless a dated notice of such assignment or interest signed by the Assured, and by the assignor in the case of subsequent assignment, is endorsed on the policy or other document evidencing the insurance and such policy or other document with such endorsement is produced before payment of any claim or return of premium under this insurance.

### **54. Several liability**

54.1 The Underwriters' obligations are several and not joint and are limited solely to the extent of their individual subscriptions.

54.2 The Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

### **55. Contracts (Rights of Third Parties) Act 1999**

55.1 No benefit of this insurance is intended to be conferred on or enforceable by any party other than the Assured, the Additional Assureds and loss payee (if any), save as may be expressly provided herein to the contrary.

55.2 This insurance may by agreement between the Assured and the Underwriters be rescinded or varied without the agreement of the loss payee (if any) or any other third party to whom the right of enforcement of any terms has been expressly provided.

### **56. Definitions**

The following words shall have the meanings assigned to them below:

56.1 "Abandonment" means an agreement, with the prior written agreement of the Underwriters (such agreement not to be unreasonably withheld), between the Builder and the Buyer that the Builder is relieved of the obligation to build or deliver the Vessel to the Buyer, by reason of physical loss of or physical damage to the Vessel.

56.2 "Additional Assured" means:

56.2.1 a Contractor to whom benefit of this insurance has been provided for in their written contract with the Assured;

56.2.2 a Sub-contractor to whom benefit of this insurance has been provided for in their written contract with a Contractor.

For the avoidance of doubt, "Additional Assured" shall not include:

56.2.3 a contractor with whom the Assured has not entered or does not during the Period of the Insurance and prior to loss enter into a written contract in relation to the construction of the Vessel;

56.2.4 a sub-contractor who has not entered or does not during the Period of the Insurance and prior to loss enter into a written contract in relation to the construction of the Vessel with a Contractor or where such written contract has not been approved by the Assured.

56.3 "Allocated Series Costs" means the allocation, agreed in the Schedule, by the Assured to the Vessel of:

56.3.1 Contractor Cost as defined in Clause 56.8, but deleting the word "solely";

56.3.2 Labour Cost as defined in Clause 56.12, but deleting the word "solely";

56.3.3 Material Cost as defined in Clause 56.14, but deleting the word "solely",

where such costs relate to the construction of a series of vessels, of which the Vessel is one, but in no case shall the total of the Allocated Series Costs exceed the sum agreed, if any, in the Schedule.

56.4 "Assured" means the Builder or the Buyer named as the Assured in the Schedule. The Assured shall consist of both the Builder and the Buyer, if both are so named in the Schedule.

56.5 "Builder" means the builder (or if Clause 43 applies, the prime contractor) named in the Schedule.

56.6 "Buyer" means the buyer (or in the event Clause 43 applies, the owners and managers of the Pre-existing Vessel) named in the Schedule.

56.7 "Contractor" means those with whom the Assured have entered or during the Period of the Insurance and prior to loss enter into written contracts in relation to the construction of the Vessel, but shall in no case include the Builder or the Buyer.

56.8 "Contractor Cost" means the cost (to include the Assured's overhead) to the Assured of contractors (whether or not the Assured has a written contract with such contractors) solely in relation to the construction of the Vessel and shall not include the Assured's profit on such cost, nor Labour Cost nor Material Cost. Where the Assured consists of the Builder and the Buyer, the "Contractor Cost" shall be the cost to the party which has retained the contractor.

56.9 "Contract Deduction" means the amount by which the sum payable by the Buyer to the Builder is reduced, with the prior written agreement of the Underwriters (such agreement not to be unreasonably withheld), by reason of physical damage to the Vessel not repaired by the Builder at the time this insurance terminates, but shall not include any amount which the Builder shall bear on account of delay which would be caused were such damage to be repaired or on account of any failure to meet performance criteria.

56.10 "Expediting Expenses" means the expenses incurred to expedite the repair of the Vessel following physical loss or physical damage covered under this insurance, including but not limited to the cost of overtime, night work, work on public holidays and express freight (to include non-scheduled airfreight).

56.11 "Items" means any material within the Yard which has been allocated to the Vessel. For the avoidance of doubt, "Items" shall not include any material:

56.11.1 prior to its arrival at the Yard;

56.11.2 prior to its allocation to the Vessel;

save as agreed by the Underwriters in accordance with Clause 50.3 (Items).

56.12 "Labour Cost" means the sums payable by the Assured to labourers directly employed by the Assured solely in relation to the construction of the Vessel plus the Assured's overhead on such sums and shall not include the Assured's profit on such sums. Where the Assured consists of the Builder and the Buyer, the "Labour Cost" shall be the sums payable by the party which has employed the labourers.

56.13 "Launch Date" means the first date on which the Assured intends the Vessel's hull to float on water and the Vessel's hull does so.

56.14 "Material Cost" means the cost (to include the Assured's overhead) to the Assured of materials directly supplied by the Assured solely in relation to the construction of the Vessel and shall not include the Assured's profit on such cost. Where the Assured consists of the Builder and the Buyer, the "Material Cost" shall be the cost to the party which has supplied the material.

56.15 "Occurrence" means one loss, accident, disaster or casualty or series of losses, accidents, disasters or casualties arising out of one event. Without prejudice to the generality of the foregoing:

56.15.1 windstorms, tornadoes, cyclones, hurricanes, similar storms and systems of winds of a violent and destructive nature and any tidal surge arising therefrom within any period of 72 consecutive hours and arising out of the same atmospheric disturbance shall constitute one event;

56.15.2 each earthquake, shock, volcanic eruption or tsunami or tidal wave arising therefrom, shall constitute one event. However, if more than one earthquake, shock, volcanic eruption, tsunami or tidal wave shall occur within any period of 72 consecutive hours, such earthquakes, shocks, volcanic eruptions, tsunamis or tidal waves shall constitute one event.

For the purposes of Clauses 56.15.1 and 56.15.2, where the event lasts for more than 72 consecutive hours, the Assured shall be entitled to select the time and date at which the event commences for the purposes of this insurance, provided always that no one 72 hour period shall overlap with another.

Notwithstanding the provisions of this Clause 56.15, damage caused by heavy weather or contact with ice during a single sea passage between two successive ports shall be treated as having been caused by one event.

56.16 "Period of the Insurance" under Section A, Section B and Section D means the period commencing on:

56.16.1 the commencement of the construction of the Vessel at the Yard; or

56.16.2 such earlier date, if any, agreed in the Schedule.

Period of the Insurance under Section C means the period commencing as described in Clause 9.1 (Attachment); and

ceasing, under Section A, Section B, Section C and Section D, on

56.16.3 delivery of the Vessel to the Buyer; or

56.16.4 the date agreed in the Schedule; or

56.16.5 such date at which this insurance shall be cancelled in accordance with Clause 47 (Premium payment); or

56.16.6 such date at which this insurance shall be terminated automatically in accordance with Clause 52 (Automatic termination),

whichever shall first occur.

56.16.7 Termination or cancellation (whether or not such termination or cancellation be automatic) of the insurance under Section C or Section D shall not terminate or cancel the insurance under Section A or Section B.

56.17 "Profit Percentage" means 10% (or such other percentage (if any) agreed in the Schedule) of the Allocated Series Cost, Contractor Cost, Labour Cost and Material Cost in respect of the Assured's profit.

56.18 "Sub-contractor" means those with whom a Contractor has entered or during the Period of the Insurance and prior to loss enters into a written contract in relation to the construction of the Vessel, provided always the written contract has been approved by the Assured, but shall not include the Builder or the Buyer.

56.19 "Subject Matter Insured" means the Items and the Vessel.

56.20 "Sum Insured" means the sum stated in the Schedule as the sum insured in respect of the Subject Matter Insured. Should the Works Value plus the Profit Percentage exceed the Sum Insured, the Sum Insured shall, subject to Clause 44.2 (Sum insured), be increased in the manner set out in Clause 44.1 (Sum insured).

56.21 "Vessel" means the project bearing the hull number or project name identified in the Schedule.

56.22 "Works Value" means the total of:

56.22.1 the Allocated Series Cost spent by the Assured; and

56.22.2 the Contractor Cost spent by the Assured; and

56.22.3 the Labour Cost spent by the Assured; and

56.22.4 the Material Cost spent by the Assured,

but shall in no case exceed the Sum Insured.

56.23 "Yard" means the premises of the Builder named in the Schedule where the Vessel is being constructed or, if Clause 43 applies, where the Pre-existing Vessel is to undergo conversion, repair, lengthening or any other work.

## PART V – OPTIONAL BUYBACKS

### **57. Defects**

If the Underwriters have expressly agreed in writing:

57.1 the insurance under Section A shall also cover the cost that would have been incurred to replace, repair or rectify the defect in workmanship, defect in material or latent defect, had such defect been discovered immediately prior to the occurrence of the physical loss or physical damage covered under Clause 2 (Perils), but in no case shall the insurance under Section A cover any costs incurred to replace, repair or rectify a defect in design, plan or specification.

57.2 the insurance under Section A shall also cover 50% of the costs common to both:

57.2.1 the repair of physical loss and physical damage caused by a defect in design, plan or specification, where such physical loss or physical damage is covered under Clause 2 (Perils); and

57.2.2 the replacement, repair and rectification of the said defect,

but in no case shall the insurance under Section A cover any costs incurred solely in the replacement, repair and rectification of the defect in design, plan or specification or incurred by reason of betterment or alteration in design, plan or specification.

### **58. Profit on partial loss**

58.1 If the Underwriters have expressly agreed in writing, Clause 27.2.1 (Partial loss) shall be deleted and the Profit Percentage shall be added to the Labour Cost, the Material Cost and the Contractor Cost in calculating the reasonable cost of the repairs for a partial loss.

58.2 However, notwithstanding the application of this Clause 58, Clause 27.2.1 (Partial loss) shall still apply for the purposes of Clause 28.3 (Constructive total loss) and Clause 31.1.1 (Abandonment).

58.3 For the avoidance of doubt, the reasonable cost of the repairs shall not include the Assured's profit on such cost, save as may be included within the Profit Percentage.

**59. Expediting Expenses**

If the Underwriters have expressly agreed in writing, Clauses 27.2.2 (Partial loss), 28.4.2.1 (Constructive total loss) and 31.3.2.1 (Abandonment) shall be deleted and Expediting Expenses shall be covered under this insurance, subject to a limit of 10%, or such other percentage agreed in the Schedule, of the Sum Insured in respect of any one Occurrence.

**60. Trials amendment**

If the Underwriters have expressly agreed in writing, the words "to the extent that such expenses are necessary to effect the repairs, but in no case shall the Underwriters be liable for the expenses incurred in re-running trials undertaken solely by reason of contractual provisions between the Builder and the Buyer." shall be deleted from Clause 32 (Trials).

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