

# **TRANSMARINE**

**Class I, II and III**

**Terms and Conditions**

**&**

**List of Commercial and Legal Correspondents**

**Commencing 1st January 2005**

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**Transmarine Class I**

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# **CLASS I - STRIKE INSURANCE**

## **1. STRIKE INSURANCE**

### **1.1 RISKS INSURED**

An Assured shall be entitled to compensation for any Applicable Delay(s) occurring during the Policy Year and suffered by an Insured Vessel whilst at or off any port as a result of one or more of the following risks, subject to these Terms and Conditions and the terms specified in the Certificate of Insurance.

- (a) Strike or Lockout (other than a Crew Strike);
- (b) Crew Strike.

### **1.2 AMOUNT OF COMPENSATION**

Subject to these Terms and Conditions and subject also to any terms in the Certificate of Insurance, the Assured may recover compensation at the Daily Insured Sum for the period of any Applicable Delay subject to the following limits:

- (a) The amount recoverable in respect of any Applicable Delay shall be limited (subject to any agreed Excess) to the amount of the Daily Insured Sum for each Day (and pro rata for any part of a Day) upon which delay occurred and for which a claim is allowable under these Terms and Conditions.
- (b) If no Excess has been agreed, a claim will be allowed if, and only if, the occurrence caused delay for a continuous period of more than twenty-four hours' duration.
- (c) The amount recoverable in respect of any Applicable Delay(s) which have arisen out of any one occurrence shall be limited to a sum equivalent to sixty times the Daily Insured Sum applicable to the Insured Vessel or to such lesser limit as may have been

agreed and recorded in the Certificate of Insurance. For the purposes of this provision, Applicable Delay(s) caused by one or more Strikes or Lockouts in relation to any call or calls at any port/place or ports/places arising out of any one occurrence shall be subject to the limit specified above whether or not such Applicable Delay or delays is/are continuous.

### 1.3 **EXCLUSIONS AND QUALIFICATIONS**

An Assured shall not be entitled to any compensation from Underwriters:

- (a) in respect of clause 1.1(a) above unless the Insured Vessel could not reasonably have been diverted to any other port or place where she would not have been subjected to delay, and
  - (1) the Insured Vessel was at or off the port or place affected by the Strike or Lockout during some part of the time while the Strike or Lockout was actually continuing (whether or not the Insured Vessel was thereby delayed); or
  - (2) the Insured Vessel reached the relevant port or place within ten Days after the termination of the Strike or Lockout affecting such port or place; or
  - (3) in the case of a Strike or Lockout simultaneously affecting a range of ports, the Insured Vessel proceeded to the relevant port or place (being one within the affected range to which she was scheduled to proceed) after having already suffered delay, whilst engaged on the same voyage, at some other port or place within the affected range.
- (b) in respect of clause 1.1(b) above unless;
  - (1) he has an Owner's Cover, or

- (2) Underwriters have otherwise agreed in writing.
- (c) if either;
  - (1) the Insured Vessel was at the relevant time employed under charter or sub-charter (whether by demise, time or voyage) to a third party and if the Assured was entitled to be paid charter hire or demurrage during the period of delay; or
  - (2) the claim relates to delay occurring during a period in relation to which partial relief from premium has been claimed pursuant to clause 10 and the loss suffered by the Assured derives from the presence in the charter of any special provision (including any amendment made to the printed form of off-hire clause in the charter), the effect of which is to exclude the Assured's right to hire in circumstances in which hire would have continued to be payable under the usual form of off-hire clause, which shall mean the unamended, printed form of off-hire clause in the relevant charter or, if the charter does not contain a printed form of off-hire clause, the off-hire clause in the current New York Produce Exchange form of charter; or
  - (3) the Insured Vessel was at the relevant time unemployed, or laid up, unless, and subject to being agreed in writing by Underwriters, the Insured Vessel was being repaired or overhauled during the relevant time.
- (d) in the case of a Time Charterer's Cover, in respect of any period for which charter hire ceased to be payable by the Assured.

## 2. GENERAL EXCLUSIONS

- 2.1 In no case shall this Insurance cover loss or expense arising out of or directly or indirectly caused or contributed to, by, or consequent upon any one or more of the following:
- (a) the trade, voyage or operation upon which the Insured Vessel was engaged being unduly hazardous or otherwise imprudent;
  - (b) the Assured and/or his agents failing to take such steps, including but not limited to the making of and acting upon all reasonable inquiries, as could reasonably be expected to be taken by a competent and prudent uninsured operator in the same or similar circumstances;
  - (c) the Assured failing in any material respect to comply with his obligations under this Insurance.
- 2.2 The Assured shall **not** be entitled to compensation from Underwriters in respect of any one or more of the following:
- (a) if the circumstances giving rise to the claim existed before or at the time the Insurance attached;
  - (b) if the Insured Vessel was carrying contraband or was involved in blockade-running;
  - (c) if the Insured Vessel was employed in any unlawful trade or used in any unlawful manner;
  - (d) for any amount in excess of the loss actually suffered by the Assured due to delay during the period in respect of which the claim is made;
  - (e) for loss arising from any failure of the Assured or of his agent to comply with the laws of any jurisdiction in which such Assured or

agent is incorporated or has a place of business or in which the cargo or the Insured Vessel is at any time located;

- (f) for loss arising from any failure of the Assured or his agent to obtain all necessary permits and authorisations;
- (g) for loss arising out of or in any way contributed to by the wrongful act, negligence or wilful misconduct of the Assured or his agent.

2.3 In no case shall this Insurance cover loss or expense arising out of or directly or indirectly caused or contributed to by or consequent upon:

- (a) war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or arising out of or relating to warlike events or operations or acts of national defence and irrespective of whether or not any loss or damage is caused to the Insured Vessel or any other property;
- (b) capture, seizure, arrest, restraint or detainment of the Insured Vessel, and the consequences thereof or any attempt thereat;
- (c) derelict mines, torpedoes, bombs or other derelict weapons of war;
- (d) the act of any terrorist or of any person acting maliciously or from a political, religious, ethnic or other motive.

2.4 This clause 2.4 shall be paramount and shall override anything contained in this Insurance inconsistent therewith. In no case shall this Insurance cover loss, damage, liability, or expense directly or indirectly caused by or contributed to, by, or arising from:

- (1) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;

- (2) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (3) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (4) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause 2.4 (4) does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
- (5) any chemical, biological, bio-chemical, or electromagnetic weapon;
- (6) the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

### **3. CLAIMS**

- (a) Any occurrence or circumstance which is likely to give rise to a claim shall be immediately notified in writing to Underwriters.
- (b) Notwithstanding the obligation set out in clause 3(a) above to give immediate notice to Underwriters, the Assured shall further within 9 Months from the date on which the relevant Strike began submit to Underwriters all available and necessary information concerning the claim and being accompanied by all relevant documents available to the Assured.
- (c) Subject to Underwriters in their absolute discretion determining to the contrary, in no circumstances whatsoever shall any claim be

recoverable from Underwriters unless the Assured have complied with their obligations in respect of clause 3(b) above.

- (d) The Assured shall supply such further documents, information or evidence (including evidence on oath) as Underwriters may require.
- (e) If an Assured makes any claim he knew, or ought to have known, was false or fraudulent in any respect whatsoever the Insurance for all Insured Vessels shall be void from inception and all claims shall be forfeited absolutely.
- (f) Acceptance of liability by Underwriters in respect of a claim shall be notified to the Assured by formal letter or fax from Managers, and no admission of liability on behalf of Underwriters shall be constituted by, or inferred from, anything done or omitted to be done prior to the dispatch of such formal notification by letter or fax.
- (g) Any claim(s) made under this Insurance shall be limited to the principal amount only and in no circumstances shall an Assured be entitled to interest on his claim whether before, after, or irrespective of whether any judgement and/or arbitration award has been or will be made.
- (h) Underwriters shall have an absolute discretion to disallow any claim or to reduce the amount paid in respect thereof if any of the provisions of clause 3 (a-e) are not in the Underwriter's opinion observed.
- (i) Underwriters shall have an absolute discretion to disallow any claim or reduce the amount paid in respect thereof of any claim where an Assured fails to notify Underwriters of any change in the particulars or information supplied by an Assured in the proposal form.

- (j) Underwriters shall be entitled in the exercise of their absolute discretion:
  - (1) to authorise reimbursement to an Assured in respect of expenses reasonably incurred by him in order to prevent loss which would otherwise have resulted in a claim on Underwriters;
  - (2) to allow in whole or in part any claim which they consider to be within the spirit of these Terms and Conditions.
- (k) Underwriters may at any time, and on such terms as they deem fit, instruct on their and/or the Assured's behalf, surveyors, lawyers, adjusters or other persons, for the purpose of dealing with any matter giving rise, or liable to give rise, to a claim by the Assured on Underwriters. Underwriters will be at liberty to instruct any such person to report directly to Underwriters without prior reference to the Assured.
- (l) Underwriters may, upon request by the Assured, agree to make a payment on account to the Assured following an occurrence giving rise to a claim by the Assured on Underwriters. Under no circumstances, however, shall Underwriters be obliged to make a payment on account. Should Underwriters agree to make a payment on account, such payment will always be made strictly without prejudice and is in no way to be construed as any acceptance whatsoever of Underwriters liability under the Certificate of Insurance or in respect of the claim. Notwithstanding any payment on account, these Terms and Conditions and those contained in the Certificate of Insurance will continue to be binding and to apply.
- (m) Underwriters shall be entitled in the exercise of their absolute discretion to withhold payment of any claim until such time as all outstanding sums due from the Assured are fully paid and to

exercise their right of set off in accordance with clause 9(b) against claims payments in respect of sums due.

- (n) Following the occurrence of an event which is likely to give rise to a claim under this Insurance the Assured must take all appropriate steps to avoid or minimise any additional costs, loss or detention and in doing so must, wherever possible and reasonable, obtain and follow instructions from Underwriters.

#### **4. EXCESS**

No claim arising from a peril insured against shall be payable under this Insurance unless the claim for each separate occurrence exceeds the Excess as specified in the Certificate of Insurance. There shall be no recovery whatsoever under this Insurance for the Excess.

#### **5. TERMINATION OF INSURANCE**

- 5.1 An Assured shall cease to be insured and the Period of Cover shall be terminated forthwith in respect of all Insured Vessels insured by him with Underwriters upon the happening of any of the following events or circumstances:

- (a) where an Assured is an individual, upon his death or if a receiving order shall be made against him or if he shall become bankrupt or make any composition or arrangement with his creditors generally or if he shall become incapable by reason of mental disorder of managing and administering his property and affairs or if under any system of law other than English Law there occurs an event in relation to that individual which has a similar effect to any of the aforesaid events or circumstances;
- (b) where an Assured is a corporation, upon the passing of any resolution for voluntary winding up (other than voluntary winding up for the purpose of company or group reorganisation) or upon an order being made for compulsory winding up or upon

dissolution or upon the appointment of an administrator, trustee, liquidator, receiver, manager or similar officer of all or part of the corporation's business or undertaking being appointed or upon crystallisation of and/or possession being taken by or on behalf of the holders of any debentures secured by floating charge of any property comprised in or subject to the charge or if under any system of law other than English Law there occurs an event in relation to that corporation which has a similar effect to any of the aforesaid events or circumstances;

- (c) if having failed to pay when due and demanded by Underwriters, any sum which Underwriters consider to be due, he is served with a notice by or on behalf of Underwriters requiring him to pay such sum on or before any date which may be specified in such notice and he fails to pay such sum in full on or before the date so specified.

5.2 An Assured shall further cease to be insured and the Period of Cover shall be terminated in the following circumstances:

- (a) in the case of an owner's Insured Vessel, at the time when the Assured was divested of his ownership or share in the Insured Vessel by transfer thereof by bill of sale or other instrument, or was divested of control and possession of the Insured Vessel by delivery to a third party for employment on demise or bareboat charter;
- (b) where the Insured Vessel is demise or bareboat chartered or time chartered to the Assured, immediately upon the charterparty being terminated by redelivery or otherwise;
- (c) where the Insured Vessel is voyage chartered to the Assured, immediately upon the charterparty being terminated by completion of the voyage or otherwise;
- (d) irrespective of the nature of the interest insured:

- (1) on the Insured Vessel becoming an actual total loss;
  - (2) immediately on acceptance by hull underwriters (whether marine or war risks) that the Insured Vessel is a constructive total loss;
  - (3) immediately on the Insured Vessel being missing for 10 Days from the date she was last heard of or from her being posted at Lloyd's as missing, whichever shall be the earlier;
  - (4) on the Insured Vessel being requisitioned for title or use.
- 5.3 (a) When the Insurance of any Insured Vessel terminates under clause 5.1(a) or (b) hereof then Underwriters shall remain liable in respect of any Insured Vessel for all claims under these Terms and Conditions arising by reason of any event which had occurred prior to the time of termination but shall be under no liability whatsoever by reason of anything occurring after the time of termination.
- (b) When an Assured ceases to be insured by virtue of clause 5.1(c) hereof then Underwriters shall thereupon cease to be liable for all and any claims under the Terms and Conditions in respect of any Insured Vessel, irrespective of whether:
- (1) such claims have accrued or arisen or may arise by reason of any event which had occurred before the date of termination or before the commencement of the Policy Year in which the date of termination occurred;
  - (2) such claims may arise by reason of any event occurring on or after the date of termination;
  - (3) Underwriters may have decided to support the Assured or admitted liability for such claims or appointed lawyers, surveyors or any other person to deal with such claims;

- (4) at the date of termination the claims were likely to accrue or the event giving rise thereto was or was not known to Underwriters;

and from the date of termination any liability for such claims shall retrospectively terminate and Underwriters shall be under no liability to such Assured for the said or any other claims or on any account whatsoever;

PROVIDED ALWAYS that:-

Underwriters may, in their absolute discretion and upon such terms as to the payment of any sums due or otherwise as they think fit, admit either wholly or partly any claim in respect of any Insured Vessel for which Underwriters are under no liability under either paragraph (a) or paragraph (b) of this clause, whether arising before or after any date of termination as hereinbefore referred to.

- (c) When the insurance of any Insured Vessel terminates under clause 5.2 hereof then the Insurance shall be deemed to have terminated at the times respectively stated if, but only if, Underwriters are notified in writing of the relevant event within one Month of its occurrence.

- 5.4 All obligations of the Assured and rights of termination set out in clauses 5.1 (c) and 5.3 (b) above shall apply equally to each individual Assured named in the Certificate of Insurance and any joint Assured as described in clause 12 so that any default of one such Assured and/or joint Assured shall have effect over each and every other Assured and/or joint Assured.

**6. LIABILITIES OF AN ASSURED FOLLOWING TERMINATION**

Following the termination of this Insurance the Assured shall remain liable to Underwriters in respect of all sums which Underwriters consider due or which become due including, but not limited to premiums then accrued or thereafter accruing due for the period prior to such termination, the premiums being calculated on a pro-rata basis if cover is terminated during the course of a Period of Cover.

**7. ASSIGNMENT**

- (a) No Insurance given by Underwriters and no interest under these Terms and Conditions or under any contract between Underwriters and any Assured may be assigned without the written consent of Underwriters who shall have the right in their absolute discretion to give or refuse such consent without stating any reason or give such consent upon any such terms or conditions as they may think fit. Any purported assignment made without such consent or without there being due compliance with any such terms and conditions as Underwriters may impose shall, unless Underwriters in their absolute discretion otherwise determine, be void and of no effect.
- (b) Whether or not Underwriters shall expressly so stipulate as a condition for giving their consent to any assignment, Underwriters shall be entitled in settling any claim presented by the assignee to deduct or retain such amount as Underwriters may then estimate to be sufficient to discharge any liabilities of the assignor to Underwriters, whether existing at the time of the assignment or having accrued or being likely to accrue thereafter.

## 8. **SUBROGATION**

- (a) When a claim has been paid under these Terms and Conditions, Underwriters shall be subrogated to all rights and remedies in respect of that claim which the Assured may have against any third party.
- (b) Underwriters shall be entitled to use the name of the Assured in bringing, defending, enforcing or settling any legal proceedings (including proceedings in any arbitration) and the Assured shall give all necessary information and assistance and produce and forward all documents to enable Underwriters to substantiate, pursue, settle or resist any claim or any legal proceedings (including proceedings in any arbitration).
- (c) Underwriters shall, where they use the name of the Assured indemnify him against all costs, charges, expenses and liabilities arising therefrom.

## 9. **SET-OFF**

- (a) The Assured shall have no right of set-off against Underwriters. In determining for any purpose the amount due at any time from an Assured to Underwriters no account shall be taken of any amount which either is, or is alleged to be, due from Underwriters to an Assured, and in any proceedings brought by Underwriters to recover outstanding premiums, no set-off of any kind (including one which might otherwise have arisen by reason of the bankruptcy or winding up of an Assured) shall be allowed against the amount due by an Assured to Underwriters. Underwriters may in their absolute discretion, when making a demand for payment of outstanding premiums, make allowance for any amount due from Underwriters to an Assured, but no set-off permitted at any time in the past shall constitute a waiver by Underwriters of the provisions of this clause.

- (b) Underwriters shall have a general right of set-off against an Assured.

## 10. **RETURN OF PREMIUM**

- (a) In the case of an Owner's Cover the Assured shall be entitled to claim relief from premiums in an amount equivalent to 95 per cent per annum of such portion of the premiums paid or payable in respect of this Insurance as is attributable to any period during which the Insured Vessel is unemployed and laid up (otherwise than for repair or overhaul), provided that the Insured Vessel is so unemployed and laid up for a period of fifteen or more consecutive Days.
- (b) In the case of an Owner's or Time Charterer's Cover the Assured shall be entitled to claim relief from premiums in an amount equivalent to 95 per cent per annum of such portion of the premiums paid or payable in respect of this Insurance as is attributable to any period during which the Insured Vessel is employed under time charter to a third party. An Assured shall not be entitled to claim relief from premiums for that portion of the premiums paid or payable in respect of this Insurance which relates to Crew Strikes and has been recorded as such in the Certificate of Insurance.
- (c) Relief from premiums under sub-paragraphs (a) or (b) above may only be claimed if within seven Days of the Insured Vessel being so unemployed and laid up, or so employed, as applicable, Underwriters are notified in writing of that circumstance and that relief from premiums will be claimed.
- (d) In relation to any Insured Vessel in respect of which Underwriters have been so notified they shall be likewise notified when the period of such unemployment and lay up, or employment, as applicable, ends, and the claim to relief from premiums shall be submitted in writing to Underwriters within six Months of the

Insured Vessel ceasing to be so unemployed and laid up, or employed. A provisional adjustment will then be effected when the next premium is charged and any further adjustment (if required) will be effected as soon as practicable thereafter.

- (e) If an Assured fails to submit his claim for relief within the time prescribed above Underwriters shall be entitled in their absolute discretion to disallow the claim in whole or in part.

## **11. FORBEARANCE**

11.1 No act, omission, course of dealing, forbearance, delay or indulgence of any kind by the Underwriter, or by anybody acting on Underwriters behalf, in relation to any of these Terms and Conditions or the Certificate of Insurance, shall be treated as a waiver of any of the Underwriter's rights thereunder.

11.2 Notwithstanding clause 11.1 above, Underwriters may by express waiver in writing, waive all or any of the Terms and Conditions contained herein or in the Certificate of Insurance and where consequent to any such waiver pay any claim in full or in part.

Any such waiver shall not constitute a precedent and Underwriters shall be entitled in all other circumstances which are not expressly waived therein to insist, without notice, on the strict application of these Terms and Conditions and those contained in the Certificate of Insurance.

## **12. JOINT INSURANCE**

Where one or more vessels is insured in the name of or on behalf of more than one Assured then unless otherwise agreed in writing by Underwriters all such Assureds will be jointly and severally liable:

- (a) to pay all premiums or other sums due to Underwriters and the receipt by any one of such Assureds for any sums payable by the

Underwriters shall be sufficient discharge of Underwriters liability to all Assureds;

- (b) for any failure to perform the obligations of any one or more of them under this Insurance including the failure to disclose material information within any Assureds knowledge, and the failure of any one or more Assureds shall be treated as the failure of all the Assureds; and
- (c) for the conduct of any Assured which would have entitled Underwriters to decline paying any claim, and the conduct of any one or more Assureds shall be treated as the conduct of all the Assureds.

The contents of any communication from or on behalf of the Underwriters to any Assured or their agents shall be deemed to be within the knowledge of all the Assureds and any communication from any Assured to the Underwriters or the Managers shall be deemed to have been made with the full approval and authority of all the Assureds.

The provisions of this clause shall apply regardless of whether or not the Insured Vessel(s) are insured as a fleet, save that where an Assured is acting in the capacity of a ship management company for such fleet, then Underwriters shall have a sole discretion to disallow any one or more of the provisions of this clause.

### **13. DOUBLE INSURANCE**

Where the Assured has taken out any other insurance in respect of risks covered by this Insurance, Underwriters shall not indemnify the Assured in respect of any claims, costs or expenses of any nature whatsoever which are recoverable by the Assured under that other insurance, or which would have been recoverable:

- (1) but for some other term in that insurance excluding or limiting liability by reason of double insurance;

(2) if the Insured Vessel had not been covered under this Insurance.

#### **14. LAW**

- 14.1 The construction of these Terms and Conditions and the respective rights and obligations of Underwriters and the Assured hereunder shall be governed by and construed in accordance with English Law.
- 14.2 The particulars and information given in the proposal form together with any supplementary information supplied on request shall be deemed to form part of the contract for this Insurance and the accuracy of all such particulars and information shall form the basis of such contract of Insurance.
- 14.3 A person who is not a party to the Certificate of Insurance has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Certificate of Insurance but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

#### **15. ARBITRATION**

- (a) Any dispute or difference between an Assured and Underwriters shall, unless Underwriters decide in their absolute discretion that any such dispute or difference shall be decided by the English High Court of Justice, be referred to arbitration in London by an arbitrator to be appointed by agreement between the parties concerned.
- (b) In the absence of agreement within 14 (fourteen) Days of a request by either party to agree to an arbitrator, an arbitrator who is a Member of the London Maritime Arbitrator's Association shall be appointed by the President for the time being of the London Maritime Arbitrator's Association at the request of either party.

- (c) The submission to arbitration and all proceedings therein shall be subject to the provisions of the Arbitration Acts 1950 to 1996 or any statutory re-enactment or modification thereof.
- (d) The arbitrator shall have power to admit any evidence whether legally admissible or not.
- (e) Subject to the foregoing provisions of this clause, the obtaining of an arbitration award as hereinbefore provided shall be a condition precedent to the right of any Assured to bring or maintain any action, suit or other legal proceedings against Underwriters.

## **16. CORRESPONDENCE**

Michael Else and Company Limited of 65 Leadenhall Street, London EC3A 2AD are hereby recognised as the Managers for Underwriters in all matters connected with this Insurance and all communications relating thereto should be addressed to Michael Else and Company Limited.

## **17. NOTICES**

### **17.1 Notices to Underwriters**

All notices required to be given by the Assured under these Terms and Conditions shall be addressed to the Managers in writing at the address specified in clause 16, or as subsequently advised.

### **17.2 Notices to the Assured**

Any notice required to be given to an Assured in accordance with these Terms and Conditions may be sent by post to his address as furnished by him in writing to the Managers, or, by telegram, cable, telex or fax, and, if no such address has been furnished, at the same address which is his last known address to the knowledge of the Managers, or upon the Assured's broker or agent at the broker's or agent's place of

business so long as the Assured when he last applied for Insurance communicated through such broker or agent, and such notice shall be deemed to have been duly served on the Day after the same is put into the post, or in the case of telegrams or cables when handed in to the telegram or cable office, and in the case of telex or fax on the Day of transmission.

## 18. DEFINITIONS

In these Terms and Conditions the following expressions shall, unless the context or subject matter otherwise requires, have the following meanings:

<b>Applicable Delay(s)</b>	Any delay(s) covered by Underwriters under these Terms and Conditions.
<b>Assured(s)</b>	The person or party who is insured in accordance with the Terms and Conditions and named as Assured or Co-Assured in the Certificate of Insurance.
<b>Certificate of Insurance</b>	Any document issued by Underwriters evidencing the terms and conditions of insurance with Underwriters, including any endorsement evidencing any change in or addition to such terms and conditions.
<b>Crew Strike</b>	A Strike by any of the seafarers for the time being employed for service on an Insured Vessel.
<b>Daily Insured Sum</b>	The daily amount insured by Underwriters in respect of an Insured Vessel as agreed between the Assured and Underwriters.  <b>Note:</b> The Daily Insured Sum is the sum with reference to which claims will be calculated and

premiums will be payable, and will normally be agreed as follows:-

- (1) in the case of an Owner's Cover, by reference to the estimated daily running costs of the Insured Vessel whilst in port;
- (2) in the case of a Time Charterer's Cover, by reference to the charterer's estimated daily costs under the charter whilst the Insured Vessel is in port;
- (3) in the case of a Voyage Charterer's Cover by reference to the daily demurrage liability for the Insured Vessel under the charter.

<b>Day</b>	A period of twenty-four hours from Midnight to Midnight Greenwich Mean Time.
<b>Excess</b>	Excess, deductible or franchise as specified in the Certificate of Insurance.
<b>Insurance</b>	Cover provided to an Assured in accordance with the Terms and Conditions and Certificate of Insurance.
<b>Insured Vessel</b>	A vessel insured under these Terms and Conditions and identified as such in the Certificate of Insurance.
<b>Lockout</b>	Any form of industrial action taken by employers involving deliberate exclusion of workers from their place of employment or the termination or suspension of their employment, but excluding any action taken by the Assured on whose behalf the Insurance was effected.

<b>Managers</b>	Michael Else and Company Limited of 65 Leadenhall Street, London, EC3A 2AD.
<b>Midnight</b>	Midnight Greenwich Mean Time.
<b>Month</b>	Calendar month.
<b>Owner's Cover</b>	Insurance cover taken out by or on behalf of a person who is the owner or bareboat charterer of the Insured Vessel or any share therein or by or on behalf of any person having an analogous interest in the operation and employment of the Insured Vessel.
<b>Period of Cover</b>	The period for which an Assured or Insured Vessel is insured as set out in the Certificate of Insurance or any subsequent endorsements.
<b>Policy Year</b>	As stated in the Certificate of Insurance.
<b>Strike</b>	Any form of industrial action taken by workers which is carried on with the intention of preventing, restricting or otherwise interfering with the production of goods or the provision of services.
<b>Terms and Conditions</b>	The Terms and Conditions of Transmarine Class I for the time being in force and which are incorporated by reference into the Certificate of Insurance.
<b>Time Charterer's Cover</b>	Insurance cover taken by or on behalf of a person who is the time charterer of the Insured Vessel.
<b>Underwriters</b>	Great Lakes Reinsurance (UK) PLC.

**Voyage Charterer's  
Cover**

Insurance cover taken by or on behalf of a person who is the voyage or sub-voyage charterer of the Insured Vessel.

Words importing the masculine gender shall include the feminine gender.

Words importing persons shall include individuals, partnerships, corporations and associations.

Words importing the singular shall include the plural and vice versa.

## **CLASS II - TRADE DISRUPTION INSURANCE**

### **1. TRADE DISRUPTION INSURANCE**

#### **1.1 RISKS INSURED**

An Assured shall be entitled to compensation for one or more of the following disruptions to trade, subject to the terms specified in his Certificate of Insurance:

- (a) (1) delayed arrival or non-arrival of the Insured Vessel at a port or place of loading, transshipment or discharge (for the purpose of this sub-clause, "delayed" means occurring later than would otherwise have been the case, based on the reasonably calculated estimated time of arrival of the Insured Vessel at the relevant port or place);
- (2) delayed loading, transshipment or discharge of cargo on or from the Insured Vessel (for the purpose of this sub-clause, "delayed" means occurring later than would otherwise have been the case, based on the reasonably calculated estimated time of loading, transshipment or discharge of the Insured Vessel at the relevant port or place);
- (3) inability to load, tranship or discharge cargo on or from the Insured Vessel;
- (4) delayed delivery of cargo from the port of discharge to final inland destination (for the purpose of this sub-clause, "delayed" means occurring later than would otherwise have been the case, based on the reasonably calculated estimated time of delivery of the cargo to its final destination);

- (5) inability to deliver cargo from the port of discharge to final inland destination;
- (6) such other disruption to trade as may be expressly agreed by Underwriters and endorsed to that effect in the Certificate of Insurance;

**provided that:**

- (b) the disruption to trade is caused by one or more of the following insured perils:
  - (1) fire or explosion on land not causing any physical loss or damage to the Insured Vessel;
  - (2) Extraordinary Weather, not causing any physical loss or damage to the Insured Vessel;
  - (3) earthquake, heave, landslip, subsidence or volcanic eruption, not causing any physical loss or damage to the Insured Vessel;
  - (4) contact with aircraft, helicopters or similar objects, or objects falling therefrom, not causing any physical loss or damage to the Insured Vessel;
  - (5) overturning, capsizing, sinking, or collision of, or contact with any external object, by any conveyance carrying cargo prior to loading on or after discharge from the Insured Vessel;
  - (6) emergency total or partial closure of any port, road, airport or navigable waterway by or under the lawful order of any authority having jurisdiction to make such an order;

- (7) physical damage to the Insured Vessel caused by;
- (i) those perils covered by the Institute Time Clause Hulls 1/11/95 as set out in the amended form below or by other international marine hull clauses that may be agreed by Underwriters and endorsed to that effect in the Certificate of Insurance

Perils covered by the Institute Time Clause Hulls 1/11/95 as amended;

- (1.1) perils of the seas, rivers, lakes or other navigable waters;
- (1.2) fire, explosion;
- (1.3) violent theft by persons from outside the Insured Vessel;
- (1.4) jettison;
- (1.5) piracy;
- (1.6) contact with land conveyance, dock or harbour equipment or installation;
- (1.7) earthquake, volcanic eruption or lightning;
- (1.8) accidents in loading, discharging or shifting of cargo or fuel;
- (1.9) bursting of boilers, breakage of shafts or any latent defect in the machinery or hull (subject, if applicable, to the exclusion contained in clause 2 "Electronic Date Recognition");
- (2.0) negligence of master, officers, crew, stevedores, fuel suppliers, or pilots;
- (2.1) negligence of repairers or charterers, provided such repairers or charterers are not an Assured hereunder;
- (2.2) barratry of master, officers, crew or pilots;
- (2.3) contact with aircraft, helicopters or similar objects, or objects falling therefrom;

- (2.4) breakdown of machinery, including electrical machinery, provided such breakdown has not resulted from wear and tear.

Provided that such physical damage to the Insured Vessel has not resulted from want of due diligence by the Assured, owners, charterers, managers or superintendents or any of their onshore management.

Masters, officers, crew or pilots not to be considered owners within the meaning of this clause should they hold shares in the Insured Vessel.

- (ii) those perils covered by the Institute War and Strikes Clause Hulls Time 1/11/95 (War Risk Trading Warranties for Hull, in force at the time the insured peril occurred, to be included) as set out in the amended form below or by other war and strikes clauses that may be agreed by Underwriters and endorsed to that effect in the Certificate of Insurance
- (a) war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power;
  - (b) capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat;
  - (c) derelict mines, torpedoes, bombs or other derelict weapons of war;
  - (d) strikers, locked-out workmen, or persons (in each case, other than servants or agents of the Assured) taking part in labour disturbances, riots or civil commotions;
  - (e) any terrorist or any person acting maliciously or from a political motive;

- (f) confiscation or expropriation.
- (8) any abnormal physical obstruction of a berth at the port of loading, transshipment, discharge or of the approaches thereof which prevents the use of the berth by the Insured Vessel provided that this peril shall not include:
  - (i) inaccessibility of a berth due to port congestion or routine operations of maintenance or dredging;
  - (ii) any obstruction which could reasonably have been foreseen by the Assured or his agent at the time of entering into the contract of affreightment;
  - (iii) use or occupation of the berth by another vessel provided that if the other vessel is incapable of vacating the berth solely as a result of physical damage such circumstances will be regarded as an insured peril;
- (9) any reasonable refusal by the Master of the Insured Vessel to proceed through any areas through which she must pass in order to reach the port or place of loading, transshipment or discharge on the grounds that such area, port or place is dangerous;
- (10) save as provided in clause 1.1(b)(7)(i)(1.5), acts of piracy and any consequences thereof or any attempt thereat directly targeted at, involving and affecting the Insured Vessel, excluding the consequences of loss or damage to the property of the Assured on land;
- (11) closure of borders (whether national or regional) for political purposes which restricts or prohibits the Insured Vessel or cargo which is the subject of a contract of affreightment with the Assured from entry into or exit from

any country specified in the Certificate of Insurance or its territorial waters;

- (12) the rescuing of refugees or life saving, salvage or other assistance given by the Insured Vessel;
- (13) save as provided by clause 1.1(b)(20) hereof, expropriation, confiscation, seizure or requisition for title or use of the Insured Vessel (provided no physical loss or damage is caused thereby) or cargo by or under the order of the government of any country other than the flag state (whether civil, military or de facto) or any public or local authority in any such country;
- (14) the imposition, or official and public announcement, of import or export controls by the authorities of any country in which cargo is to be loaded on or discharged from the Insured Vessel;
- (15) arrest, restraint or detainment of the Insured Vessel under quarantine regulations;
- (16) infectious diseases or poisoning on board the Insured Vessel;
- (17) illness, death or injury to persons on board the Insured Vessel;
- (18) the discovery of stowaways on board the Insured Vessel;
- (19) detention of the Insured Vessel following actual or alleged pollution emanating from the Insured Vessel;
- (20) detention of the Insured Vessel following the infringement of any customs law or regulation, arising out of the discovery on board the Insured Vessel of, or the suspicion of the presence on board the Insured Vessel of, illegal

narcotics or drugs, but excluding any claim caused by the confiscation of the Insured Vessel by any party whatsoever, as a consequence of the aforesaid infringement, and, provided always that the Assured neither knew nor ought to have known of the said presence or suspected presence on board of illegal narcotics or drugs;

- (21) oil or chemical pollution emanating from any vessel (other than the Insured Vessel) or property whether on land or water following a sudden, unexpected and accidental incident;
  - (22) inability of the Insured Vessel to sail from any port, canal, waterway or other place to the high seas as a result of the closure of the connecting channel to all vessels of such size or draft provided that such closure was caused by the blockage of the waterways because of a warlike act, or act of national defence and irrespective of whether or not there is physical damage to the Insured Vessel (War Risk Trading Warranties for Hull, in force at the time the insured peril occurred, to be included).
- (c) Cover for those perils contained in clause 1.1(b)(20) and (22) hereof shall only be available to the Assured in the event they are expressly referred to as being covered in the Certificate of Insurance for the Insured Vessel.
  - (d) Where the perils insured against under Clause 1.1(b)(7) are amended by the substitution of perils contained in and as limited and/or restricted and/or excluded by other international marine hull or war and strikes clauses, such amendment shall be limited to such perils only and as specified in the Certificate of Insurance. All other provisions of these Terms and Conditions, including but not limited to Clauses 17 and 18, shall remain in full force and effect unless expressly agreed in writing by

Underwriters and endorsed to that effect in the Certificate of Insurance.

**1.2 AMOUNT OF COMPENSATION**

- (a) Subject to these Terms and Conditions and subject also to any terms set out in the Certificate of Insurance, the Assured may recover one or more of the following amounts in respect of any Insured Disruption to Trade:
- (1) the net loss of earnings suffered by the Assured whether or not the Insured Vessel is on charter;
  - (2) additional costs and expenses in respect of storage, warehousing, handling, freight, labour, deadfreight, demurrage, detention, insurance, chartering or (subject to Underwriters prior approval) legal services, or other expenses of a similar nature, which are reasonably and necessarily incurred for the purpose of enabling the Insured Vessel or its cargo to proceed to their intended destination or of avoiding or reducing loss by procuring one or more alternative vessels or alternative cargoes;
  - (3) contractual liability under an express term or terms for any Insured Disruption to Trade to the extent that such liability would not otherwise have arisen but for such term and could not be avoided or reduced by reasonable action on the part of the Assured, provided that such term or terms have been approved by Underwriters and endorsed to that effect in the Certificate of Insurance and cover for liability has been agreed between the Assured and Underwriters on such terms as Underwriters shall require.
- (b) All losses, additional costs and expenses and liability recovered under clause 1.2(a) above must be incurred by the Assured and

will be indemnified on a proven loss basis only save as otherwise provided in clause 1.2(c)(1) below.

- (c) The amount recoverable under clause 1.2(a) shall be subject to the following limits:
  - (1) the daily amount of any recovery in respect of net loss of earnings under clause 1.2(a)(1) shall not exceed the amount of the daily insured sum for each Day (and pro rata for any part of a Day) as stated in the Certificate of Insurance over the period of the Insured Disruption to Trade unless the Certificate of Insurance states the daily insured amount is 'fixed and agreed' in which event the daily amount of any recovery shall be the daily insured sum for each Day (and pro rata for any part of a Day) over the period of the Insured Disruption to Trade;
  - (2) unless otherwise specified in the Certificate of Insurance the total amount of any recovery for additional costs and expenses under clause 1.2(a)(2) shall not exceed one and a half times the daily insured sum.
- (d) This Insurance concerns only Insured Disruption to Trade which begins within the Period of Cover save for claims under Clause 1.1(b)(7) hereof where the disruption to trade to the Insured Vessel may occur any time up until the expiry of the period set out in Clause 3(e) hereof.
- (e) Unless otherwise specified in the Certificate of Insurance compensation under clause 1.2(a) shall not exceed 60 Days (after application of the Excess period) after the relevant Insured Disruption to Trade begins.

### 1.3 QUALIFICATIONS

The Assured shall not be entitled to any compensation from Underwriters whatsoever, **unless**:

- (a) the relevant insured peril or perils occurred during the Period of Cover; and
- (b) save as set out in clause 1.1(b)(7) the relevant insured peril or perils occurred in circumstances outside the control of the Assured, his agents and/or his servants; and
- (c) the relevant insured peril or perils prevented or hindered:
  - (1) the transport of cargo to or from the Insured Vessel by the route which the Assured or the Assured's customer has reasonably arranged or was reasonably intending to use, or in the absence of any specific arrangement or intention, the customary or reasonable route; or
  - (2) the passage of the Insured Vessel to a port of loading, transshipment or discharge by the route which the Assured has arranged or was intending to use or, in the absence of any specific arrangement or intention, the customary or reasonable route; or
  - (3) actual loading, transshipment or discharge of cargo to or from the Insured Vessel or delayed delivery of cargo from the port of discharge to final inland destination;

and then in each case only for the period of such prevention or hindrance.

## 2. ELECTRONIC DATE RECOGNITION

The provisions of this clause shall prevail notwithstanding any provision whether written typed or printed in these Terms and Conditions inconsistent therewith.

- (a) This Insurance does not cover any loss, damage, liability or expense directly or indirectly caused by or in any way in consequence of:
  - (1) the failure or anticipated failure or inability of any computer system, software, hardware, integrated circuit, microchip, operating system and/or any other electronic device or component, whether or not belonging to or in possession of the Assured or of any third party, correctly, unambiguously or completely to assign, exchange, interpret, manipulate, process, recognise, sequence or transfer any time, year, date or date-like code, data or information;
  - (2) any implemented or attempted change or modification or test of any computer system, software, hardware, integrated circuit, microchip, operating system and/or any other electronic device or component, whether or not belonging to or in possession of the Assured or of any third party, in anticipation of or in response to any change of year, date or time, or any advice given or services performed in connection with any such change or modification;
  - (3) any non-use or unavailability for use of any property or equipment of any kind whatsoever resulting from any act, failure to act or decision of the Assured or of any third party related to (1) and/or (2) above.

- (b) Subject to the Assured receiving written confirmation from Underwriters, paragraph (a) of this clause shall not apply to exclude a claim which the Assured can demonstrate:
- (1) would be recoverable under this Insurance in the absence of the exclusion in paragraph (a),  
  
and
  - (2) has not resulted from want of due diligence by the Assured, owners, managers or superintendents or any of their onshore management in respect of any of the matters referred to in paragraph (a) of this clause,  
  
and
  - (3) is proximately caused by any of the following perils:
    - (i) perils of the seas, rivers, lakes or other navigable waters;
    - (ii) fire, explosion;
    - (iii) violent theft by persons from outside the Insured Vessel;
    - (iv) jettison;
    - (v) piracy;
    - (vi) contact with land conveyance, dock or harbour equipment or installation;
    - (vii) earthquake, volcanic eruption or lightning;
    - (viii) accidents in loading, discharging or shifting cargo or fuel;
    - (ix) bursting of boilers, breakage of shafts;
    - (x) negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder or master officers or crew;
    - (xi) contact with aircraft, helicopters or similar objects, or objects falling therefrom.

- (c) Notwithstanding paragraph (b) above in no circumstances shall the cover provided herein extend to a claim for loss, damage, liability or expense:
  - (1) in respect of any software, programming, operating system, code or data; or
  - (2) arising from or in any way connected, whether directly or indirectly, with any measures taken with the intention of averting or minimising any of the matters referred to in paragraphs (a)(1) or (a)(2) above or any of their possible or anticipated consequences.
- (d) The cover provided in this clause is subject in all other respects to all other terms, conditions, exclusions and limits contained in these Terms and Conditions.

### **3. GENERAL EXCLUSIONS**

- (a) Save as expressly set out in clause 1.1(b) there is no cover for any disruption to trade directly or indirectly caused or contributed to by or consequent upon:
  - (1) war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or arising out of or relating to warlike events or operations or acts of national defence and irrespective of whether or not any loss or damage is caused to the Insured Vessel or any other property;
  - (2) the act of any terrorist or of any person acting maliciously or from a political, religious, ethnic or other motive;
  - (3) derelict mines, torpedoes, bombs or other derelict weapons of war;

- (4) 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, Russian Federation, the People's Republic of China;
  - (5) any delay in dry-docking or repairs or redelivery of the Insured Vessel from dry-docking or repairs, unless specifically agreed by Underwriters;
  - (6) arrest, restraint, detainment, confiscation or expropriation by reason of infringement of any customs or trading regulations;
  - (7) the operation of ordinary judicial process, failure to provide security or to pay any fine or penalty or any financial cause.
- (b) The Assured shall not be entitled to compensation from Underwriters in respect of any one or more of the following:
- (1) for physical loss of or damage to the Insured Vessel or cargo;
  - (2) for loss arising from any debt, insolvency, failure to provide any bond or security, whether under court order or otherwise, or any other financial cause;
  - (3) for loss arising from any failure of the Assured or of his agent to comply with the laws of any jurisdiction in which such Assured or agent is incorporated or has a place of business or in which the cargo or the Insured Vessel is at any time located;
  - (4) for loss arising from any failure of the Assured or his agent to obtain all necessary permits and authorisations;

- (5) for loss arising out of or in any way contributed to by the wrongful act, negligence or wilful misconduct of the Assured or his agent (other than negligence referred to in clause 1.1(b) (7));
  - (6) if the circumstances giving rise to the claim existed before or at the time the Insurance attached other than latent defect as referred to in clause 1.1(b)(7)(i)(1.9);
  - (7) if the Insured Vessel was carrying contraband or was involved in blockade-running;
  - (8) if the Insured Vessel was employed in any unlawful trade or used in any unlawful manner;
  - (9) for any delay caused by disputes arising out of any contract with the Assured;
  - (10) for cancellation, abandonment or curtailment of consecutive voyages due to insufficient financial resource, financial default or insolvency of the Assured;
  - (11) for any disruption to trade other than the immediate disruption to trade caused directly by the relevant insured peril(s) under clause 1.1(b);
  - (12) any delay in delivery of a new building or delays incurred as a result of construction, conversion or upgrade of the Insured Vessel, unless specifically agreed by Underwriters.
- (c) In no case shall this Insurance cover loss arising out of or consequent upon any one or more of the following:
- (1) the trade, voyage or operation upon which the Insured Vessel was engaged being unduly hazardous or otherwise imprudent;

- (2) the Assured and/or his agents failing to take such steps, including but not limited to the making of and acting upon all reasonable inquiries, as could reasonably be expected to be taken by a competent and prudent uninsured operator in the same or similar circumstances;
  - (3) the Assured failing in any material respect to comply with his obligations under this Insurance;
  - (4) any occurrence or series of occurrences causing the Insured Vessel to become a total loss, actual or constructive, and irrespective of whether or not the notice of abandonment of the Insured Vessel has been given by any person to the hull or other underwriters; provided always that for the purpose of this exclusion the question of whether or not the Insured Vessel has become a constructive total loss shall be determined by reference to her market value (plus 15% thereof) or insured value, whichever is the lesser, at the time when the occurrence (or the first in a series of occurrences) causing her to become a total loss took place.
- (d) This clause 3(d) shall be paramount and shall override anything contained in this Insurance inconsistent therewith. In no case shall this Insurance cover loss, damage, liability, or expense directly or indirectly caused by or contributed to, by, or arising from:
- (1) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
  - (2) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;

- (3) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
  - (4) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause 3(d)(4) does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
  - (5) any chemical, biological, bio-chemical, or electromagnetic weapon.
- (e) Where the insured peril under Clause 1.1(b)(7) hereof occurs within the Period of Cover but gives rise to a disruption to trade to the Insured Vessel after the Period of Cover has ended then in no circumstances whatsoever will the Assured be entitled to compensation from Underwriters for any disruption to trade to the Insured Vessel occurring more than 18 Months after the Period of Cover has ended, irrespective of whether or not such disruption to trade began before the 18 Months ended or was continuing at the time when the 18 Months ended.
- (f) Where the Insured Vessel is within the territorial waters of any countries or places which may from time to time be included in the War Risk Trading Warranties for Hull, there shall be no cover under clauses 1.1 (b)(7)(ii) and (22) of this Insurance unless the Assured gave notice to Underwriters that the Insured Vessel was sailing for, deviating towards or was already within (at the time of the issue of any new or extended warranty as aforesaid) the territorial waters of any countries or places which may from time to time be included in the War Risk Trading Warranties for Hull and Underwriters, in their absolute discretion, decide to reinstate,

in whole or in part cover as otherwise excluded above and have charged the Assured an additional premium in respect thereof.

- (g) Subject only to sub-clause 3(g)(2) below, in no case shall this Insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from:
  - (1) the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
  - (2) strictly limited to cover set out in clause 1.1(b)(7)(ii) in respect of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, sub-clause 3(g)(1) shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

#### **4. CLAIMS**

- (a) Any occurrence or circumstance which is likely to give rise to a claim shall be immediately notified in writing to Underwriters.
- (b) Notwithstanding the obligation set out in clause 4(a) above to give immediate notice to Underwriters, the Assured shall further within 9 Months from the date on which the relevant trade disruption began submit to Underwriters all available and necessary information concerning the claim and being accompanied by all relevant documents available to the Assured.

- (c) Subject to Underwriters in their absolute discretion determining to the contrary, in no circumstances whatsoever shall any claim be recoverable from Underwriters unless the Assured have complied with their obligations in respect of clause 4(b) above.
- (d) The Assured shall supply such further documents, information or evidence (including evidence on oath) as Underwriters may require.
- (e) If an Assured makes any claim which he knew or should have known was false or fraudulent as regards amount or in any other way whatsoever the Insurance for all Insured Vessels shall become void from inception and all claims shall be forfeited absolutely.
- (f) Acceptance of liability by Underwriters in respect of a claim shall be notified to the Assured by formal letter or fax from Managers, and no admission of liability on behalf of Underwriters shall be constituted by, or inferred from, anything done or omitted to be done prior to the dispatch of such formal notification by letter or fax.
- (g) Any claim(s) made under this Insurance shall be limited to the principal amount only and in no circumstances shall an Assured be entitled to interest on his claim whether before, after, or irrespective of whether any judgement and/or arbitration award has or will be made.
- (h) Underwriters shall have an absolute discretion to disallow any claim or reduce the amount paid in respect thereof if any of the provisions of clause 4(a-e, k-l) are not in Underwriters opinion observed.
- (i) Underwriters shall have an absolute discretion to disallow any claim or reduce the amount paid in respect thereof where an Assured fails to notify Underwriters of any change in the

particulars or information supplied by an Assured in the proposal form.

- (j) Underwriters shall be entitled in the exercise of their absolute discretion:
  - (1) to authorise reimbursement of an Assured in respect of expenses reasonably incurred by him in order to prevent loss which would otherwise have resulted in a claim on Underwriters;
  - (2) to allow in whole or in part any claim which they consider to be within the spirit of these Terms and Conditions.
- (k) Following the occurrence of an event which is likely to give rise to a claim under this Insurance the Assured must take all appropriate steps to avoid or minimise any additional costs or loss of earnings including (without limitation) having repairs carried out in good time, making alternative arrangements or obtaining replacements, and in doing so must, wherever possible and reasonable, obtain and follow instructions from Underwriters. This also applies if additional costs or loss of earnings have already been incurred.

The Assured must notify Underwriters without delay of any measures he has taken which, given the circumstances, he considered to be advisable but for which he was unable to obtain Underwriter's prior approval.

In particular the Assured shall also be obliged to safeguard any claims for compensation against third parties including but not limited to ensuring that any rights of claim are not extinguished by the operation of a time bar or passing of a limitation period and must not without Underwriters express approval enter into any contracts which purport either expressly or by implication to exclude or limit such rights.

- (l) An Assured shall not in any circumstances make any admission, enter into any discussions or negotiations or conclude any settlement in relation to any claim by any third party for which he may be insured by Underwriters unless or until he has obtained prior approval in writing from Underwriters (which they may grant or refuse in their absolute discretion and on such terms as they may think fit).
- (m) Underwriters may at any time, and on such terms as they deem fit, instruct on their and/or the Assured's behalf, surveyors, lawyers, adjusters or other persons, for the purpose of dealing with any matter giving rise, or liable to give rise, to a claim by the Assured on Underwriters. Underwriters will be at liberty to instruct any such person to report directly to Underwriters without prior reference to the Assured.
- (n) Underwriters may, upon request by the Assured, agree to make a payment on account to the Assured following an occurrence giving rise to a claim by the Assured on Underwriters. Under no circumstances, however, shall Underwriters be obliged to make a payment on account. Should Underwriters agree to make a payment on account, such payment will always be made strictly without prejudice and is in no way to be construed as any acceptance whatsoever of Underwriters liability under the Certificate of Insurance or in respect of the claim. Notwithstanding any payment on account, these Terms and Conditions and those contained in the Certificate of Insurance will continue to be binding and to apply.
- (o) Underwriters shall be entitled in the exercise of their absolute discretion to withhold payment of any claim until such time as all outstanding sums due from the Assured are fully paid and to exercise their right of set off in accordance with clause 12(b) against claims payments in respect of sums due.

## 5. CLASSIFICATION AND STATUTORY

- 5.1 In the event the Assured is the owner or the bareboat, time, or voyage charterer of the Insured Vessel then it is a condition of this Insurance that at all times whatsoever throughout the Period of Cover:
- (a) the Insured Vessel is fully classed with a classification society which is a member of the International Association of Classification Societies (IACS), approved by Underwriters; and
  - (b) the Insured Vessel and the Assured (where applicable) shall comply with all directions, provisions and requirements of the International Convention for the Safety of Life at Sea (hereinafter referred to as "SOLAS 1974"), and any amendments thereto, including but not limited to all provisions relating to the International Safety Management Code (hereinafter referred to as the "ISM Code") which pertain to the Insured Vessel and/or the Assured (which term shall include "the Company" as defined by SOLAS 1974) and which are in force during the Period of Cover.
- 5.2 In the event the Assured is the owner or bareboat charterer of the Insured Vessel then it is a condition of this Insurance that at all times whatsoever throughout the Period of Cover:
- (a) the Assured will promptly report, as soon as is reasonably practicable, to the classification society any incident, condition or damage in respect of which the Assured believes, or which a reasonable and competent operator would have believed, the classification society might impose any recommendations, conditions or restrictions (or make any directions or instructions); and
  - (b) the Assured will comply with any recommendations, conditions or restrictions imposed (or any directions or instructions made) by the classification society and generally comply with its rules in

respect of the Insured Vessel without delay and in any event within any time limits laid down by the classification society; and

- (c) the Assured complies with all laws promulgated, and regulations maintained, by the government of the Insured Vessel's flag state and of any state through whose waters the Insured Vessel passes in the course of being traded or operated whether for the Assured's own account or not; and
- (d) all the Insured Vessel's statutory certificates as prescribed by the Insured Vessel's flag state and by any state through whose waters the Insured Vessel passes are valid and kept maintained up to date and in good order and, in the event of an occurrence giving rise to a claim under this Insurance, the Assured, in addition to any other documents which the Assured is required to provide to Underwriters, shall also and on request by Underwriters, provide the following:
  - (1) a copy of the current Safety Management Certificate (SMC) as referred to in the ISM Code;
  - (2) a copy of the current Document of Compliance (DOC) as referred to in the ISM Code;
  - (3) a statement from the "Designated Person" (as referred to in the ISM Code) confirming that all relevant aspects of the ISM Code for which he has specific responsibility have been carried out in accordance with the provisions stated therein.

- 5.3 If the Assured is the time or voyage charterer of the Insured Vessel, then it is a condition of this Insurance that the Assured, in addition to any other documents which the Assured is required to provide to Underwriters, shall also and on request by Underwriters provide copies of any documents relating to compliance of the Insured Vessel with

SOLAS 1974 and any amendments thereto and/or the ISM Code to which they are entitled under the charterparty.

- 5.4 There shall be no recovery whatsoever from Underwriters in the event of any breach or breaches of any or all of the conditions of Insurance set out in clauses 5.1, 5.2 and 5.3 hereof unless and to the extent Underwriters in their sole discretion determine otherwise.

## **6. EXCESS**

No claim arising from a peril insured against shall be payable under this Insurance unless the claim for each separate occurrence exceeds the Excess as specified in the Certificate of Insurance. There shall be no recovery whatsoever under this Insurance for the Excess.

## **7. REPAIRS OF THE INSURED VESSEL**

### **7.1 Deferred Repairs**

In the event that Underwriters agree to defer repairs to a mutually convenient time, these repairs are to be undertaken within one year of the end of the Period of Cover.

### **7.2 Simultaneous Repairs**

If the Insured Vessel's trade is disrupted both by damage repairs caused by an insured peril and also the Assured's own repairs (necessary for seaworthiness or classification repairs due under periodic inspection requirements) which are not caused by an insured peril and such repairs are carried out simultaneously then, as much time as is common to both classes of work in excess of the Excess period shall be divided equally between Underwriters and the Assured.

Unless circumstances clearly indicate otherwise, all repairs are deemed to commence at the arrival of the Insured Vessel at the repair yard.

The Assured shall, with Underwriters prior written agreement, be allowed to carry out concurrent maintenance, refitting, strengthening or any other work which would not by itself have necessitated a separate stay at a repair yard, (not being work necessary for seaworthiness or in compliance with classification society requirements or recommendations) provided that such work does not interfere with and/or extend the time necessary to effect the damage repairs caused by an insured peril or if it does then the additional time shall be entirely for the Assured's account.

### **7.3 Scheduled Dry-Docking**

Where damage caused by an insured peril is discovered during a scheduled dry-docking then, subject to the Assured receiving Underwriters prior written agreement, repairs to such damage may be put immediately in hand with advice to Underwriters, subject to clause 7.2 hereof, but the Excess period shall not begin until the time when the aforesaid damage repairs commence.

## **8. TERMINATION OF INSURANCE**

8.1 An Assured shall cease to be insured and the Period of Cover shall be terminated forthwith in respect of all Insured Vessels insured by him with Underwriters upon the happening of any of the following events or circumstances:

- (a) where an Assured is an individual, upon his death or if a receiving order shall be made against him or if he shall become bankrupt or make any composition or arrangement with his creditors generally or if he shall become incapable by reason of mental disorder of managing and administering his property and affairs or if under any system of law other than English Law there occurs an event in relation to that individual which has a similar effect to any of the aforesaid events or circumstances;

- (b) where an Assured is a corporation, upon the passing of any resolution for voluntary winding up (other than voluntary winding up for the purpose of company or group reorganisation) or upon an order being made for compulsory winding up or upon dissolution or upon the appointment of an administrator, trustee, liquidator, receiver, manager or similar officer of all or part of the corporation's business or undertaking being appointed or upon crystallisation of and/or possession being taken by or on behalf of the holders of any debentures secured by floating charge of any property comprised in or subject to the charge or if under any system of law other than English Law there occurs an event in relation to that corporation which has a similar effect to any of the aforesaid events or circumstances;
- (c) if having failed to pay when due and demanded by Underwriters, any sum which Underwriters consider to be due, he is served with a notice by or on behalf of Underwriters requiring him to pay such sum on or before any date which may be specified in such notice and he fails to pay such sum in full on or before the date so specified;
- (d) in respect of War Risks;
  - (i) if there is an 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;
  - (ii) by written notice of cancellation by Underwriters, such cancellation to become effective after 7 Days from Midnight at the end of the Day on which notice of cancellation was issued by Underwriters.

8.2 An Assured shall further cease to be insured and the Period of Cover shall be terminated in the following circumstances:

- (a) in the case of an Owner's Insured Vessel, at the time when the Assured was divested of his ownership or share in the Insured Vessel by transfer thereof by bill of sale or other instrument, or was divested of control and possession of the Insured Vessel by delivery to a third party for employment on demise or bareboat charter;
  - (b) where the Insured Vessel is demise or bareboat chartered or time chartered to the Assured, immediately upon the charterparty being terminated by redelivery or otherwise;
  - (c) where the Insured Vessel is voyage chartered to the Assured, immediately upon the charterparty being terminated by completion of the voyage or otherwise;
  - (d) irrespective of the nature of the interest insured:
    - (1) on the Insured Vessel becoming an actual total loss;
    - (2) immediately on acceptance by hull underwriters (whether marine or war risks) that the Insured Vessel is a constructive total loss;
    - (3) immediately on the Insured Vessel being missing for 10 Days from the date she was last heard of, or, from her being posted at Lloyds as missing, whichever shall be the earlier.
- 8.3 (a) When the Insurance of the Insured Vessel terminates under clause 8.1(a) or (b) hereof then Underwriters shall remain liable in respect of any Insured Vessels insured by such Assured for all claims under these Terms and Conditions arising by reason of any event which had occurred prior to the time of termination but shall be under no liability whatsoever by reason of anything occurring after the time of termination.

- (b) When an Assured ceases to be insured by virtue of clause 8.1(c) hereof then Underwriters shall thereupon cease to be liable for all and any claims under the Terms and Conditions in respect of any Insured Vessel irrespective of whether:
- (1) such claims have accrued or arisen or may arise by reason of any event which had occurred before the date of termination or before the commencement of the Policy Year in which the date of termination occurred;
  - (2) such claims may arise by reason of any event occurring on or after the date of termination;
  - (3) Underwriters may have decided to support the Assured or admitted liability for such claims or appointed lawyers, surveyors or any other person to deal with such claims;
  - (4) at the date of termination the claims were likely to accrue or the event giving rise thereto was or was not known to Underwriters;

and from the date of termination any liability for such claims shall retrospectively terminate and Underwriters shall be under no liability to such Assured for the said or any other claims or on any account whatsoever;

PROVIDED ALWAYS that:-

Underwriters may, in their absolute discretion and upon such terms as to the payment of any sums due or otherwise as they think fit, admit either wholly or partly any claim in respect of any Insured Vessel for which Underwriters are under no liability under either paragraph (a) or paragraph (b) of this clause, whether arising before or after any date of termination as hereinbefore referred to.

- (c) When the Insurance of any Insured Vessel terminates under clause 8.2 hereof then the Insurance shall be deemed to have terminated at the times respectively stated if, but only if, Underwriters are notified in writing of the relevant event within one Month of its occurrence.

8.4 All obligations of the Assured and rights of termination set out in clauses 8.1 (c) and 8.3 (b) above shall apply equally to each individual Assured named in the Certificate of Insurance and any joint Assured as described in clause 15 so that any default of one such Assured and/or joint Assured shall have effect over each and every other Assured and/or joint Assured.

## **9. LIABILITIES OF AN ASSURED FOLLOWING TERMINATION**

Following the termination of this Insurance the Assured shall remain liable to Underwriters in respect of all sums which Underwriters consider due or which become due including, but not limited to premiums then accrued or thereafter accruing due for the period prior to such termination, the premiums being calculated on a pro-rata basis if cover is terminated during the course of a Period of Cover.

## **10. ASSIGNMENT**

- (a) No Insurance given by Underwriters and no interest under these Terms and Conditions or under any contract between Underwriters and any Assured may be assigned without the written consent of Underwriters who shall have the right in their absolute discretion to give or refuse such consent without stating any reason or give such consent upon any such terms or conditions as they may think fit. Any purported assignment made without such consent or without there being due compliance with any such terms and conditions as Underwriters may impose

shall, unless Underwriters in their absolute discretion otherwise determine, be void and of no effect.

- (b) Whether or not Underwriters shall expressly so stipulate as a condition for giving their consent to any assignment, Underwriters shall be entitled in settling any claim presented by the assignee to deduct or retain such amount as Underwriters may then estimate to be sufficient to discharge any liabilities of the assignor to Underwriters, whether existing at the time of the assignment or having accrued or being likely to accrue thereafter.

## **11. SUBROGATION**

- (a) When a claim has been paid under these Terms and Conditions, Underwriters shall be subrogated to all rights and remedies in respect of that claim which the Assured may have against any third party.
- (b) Underwriters shall be entitled to use the name of the Assured in bringing, defending, enforcing or settling any legal proceedings (including proceedings in any arbitration) and the Assured shall give all necessary information and assistance and produce and forward all documents to enable Underwriters to substantiate, pursue, settle or resist any claim or legal proceedings (including proceedings in any arbitration).
- (c) Underwriters shall, where they use the name of the Assured, indemnify him against all costs, charges, expenses and liabilities arising therefrom.

## **12. SET-OFF**

- (a) The Assured shall have no right of set-off against Underwriters. In determining for any purpose the amount due at any time from an Assured to Underwriters no account shall be taken of any

amount which either is, or is alleged to be, due from Underwriters to an Assured, and in any proceedings brought by Underwriters to recover outstanding premiums, no set-off of any kind (including one which might otherwise have arisen by reason of the bankruptcy or winding up of an Assured) shall be allowed against the amount due by an Assured to Underwriters. Underwriters may in their absolute discretion, when making a demand for payment of outstanding premiums, make allowance for any amount due from Underwriters to an Assured, but no set-off permitted at any time in the past shall constitute a waiver by Underwriters of the provisions of this clause.

- (b) Underwriters shall have a general right of set-off against an Assured.

### 13. **RETURN OF PREMIUM**

- (a) **Whilst the Insured Vessel is laid up and cover is suspended**

The Assured shall be entitled to claim relief from premiums in an amount equivalent to 95 per cent per annum of such portion of the premiums paid or payable in respect of the Insurance as is attributable to any period during which the Insured Vessel is unemployed and laid up (otherwise than for repair or overhaul), provided that the Insured Vessel is so unemployed and laid up for a period of thirty or more consecutive Days. During the period of unemployment and lay up no liability shall fall upon Underwriters in the event of the occurrence of an insured peril resulting in any delays or inabilities as stated in clause 1.1 (a) (1) to (6).

- (b) **Whilst the Insured Vessel is laid up and cover remains in force**

The Assured shall be entitled to claim relief from premiums in an amount equivalent to 50 percent per annum of such portion of

the premiums paid or payable in respect of the Insurance as is attributable to any period during which the Insured Vessel is unemployed and laid up (otherwise than for repair or overhaul), provided that the Insured Vessel is so unemployed and laid up for a period of thirty or more consecutive Days and provided that during this period of unemployment and lay-up the Insured Vessel shall not be involved in any commercial activities.

- (c) Relief from premiums under sub-paragraphs (a) or (b) above may only be claimed if within seven Days of the Insured Vessel being so laid up and unemployed Underwriters are notified in writing of that circumstance and that relief from premiums will be claimed.
- (d) In relation to any Insured Vessel in respect of which Underwriters have been so notified they shall likewise be notified when the period of such lay up and unemployment ends, and the claim to relief from premiums shall be submitted in writing to Underwriters within six Months of the Insured Vessel ceasing to be so laid up and unemployed. A provisional adjustment will then be effected when the next premium is charged and any further adjustment (if required) will be effected as soon as practicable thereafter.
- (e) If an Assured fails to submit his claim for relief within the times prescribed above Underwriters shall be entitled in their absolute discretion to disallow the claim in whole or in part.

#### **14. FORBEARANCE**

- 14.1 No act, omission, course of dealing, forbearance, delay or indulgence of any kind by the Underwriter, or by anybody acting on Underwriters behalf, in relation to any of these Terms and Conditions or the Certificate of Insurance, shall be treated as a waiver of any of the Underwriters rights thereunder.

- 14.2 Notwithstanding clause 14.1 above, Underwriters may by express waiver in writing, waive all or any of the Terms and Conditions contained herein or in the Certificate of Insurance and where consequent to any such waiver pay any claim in full or in part.

Any such waiver shall not constitute a precedent and Underwriters shall be entitled in all other circumstances which are not expressly waived therein to insist, without notice, on the strict application of these Terms and Conditions and those contained in the Certificate of Insurance.

## 15. **JOINT INSURANCE**

Where one or more vessels is insured in the name of or on behalf of more than one Assured then unless otherwise agreed in writing by Underwriters all such Assureds will be jointly and severally liable:

- (a) to pay all premiums or other sums due to Underwriters and the receipt by any one of such Assureds for any sums payable by the Underwriters shall be sufficient discharge of Underwriters liability to all Assureds;
- (b) for any failure to perform the obligations of any one or more of them under this Insurance including the failure to disclose material information within any Assureds knowledge, and the failure of any one or more Assureds shall be treated as the failure of all the Assureds; and
- (c) for the conduct of any Assured which would have entitled Underwriters to decline paying any claim, and the conduct of any one or more Assureds shall be treated as the conduct of all the Assureds.

The contents of any communication from or on behalf of the Underwriters to any Assured or their agents shall be deemed to be within the knowledge of all the Assureds and any communication from

any Assured to the Underwriters or the Managers shall be deemed to have been made with the full approval and authority of all the Assureds.

The provisions of this clause shall apply regardless of whether or not the Insured Vessel(s) are insured as a fleet, save that where an Assured is acting in the capacity of a ship management company for such fleet, then Underwriters shall have a sole discretion to disallow any one or more of the provisions of this clause.

## **16. DOUBLE INSURANCE**

Where the Assured has taken out any other insurance in respect of risks covered by this Insurance, Underwriters shall not indemnify the Assured in respect of any claims, costs or expenses of any nature whatsoever which are recoverable by the Assured under that other insurance, or which would have been recoverable:

- (1) but for some other term in that insurance excluding or limiting liability by reason of double insurance;
- (2) if the Insured Vessel had not been covered under this Insurance.

## **17. LAW**

- 17.1 The construction of these Terms and Conditions and the respective rights and obligations of Underwriters and the Assured hereunder shall be governed by and construed in accordance with English Law.
- 17.2 The particulars and information given in the proposal form together with any supplementary information supplied on request shall be deemed to form part of the contract for this Insurance and the accuracy of all such particulars and information shall form the basis of such contract of Insurance.
- 17.3 A person who is not a party to the Certificate of Insurance has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any

terms of the Certificate of Insurance but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **18. ARBITRATION**

- (a) Any dispute or difference between an Assured and Underwriters shall, unless Underwriters decide in their absolute discretion that any such dispute or difference shall be decided by the English High Court of Justice, be referred to arbitration in London by an arbitrator to be appointed by agreement between the parties concerned.
- (b) In the absence of agreement within 14 (fourteen) Days of a request by either party to agree to an arbitrator, an arbitrator who is a Member of the London Maritime Arbitrator's Association shall be appointed by the President for the time being of the London Maritime Arbitrator's Association at the request of either party.
- (c) The submission to arbitration and all proceedings therein shall be subject to the provisions of the Arbitration Acts 1950 to 1996 or any statutory re-enactment or modification thereto.
- (d) The arbitrator shall have power to admit any evidence whether legally admissible or not.
- (e) Subject to the foregoing provisions of this clause, the obtaining of an arbitration award as hereinbefore provided shall be a condition precedent to the right of any Assured to bring or maintain any action, suit or other legal proceedings against Underwriters.

## **19. CORRESPONDENCE**

Michael Else and Company Limited of 65 Leadenhall Street, London EC3A 2AD are hereby recognised as the Managers for Underwriters in



and named as Assured or Co-Assured in the Certificate of Insurance.

<b>Certificate of Insurance</b>	Any document issued by Underwriters evidencing the terms and conditions of insurance with Underwriters, including any endorsement evidencing any change in or addition to such terms and conditions.
<b>Day</b>	A period of twenty-four hours from Midnight to Midnight Greenwich Mean Time.
<b>Excess</b>	Excess, deductible or franchise as specified in the Certificate of Insurance.
<b>Extraordinary Weather</b>	Any weather which in the opinion of Underwriters is extraordinary by reference to the time and place where it occurred.
<b>Insurance</b>	Cover provided to an Assured in accordance with the Terms and Conditions and Certificate of Insurance.
<b>Insured Disruption to Trade</b>	Any disruption covered under the provisions of clause 1.1. hereof.
<b>Insured Vessel</b>	A vessel insured under these Terms and Conditions and identified as such in the Certificate of Insurance.
<b>Managers</b>	Michael Else and Company Limited of 65 Leadenhall Street, London, EC3A 2AD.
<b>Midnight</b>	Midnight Greenwich Mean Time.
<b>Month</b>	Calendar month.

<b>Period of Cover</b>	The period for which an Assured or Insured Vessel is insured as set out in the Certificate of Insurance or any subsequent endorsements.
<b>Policy Year</b>	As stated in the Certificate of Insurance.
<b>Terms and Conditions</b>	The Terms and Conditions of Transmarine Class II for the time being in force and which are incorporated by reference into the Certificate of Insurance.
<b>Underwriters</b>	Great Lakes Reinsurance (UK) PLC.
<b>War Risks</b>	Shall mean any one or more of the following: <ul style="list-style-type: none"> <li>(a) war, warlike act, civil war, act of national defence, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power;</li> <li>(b) capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat;</li> <li>(c) derelict mines, torpedoes, bombs or other derelict weapons of war;</li> <li>(d) strikers, locked-out workmen, or persons (in each case, other than servants or agents of the Assured) taking part in labour disturbances, riots or civil commotions;</li> <li>(e) any terrorist or any person acting maliciously or from a political motive;</li> </ul>

- (f) confiscation or expropriation;
- (g) war risks as covered in any international marine hull and/or war and strikes clauses which have been incorporated into this Insurance by agreement with Underwriters.

**War Risk Trading  
Warranties for Hull**

The Hull War Risk Trading Warranties as issued by the Joint War Committee of the International Underwriting Association of London and the Lloyd's Underwriters Association.

Words importing the masculine gender shall include the feminine gender.

Words importing persons shall include individuals, partnerships, corporations and associations.

Words importing the singular shall include the plural and vice versa.

**Transmarine Class II**

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# **CLASS III - TRADE DISRUPTION INSURANCE FOR THE CRUISE AND PASSENGER VESSEL INDUSTRY**

## **1. TRADE DISRUPTION INSURANCE**

### **1.1 RISKS INSURED**

An Assured shall be entitled to compensation for one or more of the following disruptions to trade, subject to the terms specified in his Certificate of Insurance:

- (a) (1) delayed arrival or non-arrival of an Insured Vessel at a port of embarkation, transshipment or disembarkation (for the purpose of this sub-clause, "delayed" means occurring later than would otherwise have been the case, based on the reasonably calculated estimated time of arrival of the Insured Vessel at the relevant port or place);
- (2) delayed embarkation, transshipment or disembarkation of passengers on or from an Insured Vessel (for the purpose of this sub-clause, "delayed" means occurring later than would otherwise have been the case, based on the reasonably calculated estimated time of embarkation, transshipment or disembarkation of passengers on or from the Insured Vessel at the relevant port or place);
- (3) inability to embark, tranship or disembark passengers on or from an Insured Vessel;
- (4) cancellation, abandonment or curtailment of voyage(s);
- (5) such other disruption to trade as may be expressly agreed by Underwriters and endorsed to that effect in the Certificate of Insurance.

**provided that:**

- (b) the disruption to trade is caused by one or more of the following insured perils:
- (1) fire or explosion on land, not causing any physical loss or damage to the Insured Vessel;
  - (2) Extraordinary Weather, not causing any physical loss or damage to the Insured Vessel;
  - (3) earthquake, heave, landslip, subsidence or volcanic eruption, not causing any physical loss or damage to the Insured Vessel;
  - (4) contact with aircraft, helicopters or similar objects, or objects falling therefrom, not causing any physical loss or damage to the Insured Vessel;
  - (5) emergency total or partial closure of any port, road, airport or navigable waterway by or under the lawful order of any authority having jurisdiction to make such an order;
  - (6) physical damage to the Insured Vessel caused by:
    - (i) those perils covered by the Institute Time Clause Hulls 1/11/95 as set out in the amended form below or by other international marine hull clauses that may be agreed by Underwriters and endorsed to that effect in the Certificate of Insurance  
  
Perils covered by the Institute Time Clause Hulls 1/11/95 as amended:
      - (1.1) perils of the seas, rivers, lakes or other navigable waters;
      - (1.2) fire, explosion;

- (1.3) violent theft by persons from outside the Insured Vessel;
- (1.4) jettison;
- (1.5) piracy;
- (1.6) contact with land conveyance, dock or harbour equipment or installation;
- (1.7) earthquake, volcanic eruption or lightning;
- (1.8) accidents in loading, discharging or shifting of cargo or fuel;
- (1.9) bursting of boilers, breakage of shafts or any latent defect in the machinery or hull (subject, if applicable, to the exclusion contained in clause 2 "Electronic Date Recognition");
- (2.0) negligence of master, officers, crew, stevedores, fuel suppliers, or pilots;
- (2.1) negligence of repairers or charterers, provided such repairers or charterers are not an Assured hereunder;
- (2.2) barratry of master, officers, crew or pilots;
- (2.3) contact with aircraft, helicopters or similar objects, or objects falling therefrom;
- (2.4) breakdown of machinery, including electrical machinery, provided such breakdown has not resulted from wear and tear.

Provided that such physical damage to the Insured Vessel has not resulted from want of due diligence by the Assured, owners, charterers, managers or superintendents or any of their onshore management.

Masters, officers, crew or pilots not to be considered owners within the meaning of this clause should they hold shares in the Insured Vessel.

- (ii) those perils covered by the Institute War and Strikes Clause Hulls Time 1/11/95 (War Risk Trading Warranties for Hull, in force at the time the insured peril occurred, to be included) as set out in the amended form below or by other war and strikes clauses that may be agreed by Underwriters and endorsed to that effect in the Certificate of Insurance
  - (a) war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power;
  - (b) capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat;
  - (c) derelict mines, torpedoes, bombs or other derelict weapons of war;
  - (d) strikers, locked-out workmen, or persons (in each case, other than servants or agents of the Assured) taking part in labour disturbances, riots or civil commotions;
  - (e) any terrorist or any person acting maliciously or from a political motive;
  - (f) confiscation or expropriation.
  
- (7) any abnormal physical obstruction of a berth at the port of embarkation, transshipment, disembarkation or of the approaches thereof which prevents the use of the berth by the Insured Vessel, provided that this peril shall not include:
  - (i) inaccessibility of a berth due to port congestion or routine operations of maintenance or dredging;

- (ii) any obstruction which could reasonably have been foreseen by the Assured or his agent at the time of entering into the contract of affreightment;
  - (iii) use or occupation of the berth by another vessel provided that if the other vessel is incapable of vacating the berth solely as a result of physical damage such circumstances will be regarded as an insured peril;
- (8) any reasonable refusal by the master of the Insured Vessel to proceed through any areas through which she must pass in order to reach the port or place of embarkation, transshipment or disembarkation on the grounds that such area port or place is dangerous;
  - (9) save as provided in clause 1.1(b)(6)(i)(1.5), acts of piracy and any consequences thereof or any attempt thereat directly targeted at, involving and affecting the Insured Vessel, excluding the consequences of loss or damage to the property of the Assured on land;
  - (10) closure of borders (whether national or regional) for political purposes which restricts or prohibits the Insured Vessel from sailing from or to a country within the intended cruise schedule;
  - (11) the rescuing of refugees or life saving, salvage or other assistance given by the Insured Vessel;
  - (12) save as provided by clause 1.1(b)(19) hereof expropriation, confiscation, seizure or requisition for title or use of the Insured Vessel (provided no physical loss or damage is caused thereby) by or under the order of the government of any country other than the flag state

(whether civil, military or de facto) or any public or local authority in any such country;

- (13) the imposition, or official and public announcement, of travel restrictions by the authorities of any country in which passengers or crew are to be embarked/disembarked on or from the Insured Vessel;
- (14) arrest, restraint or detainment of the Insured Vessel under quarantine regulations;
- (15) infectious diseases or poisoning on board the Insured Vessel;
- (16) illness, death or injury to persons on board the Insured Vessel;
- (17) the discovery of stowaways on board the Insured Vessel;
- (18) detention of the Insured Vessel following actual or alleged pollution emanating from the Insured Vessel;
- (19) detention of the Insured Vessel following the infringement of any customs law or regulation, arising out of the discovery on board the Insured Vessel of, or the suspicion of the presence on board the Insured Vessel of, illegal narcotics or drugs, but excluding any claim caused by the confiscation of the Insured Vessel by any party whatsoever, as a consequence of the aforesaid infringement, and, provided always that the Assured neither knew or ought to have known of the said presence or suspected presence on board of illegal narcotics or drugs;
- (20) oil or chemical pollution emanating from any vessel (other than the Insured Vessel) or property whether on land or

water following a sudden, unexpected and accidental incident;

- (21) accidental injury or death to passengers whilst travelling by rail, coach or plane to the Insured Vessel's port of embarkation, where the Assured, charterer of the Insured Vessel or the relevant tour operator has arranged or provided the aforesaid means of transportation to the port of embarkation;
  - (22) inability of the Insured Vessel to sail from any port, canal, waterway or other place to the high seas as a result of the closure of the connecting channel to all vessels of such size or draft provided that such closure was caused by the blockage of the waterways because of a warlike act, or act of national defence and irrespective of whether or not there is physical damage to the Insured Vessel (War Risk Trading Warranties for Hull, in force at the time the insured peril occurred, to be included).
- (c) Cover for those perils contained in clause 1.1(b)(19) and (22) hereof shall only be available to the Assured in the event they are expressly referred to as being covered in the Certificate of Insurance for the Insured Vessel.
- (d) Where the perils insured against under Clause 1.1(b)(6) are amended by the substitution of perils contained in and as limited and/or restricted and/or excluded by other international marine hull or war and strikes clauses, such amendment shall be limited to such perils only and as specified in the Certificate of Insurance. All other provisions of these Terms and Conditions, including but not limited to Clauses 17 and 18, shall remain in full force and effect unless expressly agreed in writing by Underwriters and endorsed to that effect in the Certificate of Insurance.

## 1.2 AMOUNT OF COMPENSATION

- (a) Subject to these Terms and Conditions and subject also to any terms set out in the Certificate of Insurance, the Assured may recover one or more of the following amounts in respect of any Insured Disruption to Trade:
- (1) the net loss of earnings suffered by the Assured whether or not the Insured Vessel is on Charter;
  - (2) additional costs and expenses in respect of storage, warehousing, handling, freight, labour, deadfreight, demurrage, detention, insurance, chartering or (subject to Underwriters' prior approval) legal services, or other expenses of a similar nature, which are reasonably and necessarily incurred for the purpose of enabling the Insured Vessel or passengers to proceed to their intended destination or of avoiding or reducing loss by procuring one or more alternative vessels. Additional types of expenses may be agreed and will be defined in the Certificate of Insurance;
  - (3) contractual liability under an express term or terms for any Insured Disruption to Trade to the extent that such liability would not otherwise have arisen but for such term and could not be avoided or reduced by reasonable action on the part of the Assured, provided that such term or terms have been approved by Underwriters and endorsed to that effect in the Certificate of Insurance and cover for liability has been agreed between the Assured and Underwriters on such terms as Underwriters shall require;
  - (4) extraordinary costs and expenses incurred by the Assured with Underwriters prior written confirmation relating to any one or more of the following events arising as a direct consequence of an insured peril:

- (i) extraordinary marketing costs reasonably incurred prior to and in anticipation of the occurrence of an insured peril;
  - (ii) marketing costs reasonably incurred after the occurrence of the insured peril;
  - (iii) non-refundable advanced costs for ports, terminals, pilots, canals or other waterways;
  - (iv) cancellation of ship service contracts which are pre-paid or guaranteed by the Assured but limited to medical services, food services and entertainers engaged by the Assured.
- (b) Unless otherwise expressly agreed by Underwriters and endorsed to that effect in the Certificate of Insurance, all losses, additional and extraordinary costs and expenses and liability recovered under clause 1.2(a) above must be incurred by the Assured and will be indemnified on a proven loss basis only.
- (c) The amount recoverable under clause 1.2(a) shall be subject to the following limits:
- (1) the daily amount of any recovery in respect of net loss of earnings under clause 1.2(a)(1) shall not exceed the amount of the daily insured sum for each Day (and pro rata for any part of a Day) as stated in the Certificate of Insurance over the period of the Insured Disruption to Trade.

"Net loss of earnings" shall be calculated on the basis of the amount of direct passenger revenue lost as a result of the Insured Disruption to Trade less the amount of normal operating costs and expenses not incurred as a result of the circumstances giving rise to the claim (for the purposes of calculating direct revenue from passengers, both

committed and anticipated passenger bookings are included, taking average earnings for the preceding three weeks trading or, if the claim occurs at the start of season, an equivalent period in the previous year);

- (2) unless otherwise specified in the Certificate of Insurance the total amount of any recovery for additional costs and expenses under clause 1.2(a)(2) and extraordinary costs and expenses under clause 1.2(a)(4) shall not exceed one and a half times the daily insured sum.
- (d) This Insurance concerns only Insured Disruption to Trade which begins within the Period of Cover save for claims under Clause 1.1(b)(6) hereof where the disruption to trade to the Insured Vessel may occur any time up until the expiry of the period set out in Clause 3(e) hereof.
- (e) Unless otherwise specified in the Certificate of Insurance compensation under clause 1.2(a) shall not exceed 60 Days (after application of the Excess period) after the relevant Insured Disruption to Trade begins.

### 1.3 QUALIFICATIONS

The Assured shall not be entitled to any compensation from Underwriters whatsoever, **unless**:

- (a) the relevant insured peril or perils occurred during the Period of Cover; and
- (b) save as set out in clause 1.1(b)(6) the relevant insured peril or perils occurred in circumstances outside the control of the Assured, his agents and/or his servants; and
- (c) the relevant insured peril or perils prevented or hindered:

- (1) the transport of passengers to or from the Insured Vessel by the route which the Assured or Assured's customer has reasonably arranged or was reasonably intending to use, or in the absence of any specific arrangement or intention, the customary or reasonable route; or
- (2) the passage of the Insured Vessel to a port of embarkation, transshipment or disembarkation by the route which the Assured has arranged or was intending to use or, in the absence of any specific arrangement or intention, the customary or reasonable route; or
- (3) the embarkation, transshipment or disembarkation of passengers to or from the Insured Vessel;

and then in each case only for the period of such prevention or hindrance.

## **2. ELECTRONIC DATE RECOGNITION**

The provisions of this clause shall prevail notwithstanding any provision whether written typed or printed in these Terms and Conditions inconsistent therewith.

- (a) This Insurance does not cover any loss, damage, liability or expense directly or indirectly caused by or in any way in consequence of:
  - (1) the failure or anticipated failure or inability of any computer system, software, hardware, integrated circuit, microchip, operating system and/or any other electronic device or component, whether or not belonging to or in possession of the Assured or of any third party, correctly, unambiguously or completely to assign, exchange, interpret, manipulate, process, recognise, sequence or

transfer any time, year, date or date-like code, data or information;

- (2) any implemented or attempted change or modification or test of any computer system, software, hardware, integrated circuit, microchip, operating system and/or any other electronic device or component, whether or not belonging to or in possession of the Assured or of any third party, in anticipation of or in response to any change of year, date or time, or any advice given or services performed in connection with any such change or modification;
  - (3) any non-use or unavailability for use of any property or equipment of any kind whatsoever resulting from any act, failure to act or decision of the Assured or of any third party related to (1) and/or (2) above.
- (b) Subject to the Assured receiving written confirmation from Underwriters, paragraph (a) of this clause shall not apply to exclude a claim which the Assured can demonstrate:
- (1) would be recoverable under this Insurance in the absence of the exclusion in paragraph (a),  
  
and
  - (2) has not resulted from want of due diligence by the Assured, owners, managers or superintendents or any of their onshore management in respect of any of the matters referred to in paragraph (a) of this clause,  
  
and

- (3) is proximately caused by any of the following perils:
- (i) perils of the seas, rivers, lakes or other navigable waters;
  - (ii) fire, explosion;
  - (iii) violent theft by persons from outside the Insured Vessel;
  - (iv) jettison;
  - (v) piracy;
  - (vi) contact with land conveyance, dock or harbour equipment or installation;
  - (vii) earthquake, volcanic eruption or lightning;
  - (viii) accidents in loading, discharging or shifting cargo or fuel;
  - (ix) bursting of boilers, breakage of shafts;
  - (x) negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder or master officers or crew;
  - (xi) contact with aircraft, helicopters or similar objects, or objects falling therefrom.
- (c) Notwithstanding paragraph (b) above in no circumstances shall the cover provided herein extend to a claim for loss, damage, liability or expense:
- (1) in respect of any software, programming, operating system, code or data;
- or
- (2) arising from or in any way connected, whether directly or indirectly, with any measures taken with the intention of averting or minimising any of the matters referred to in paragraphs (a)(1) or (a)(2) above or any of their possible or anticipated consequences.

- (d) The cover provided in this clause is subject in all other respects to all other terms, conditions, exclusions and limits contained in these Terms and Conditions.

### **3. GENERAL EXCLUSIONS**

- (a) Save as expressly set out in clause 1.1(b) there is no cover for any disruption to trade directly or indirectly caused or contributed to by or consequent upon:
  - (1) war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or arising out of or relating to warlike events or operations or acts of national defence and irrespective of whether or not any loss or damage is caused to the Insured Vessel or any other property;
  - (2) the act of any terrorist or of any person acting maliciously or from a political, religious, ethnic or other motive;
  - (3) derelict mines, torpedoes, bombs or other derelict weapons of war;
  - (4) 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, Russian Federation, the People's Republic of China;
  - (5) any delay in dry-docking or repairs or redelivery of the Insured Vessel from dry-docking or repairs, unless specifically agreed by Underwriters;
  - (6) arrest, restraint, detainment, confiscation or expropriation by reason of infringement of any customs or trading regulations;

- (7) the operation of ordinary judicial process, failure to provide security or to pay any fine or penalty or any financial cause.
- (b) The Assured shall **not** be entitled to compensation from Underwriters in respect of any one or more of the following:
- (1) for physical loss of or damage to the Insured Vessel or injury to or death of passengers;
  - (2) for loss arising from any debt, insolvency, failure to provide any bond or security, whether under court order or otherwise, or any other financial cause;
  - (3) for loss arising from any failure of the Assured or his agent to comply with the laws of any jurisdiction in which such Assured or agent is incorporated or has a place of business or in which the passengers or the Insured Vessel are at any time located;
  - (4) for loss arising from any failure of the Assured or his agent to obtain all necessary permits and authorisations;
  - (5) for loss arising out of or in any way contributed to by the wrongful act, negligence or wilful misconduct of the Assured or his agent (other than negligence referred to in clause 1.1(b)(6));
  - (6) if the circumstances giving rise to the claim existed before or at the time the Insurance attached other than latent defect as referred to in clause 1.1(b)(6)(i)(1.9);
  - (7) if the Insured Vessel was carrying contraband or was involved in blockade-running;
  - (8) if the Insured Vessel was employed in any unlawful trade or used in any unlawful manner;

- (9) any delay caused by disputes arising out of any contract with the Assured;
  - (10) for cancellation, abandonment or curtailment of consecutive voyages due to insufficient ticket sales or insufficient financial resource, financial default or insolvency of the Assured;
  - (11) for any disruption to trade other than the immediate disruption to trade caused directly by the relevant insured peril(s) under clause 1.1(b);
  - (12) any delay in delivery of a new building or delays incurred as a result of construction, conversion or upgrade of the Insured Vessel, unless specifically agreed by Underwriters;
  - (13) for failure of passengers travelling on the Insured Vessel to obtain the necessary passports, visas, immigration, emigration or similar documentation regulating entry or exit to or from a country on the itinerary of the Insured Vessel.
- (c) In no case shall this Insurance cover loss arising out of or consequent upon any one or more of the following:
- (1) the trade, voyage or operation upon which the Insured Vessel was engaged being unduly hazardous or otherwise imprudent;
  - (2) the Assured and/or his agents failing to take such steps, including but not limited to the making of and acting upon all reasonable inquiries, as could reasonably be expected to be taken by a competent and prudent uninsured operator in the same or similar circumstances;
  - (3) the Assured failing in any material respect to comply with his obligations under this Insurance;

- (4) any occurrence or series of occurrences causing the Insured Vessel to become a total loss, actual or constructive, and irrespective of whether or not the notice of abandonment of the Insured Vessel has been given by any person to the hull or other underwriters; provided always that for the purpose of this exclusion the question of whether or not the Insured Vessel has become a constructive total loss shall be determined by reference to her market value (plus 15% thereof) or insured value, whichever is the lesser, at the time when the occurrence (or the first in a series of occurrences) causing her to become a total loss took place.
- (d) This clause 3(d) shall be paramount and shall override anything contained in this Insurance inconsistent therewith. In no case shall this Insurance cover loss, damage, liability, or expense directly or indirectly caused by or contributed to, by, or arising from:
- (1) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
  - (2) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
  - (3) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
  - (4) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause 3(d)(4) does not extend to radioactive isotopes, other than nuclear fuel, when such

isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;

- (5) any chemical, biological, bio-chemical, or electromagnetic weapon.
- (e) Where the insured peril under Clause 1.1(b)(6) hereof occurs within the Period of Cover but gives rise to a disruption to trade to the Insured Vessel after the Period of Cover has ended then in no circumstances whatsoever will the Assured be entitled to compensation from Underwriters for any disruption to trade to the Insured Vessel occurring more than 18 Months after the Period of Cover has ended, irrespective of whether or not such disruption to trade began before the 18 Months ended or was continuing at the time when the 18 Months ended.
- (f) Where the Insured Vessel is within the territorial waters of any countries or places which may from time to time be included in the War Risk Trading Warranties for Hull, there shall be no cover under clauses 1.1(b)(6)(ii) and (22) of this Insurance unless the Assured gave notice to Underwriters that the Insured Vessel was sailing for, deviating towards or was already within (at the time of the issue of any new or extended warranty as aforesaid) the territorial waters of any countries or places which may from time to time be included in the War Risk Trading Warranties for Hull and Underwriters, in their absolute discretion, decide to reinstate, in whole or in part, cover as otherwise excluded above and have charged the Assured an additional premium in respect thereof.
- (g) Subject only to sub-clause 3(g)(2) below, in no case shall this Insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from:
  - (1) the use or operation, as a means for inflicting harm, of any computer, computer system, computer software

programme, malicious code, computer virus or process or any other electronic system.

- (2) strictly limited to cover set out in clause 1.1(b)(6)(ii) in respect of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, sub-clause 3(g)(1) shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

#### **4. CLAIMS**

- (a) Any occurrence or circumstance which is likely to give rise to a claim shall be immediately notified in writing to Underwriters.
- (b) Notwithstanding the obligation set out in clause 4(a) above to give immediate notice to Underwriters, the Assured shall further within 9 Months from the date on which the relevant trade disruption began submit to Underwriters all available and necessary information concerning the claim and being accompanied by all relevant documents available to the Assured.
- (c) Subject to Underwriters in their absolute discretion determining to the contrary, in no circumstances whatsoever shall any claim be recoverable from Underwriters unless the Assured have complied with their obligations in respect of clause 4(b) above.
- (d) The Assured shall supply such further documents, information or evidence (including evidence on oath) as Underwriters may require.

- (e) If an Assured makes any claim which he knew or should have known was false or fraudulent as regards amount or in any other way whatsoever the Insurance for all Insured Vessels shall become void from inception and all claims shall be forfeited absolutely.
- (f) Acceptance of liability by Underwriters in respect of a claim shall be notified to the Assured by formal letter or fax from Managers, and no admission of liability on behalf of Underwriters shall be constituted by, or inferred from, anything done or omitted to be done prior to the dispatch of such formal notification by letter or fax.
- (g) Any claim(s) made under this Insurance shall be limited to the principal amount only and in no circumstances shall an Assured be entitled to interest on his claim whether before, after, or irrespective of whether any judgement and/or arbitration award has or will be made.
- (h) Underwriters shall have an absolute discretion to disallow any claim or reduce the amount paid in respect thereof if any of the provisions of clause 4(a-e, k-l) are not in Underwriters opinion observed.
- (i) Underwriters shall have an absolute discretion to disallow any claim or reduce the amount paid in respect thereof where an Assured fails to notify Underwriters of any change in the particulars or information supplied by an Assured in the proposal form.
- (j) Underwriters shall be entitled in the exercise of their absolute discretion:
  - (1) to authorise reimbursement of an Assured in respect of expenses reasonably incurred by him in order to prevent

loss which would otherwise have resulted in a claim on Underwriters;

- (2) to allow in whole or in part any claim which they consider to be within the spirit of these Terms and Conditions.
- (k) Following the occurrence of an event which is likely to give rise to a claim under this Insurance the Assured must take all appropriate steps to avoid or minimise any additional costs or loss of earnings including (without limitation) having repairs carried out in good time, making alternative arrangements or obtaining replacements, and in doing so must, wherever possible and reasonable, obtain and follow instructions from Underwriters. This also applies if additional costs or loss of earnings have already been incurred.

The Assured must notify Underwriters without delay of any measures he has taken which, given the circumstances, he considered to be advisable but for which he was unable to obtain Underwriter's prior approval.

In particular the Assured shall also be obliged to safeguard any claims for compensation against third parties including but not limited to ensuring that any rights of claim are not extinguished by the operation of a time bar or passing of a limitation period and must not without Underwriters express approval enter into any contracts which purport either expressly or by implication to exclude or limit such rights.

- (l) An Assured shall not in any circumstances make any admission, enter into any discussions or negotiations or conclude any settlement in relation to any claim by any third party for which he may be insured by Underwriters unless or until he has obtained prior approval in writing from Underwriters (which they may grant or refuse in their absolute discretion and on such terms as they may think fit).

- (m) Underwriters may at any time, and on such terms as they deem fit, instruct on their and/or the Assured's behalf, surveyors, lawyers, adjusters or other persons, for the purpose of dealing with any matter giving rise, or liable to give rise, to a claim by the Assured on Underwriters. Underwriters will be at liberty to instruct any such person to report directly to Underwriters without prior reference to the Assured.
- (n) Underwriters may, upon request by the Assured, agree to make a payment on account to the Assured following an occurrence giving rise to a claim by the Assured on Underwriters. Under no circumstances, however, shall Underwriters be obliged to make a payment on account. Should Underwriters agree to make a payment on account, such payment will always be made strictly without prejudice and is in no way to be construed as any acceptance whatsoever of Underwriters liability under the Certificate of Insurance or in respect of the claim. Notwithstanding any payment on account, these Terms and Conditions and those contained in the Certificate of Insurance will continue to be binding and to apply.
- (o) Underwriters shall be entitled in the exercise of their absolute discretion to withhold payment of any claim until such time as all outstanding sums due from the Assured are fully paid and to exercise their right of set off in accordance with clause 12 (b) against claims payments in respect of sums due.

## **5. CLASSIFICATION AND STATUTORY**

- 5.1 In the event the Assured is the owner or the bareboat, time, or voyage charterer of the Insured Vessel then it is a condition of this Insurance that at all times whatsoever throughout the Period of Cover:
  - (a) the Insured Vessel is fully classed with a classification society which is a member of the International Association of Classification Societies (IACS), approved by Underwriters; and

- (b) the Insured Vessel and the Assured (where applicable) shall comply with all directions, provisions and requirements of the International Convention for the Safety of Life at Sea (hereinafter referred to as "SOLAS 1974"), and any amendments thereto, including but not limited to all provisions relating to the International Safety Management Code (hereinafter referred to as the "ISM Code") which pertain to the Insured Vessel and/or the Assured (which term shall include "the Company" as defined by SOLAS 1974) and which are in force during the Period of Cover.

5.2 In the event the Assured is the owner or bareboat charterer of the Insured Vessel then it is a condition of this Insurance that at all times whatsoever throughout the Period of Cover:

- (a) the Assured will promptly report, as soon as is reasonably practicable, to the classification society any incident, condition or damage in respect of which the Assured believes, or which a reasonable and competent operator would have believed, the classification society might impose any recommendations, conditions or restrictions (or make any directions or instructions); and
- (b) the Assured complies with any recommendations, conditions or restrictions imposed (or any directions or instructions made) by the classification society and generally comply with its rules in respect of the Insured Vessel without delay and in any event within any time limits laid down by the classification society; and
- (c) the Assured complies with all laws promulgated, and regulations maintained, by the government of the Insured Vessel's flag state and of any state through whose waters the Insured Vessel passes in the course of being traded or operated whether for the Assured's own account or not; and

- (d) all the Insured Vessel's statutory certificates as prescribed by the Insured Vessel's flag state and by any state through whose waters the Insured Vessel passes are valid and kept maintained up to date and in good order and, in the event of an occurrence giving rise to a claim under this Insurance, the Assured, in addition to any other documents which the Assured is required to provide to Underwriters, shall also and on request by Underwriters, provide the following:
- (1) a copy of the current Safety Management Certificate (SMC) as referred to in the ISM Code;
  - (2) a copy of the current Document of Compliance (DOC) as referred to in the ISM Code;
  - (3) a statement from the "Designated Person" (as referred to in the ISM Code) confirming that all relevant aspects of the ISM Code for which he has specific responsibility have been carried out in accordance with the provisions stated therein.

5.3 If the Assured is the time or voyage charterer of the Insured Vessel, then it is a condition of this Insurance that the Assured, in addition to any other documents which the Assured is required to provide to Underwriters, shall also and on request by Underwriters provide copies of any documents relating to compliance of the Insured Vessel with SOLAS 1974 and any amendments thereto and/or the ISM Code to which they are entitled under the charterparty.

5.4 There shall be no recovery whatsoever from Underwriters in the event of any breach or breaches of any or all of the conditions of Insurance set out in clauses 5.1, 5.2 and 5.3 hereof unless and to the extent Underwriters in their sole discretion determine otherwise.

## **6. EXCESS**

No claim arising from a peril insured against shall be payable under this Insurance unless the claim for each separate occurrence exceeds the Excess as specified in the Certificate of Insurance. There shall be no recovery whatsoever under this Insurance for the Excess.

## **7. REPAIRS OF THE INSURED VESSEL**

### **7.1 Deferred Repairs**

In the event that Underwriters agree to defer repairs to a mutually convenient time, these repairs are to be undertaken within one year of the end of the Period of Cover.

### **7.2 Simultaneous Repairs**

If the Insured Vessel's trade is disrupted both by damage repairs caused by an insured peril and also the Assured's own repairs (necessary for seaworthiness or classification repairs due under periodic inspection requirements which are not caused by an insured peril) and such repairs are carried out simultaneously, then as much time as is common to both classes of work in excess of the Excess period shall be divided equally between Underwriters and the Assured.

Unless circumstances clearly indicate otherwise, all repairs are deemed to commence at the arrival of the Insured Vessel at the repair yard.

The Assured shall, with Underwriters prior written agreement, be allowed to carry out concurrent maintenance, refitting, strengthening or any other work which would not by itself have necessitated a separate stay at a repair yard, (not being work necessary for seaworthiness or in compliance with classification society requirements or recommendations) provided that such work does not interfere with and/or extend the time necessary to effect the damage repairs caused

by an insured peril or if it does then the additional time shall be entirely for the Assured's account.

### **7.3 Scheduled Dry-Docking**

Where damage caused by an insured peril is discovered during a scheduled dry-docking then, subject to the Assured receiving Underwriters prior written agreement, repairs to such damage may be put immediately in hand with advice to Underwriters, subject to clause 7.2 hereof, but the Excess period shall not begin until the time when the aforesaid damage repairs commence.

## **8. TERMINATION OF INSURANCE**

8.1 An Assured shall cease to be insured and the Period of Cover shall be terminated forthwith in respect of all Insured Vessels insured by him with Underwriters upon the happening of any of the following events or circumstances:

- (a) where an Assured is an individual, upon his death or if a receiving order shall be made against him or if he shall become bankrupt or make any composition or arrangement with his creditors generally or if he shall become incapable by reason of mental disorder of managing and administering his property and affairs or if under any system of law other than English Law there occurs an event in relation to that individual which has a similar effect to any of the aforesaid events or circumstances;
- (b) where an Assured is a corporation, upon the passing of any resolution for voluntary winding up (other than voluntary winding up for the purpose of company or group reorganisation) or upon an order being made for compulsory winding up or upon dissolution or upon the appointment of an administrator, trustee, liquidator, receiver, manager or similar officer of all or part of the corporation's business or undertaking being appointed or upon crystallisation of and/or possession being taken by or on behalf

of the holders of any debentures secured by floating charge of any property comprised in or subject to the charge or if under any system of law other than English Law there occurs an event in relation to that corporation which has a similar effect to any of the aforesaid events or circumstances;

- (c) if having failed to pay when due and demanded by Underwriters any sum which Underwriters consider to be due from him to Underwriters, he is served with a notice by or on behalf of Underwriters requiring him to pay such sum on or before any date which may be specified in such notice and he fails to pay such sum in full on or before the date so specified;
- (d) in respect of War Risks:
  - (i) if there is an 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;
  - (ii) by written notice of cancellation by Underwriters, such cancellation to become effective after 7 Days from Midnight at the end of the Day on which notice of cancellation was issued by Underwriters.

8.2 An Assured shall further cease to be insured and the Period of Cover shall be terminated in the following circumstances:

- (a) in the case of an owner's Insured Vessel, at the time when the Assured was divested of his ownership or share in the Insured Vessel by transfer thereof by bill of sale or other instrument, or was divested of control and possession of the Insured Vessel by delivery to a third party for employment on demise or bareboat charter;

- (b) where the Insured Vessel is demise or bareboat chartered or time chartered to the Assured, immediately upon the charterparty being terminated by redelivery or otherwise;
  - (c) where the Insured Vessel is voyage chartered to the Assured, immediately upon the charterparty being terminated by completion of the voyage or otherwise;
  - (d) irrespective of the nature of the interest insured:
    - (1) on the Insured Vessel becoming an actual total loss;
    - (2) immediately on acceptance by hull underwriters (whether marine or war risks) that the Insured Vessel is a constructive total loss;
    - (3) immediately on the Insured Vessel being missing for 10 Days from the date she was last heard of, or, from her being posted at Lloyds as missing, whichever shall be the earlier.
- 8.3
- (a) When the Insurance of the Insured Vessel terminates under clause 8.1(a) or (b) hereof then Underwriters shall remain liable in respect of any Insured Vessels insured by such Assured for all claims under these Terms and Conditions arising by reason of any event which had occurred prior to the time of termination but shall be under no liability whatsoever by reason of anything occurring after the time of termination.
  - (b) When an Assured ceases to be insured by virtue of clause 8.1(c) hereof then Underwriters shall thereupon cease to be liable for all and any claims under the Terms and Conditions in respect of any Insured Vessel insured with Underwriters, irrespective of whether:
    - (1) such claims have accrued or arisen or may arise by reason of any event which had occurred before the date of

termination or before the commencement of the Policy Year in which the date of termination occurred;

- (2) such claims may arise by reason of any event occurring on or after the date of termination;
- (3) Underwriters may have decided to support the Assured or admitted liability for such claims or appointed lawyers, surveyors or any other person to deal with such claims;
- (4) at the date of termination the claims were likely to accrue or the event giving rise thereto was or was not known to Underwriters;

and from the date of termination any liability for such claims shall retrospectively terminate and Underwriters shall be under no liability to such Assured for the said or any other claims or on any account whatsoever;

PROVIDED ALWAYS that:-

Underwriters may, in their absolute discretion and upon such terms as to the payment of any sums due or otherwise as they think fit, admit either wholly or partly any claim in respect of any Insured Vessel for which Underwriters are under no liability under either paragraph (a) or paragraph (b) of this clause, whether arising before or after any date of termination as hereinbefore referred to.

- (c) When the Insurance of any Insured Vessel terminates under clause 8.2 hereof then the Insurance shall be deemed to have terminated at the times respectively stated if, but only if, Underwriters are notified in writing of the relevant event within one Month of its occurrence.

- 8.4 All obligations of the Assured and rights of termination set out in clauses 8.1 (c) and 8.3 (b) above shall apply equally to each individual Assured named in the Certificate of Insurance and any joint

Assured as described in clause 15 so that any default of one such Assured and/or joint Assured shall have effect over each and every other Assured and/or joint Assured.

**9. LIABILITIES OF AN ASSURED FOLLOWING TERMINATION**

Following the termination of this Insurance the Assured shall remain liable to Underwriters in respect of all sums which Underwriters consider due or which become due including, but not limited to premiums then accrued or thereafter accruing due for the period prior to such termination, the premiums being calculated on a pro-rata basis if cover is terminated during the course of a Period of Cover.

**10. ASSIGNMENT**

- (a) No Insurance given by Underwriters and no interest under these Terms and Conditions or under any contract between Underwriters and any Assured may be assigned without the written consent of Underwriters who shall have the right in their absolute discretion to give or refuse such consent without stating any reason or give such consent upon any such terms or conditions as they may think fit. Any purported assignment made without such consent or without there being due compliance with any such terms and conditions as Underwriters may impose shall, unless Underwriters in their absolute discretion otherwise determine, be void and of no effect.
- (b) Whether or not Underwriters shall expressly so stipulate as a condition for giving their consent to any assignment, Underwriters shall be entitled in settling any claim presented by the assignee to deduct or retain such amount as Underwriters may then estimate to be sufficient to discharge any liabilities of the assignor to Underwriters, whether existing at the time of the

assignment or having accrued or being likely to accrue thereafter.

## 11. **SUBROGATION**

- (a) When a claim has been paid under these Terms and Conditions, Underwriters shall be subrogated to all rights and remedies in respect of that claim which the Assured may have against a third party.
- (b) Underwriters shall be entitled to use the name of the Assured in bringing, defending, enforcing or settling any legal proceedings (including proceedings in any arbitration) and the Assured shall give all necessary information and assistance and produce and forward all documents to enable Underwriters to substantiate, pursue, settle or resist any claim or legal proceedings (including proceedings in any arbitration).
- (c) Underwriters shall, where it uses the name of the Assured indemnify him against all costs, charges, expenses and liabilities arising therefrom.

## 12. **SET-OFF**

- (a) The Assured shall have no right of set-off against Underwriters. In determining for any purpose the amount due at any time from an Assured to Underwriters no account shall be taken of any amount which either is, or is alleged to be, due from Underwriters to an Assured, and in any proceedings brought by Underwriters to recover outstanding premiums, no set-off of any kind (including one which might otherwise have arisen by reason of the bankruptcy or winding up of an Assured) shall be allowed against the amount due by an Assured to Underwriters. Underwriters may in their absolute discretion, when making a demand for payment of outstanding premiums, make allowance for any amount due from Underwriters to an Assured, but no set-

off permitted at any time in the past shall constitute a waiver by Underwriters of the provisions of this clause.

- (b) Underwriters shall have a general right of set-off against an Assured.

### 13. **RETURN OF PREMIUM**

- (a) **Whilst the Insured Vessel is laid up and cover is suspended**

The Assured shall be entitled to claim relief from premiums in an amount equivalent to 95 per cent per annum of such portion of the premiums paid or payable in respect of the Insurance as is attributable to any period during which the Insured Vessel is unemployed and laid up (otherwise than for repair or overhaul), provided that the Insured Vessel is so unemployed and laid up for a period of thirty or more consecutive Days. During the period of unemployment and lay up no liability shall fall upon Underwriters in the event of the occurrence of an insured peril resulting in any delays or inabilities as stated in clause 1.1 (a) (1) to (5).

- (b) **Whilst the Insured Vessel is laid up and cover remains in force**

The Assured shall be entitled to claim relief from premiums in an amount equivalent to 50 percent per annum of such portion of the premiums paid or payable in respect of the Insurance as is attributable to any period during which the Insured Vessel is unemployed and laid up (otherwise than for repair or overhaul), provided that the Insured Vessel is so unemployed and laid up for a period of thirty or more consecutive Days and provided that during this period of unemployment and lay-up the Insured Vessel shall not be involved in any commercial activities.

- (c) Relief from premiums under sub-paragraphs (a) or (b) above may only be claimed if within seven Days of the Insured Vessel being so laid up and unemployed Underwriters are notified in writing of that circumstance and that relief from premiums will be claimed.
- (d) In relation to any Insured Vessel in respect of which Underwriters have been so notified they shall likewise be notified when the period of such lay up and unemployment ends, and the claim to relief from premiums shall be submitted in writing to Underwriters within six Months of the Insured Vessel ceasing to be so laid up and unemployed. A provisional adjustment will then be effected when the next premium is charged and any further adjustment (if required) will be effected as soon as practicable thereafter.
- (e) If an Assured fails to submit his claim for relief within the times prescribed above Underwriters shall be entitled in their absolute discretion to disallow the claim in whole or in part.

#### **14. FORBEARANCE**

- 14.1 No act, omission, course of dealing, forbearance, delay or indulgence of any kind by the Underwriter, or by anybody acting on Underwriters behalf, in relation to any of these Terms and Conditions or the Certificate of Insurance, shall be treated as a waiver of any of the Underwriter's rights thereunder.
- 14.2 Notwithstanding clause 14.1 above, Underwriters may by express waiver in writing, waive all or any of the Terms and Conditions contained herein or in the Certificate of Insurance and where consequent to any such waiver pay any claim in full or in part.

Any such waiver shall not constitute a precedent and Underwriters shall be entitled in all other circumstances which are not expressly waived therein to insist, without notice, on the strict application of these Terms and Conditions and those contained in the Certificate of Insurance.

## 15. JOINT INSURANCE

Where one or more vessels is insured in the name of or on behalf of more than one Assured then unless otherwise agreed in writing by Underwriters all such Assureds will be jointly and severally liable:

- (a) to pay all premiums or other sums due to Underwriters and the receipt by any one of such Assureds for any sums payable by the Underwriters shall be sufficient discharge of Underwriters liability to all Assureds;
- (b) for any failure to perform the obligations of any one or more of them under this Insurance including the failure to disclose material information within any Assureds knowledge, and the failure of any one or more Assureds shall be treated as the failure of all the Assureds; and
- (c) for the conduct of any Assured which would have entitled Underwriters to decline paying any claim, and the conduct of any one or more Assureds shall be treated as the conduct of all the Assureds.

The contents of any communication from or on behalf of the Underwriters to any Assured or their agents shall be deemed to be within the knowledge of all the Assureds and any communication from any Assured to the Underwriters or the Managers shall be deemed to have been made with the full approval and authority of all the Assureds.

The provisions of this clause shall apply regardless of whether or not the Insured Vessel(s) are insured as a fleet, save that where an Assured is acting in the capacity of a ship management company for such fleet, then Underwriters shall have a sole discretion to disallow any one or more of the provisions of this clause.

## 16. **DOUBLE INSURANCE**

Where the Assured has taken out any other insurance in respect of risks covered by this Insurance, Underwriters shall not indemnify the Assured in respect of any claims, costs or expenses of any nature whatsoever which are recoverable by the Assured under that other insurance, or which would have been recoverable:

- (1) but for some other term in that insurance excluding or limiting liability by reason of double insurance;
- (2) if the Insured Vessel had not been covered under this Insurance.

## 17. **LAW**

17.1 The construction of these Terms and Conditions and the respective rights and obligations of Underwriters and the Assured hereunder shall be governed by and construed in accordance with English Law.

17.2 The particulars and information given in the proposal form together with any supplementary information supplied on request shall be deemed to form part of the contract for this Insurance and the accuracy of all such particulars and information shall form the basis of such contract of Insurance.

17.3 A person who is not a party to the Certificate of Insurance has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Certificate of Insurance but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 18. **ARBITRATION**

- (a) Any dispute or difference between an Assured and Underwriters shall, unless Underwriters decide in their absolute discretion that any such dispute or difference shall be decided by the English High Court of Justice, be referred to arbitration in London by an

arbitrator to be appointed by agreement between the parties concerned.

- (b) In the absence of agreement within 14 (fourteen) Days of a request by either party to agree to an arbitrator, an arbitrator who is a Member of the London Maritime Arbitrator's Association shall be appointed by the President for the time being of the London Maritime Arbitrator's Association at the request of either party.
- (c) The submission to arbitration and all proceedings therein shall be subject to the provisions of the Arbitration Acts 1950 to 1996 or any statutory re-enactment or modification thereto.
- (d) The arbitrator shall have power to admit any evidence whether legally admissible or not.
- (e) Subject to the foregoing provisions of this clause, the obtaining of an arbitration award as hereinbefore provided shall be a condition precedent to the right of any Assured to bring or maintain any action, suit or other legal proceedings against Underwriters.

## **19. CORRESPONDENCE**

Michael Else and Company Limited of 65 Leadenhall Street, London EC3A 2AD are hereby recognised as the Managers for Underwriters in all matters connected with this Insurance and all communications relating thereto should be addressed to Michael Else and Company Limited.

## **20. NOTICES**

### **20.1 Notices to Underwriters**

All notices required to be given by the Assured under these Terms and Conditions shall be addressed to the Managers in writing at the address specified in clause 19, or as subsequently advised.

## 20.2 Notices to the Assured

Any notice required to be given to an Assured in accordance with these Terms and Conditions may be sent by post to his address as furnished by him in writing to the Managers, or by telegram, cable, telex or fax, and, if no such address has been furnished, at the same address which is his last known address to the knowledge of the Managers, or upon the Assured's broker or agent at the broker's or agent's place of business so long as the Assured when he last applied for Insurance communicated through such broker or agent, and such notice shall be deemed to have been duly served on the Day after the same is put into the post, or in the case of telegrams or cables when handed in to the telegram or cable office, and in the case of telex or fax on the Day of transmission.

## 21. DEFINITIONS

In these Terms and Conditions the following expressions shall, unless the context or subject matter otherwise requires, have the following meanings:

<b>Assured(s)</b>	The person or party who is insured in accordance with the Terms and Conditions and named as Assured or Co-Assured in the Certificate of Insurance.
<b>Certificate of Insurance</b>	Any document issued by Underwriters evidencing the terms and conditions of insurance with Underwriters, including any endorsement evidencing any change in or addition to such terms and conditions.
<b>Day</b>	A period of twenty-four hours from Midnight to Midnight Greenwich Mean Time.

<b>Excess</b>	Excess, deductible or franchise as specified in the Certificate of Insurance.
<b>Extraordinary Weather</b>	Any weather which in the opinion of the Underwriters is extraordinary by reference to the time and place where it occurred.
<b>Insurance</b>	Cover provided to an Assured in accordance with the Terms and Conditions and Certificate of Insurance.
<b>Insured Disruption to Trade</b>	Any disruption covered under the provisions of clause 1.1. hereof.
<b>Insured Vessel</b>	A vessel insured under these Terms and Conditions and identified as such in the Certificate of Insurance.
<b>Managers</b>	Michael Else and Company Limited of 65 Leadenhall Street, London EC3A 2AD.
<b>Midnight</b>	Midnight Greenwich Mean Time.
<b>Month</b>	Calendar month.
<b>Period of Cover</b>	The period for which an Assured or Insured Vessel is insured as set out in the Certificate of Insurance or any subsequent endorsements.
<b>Policy Year</b>	As stated in the Certificate of Insurance.
<b>Terms and Conditions</b>	The Terms and Conditions of Transmarine Class III for the time being in force and which are incorporated by reference into the Certificate of Insurance.
<b>Underwriters</b>	Great Lakes Reinsurance (UK) PLC.

**War Risks**

Shall mean any one or more of the following:

- (a) war, warlike act, civil war, act of national defence, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power;
- (b) capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat;
- (c) derelict mines, torpedoes, bombs or other derelict weapons of war;
- (d) strikers, locked-out workmen, or persons (in each case, other than servants or agents of the Assured) taking part in labour disturbances, riots or civil commotions;
- (e) any terrorist or any person acting maliciously or from a political motive;
- (f) confiscation or expropriation;
- (g) war risks as covered in any international marine hull and/or war and strikes clauses which have been incorporated into this Insurance by agreement with Underwriters.

**War Risk Trading  
Warranties for Hull**

The Hull War Risk Trading Warranties as issued by the Joint War Committee of the International Underwriting Association of London and the Lloyd's Underwriters Association.

Words importing the masculine gender shall include the feminine gender.

Words importing person shall include individuals, partnerships, corporations and associations.

Words importing the singular shall include the plural and vice versa.