

transmarine



# **TRANSMARINE**

## **Terms and Conditions**

**Commencing 1<sup>st</sup> January 2020**

**Managers:** Michael Else and Company Limited

**Address:** 65 Leadenhall Street  
London  
EC3A 2AD

**Telephone:** +44 20 7702 3928

**E-mail:** [transmarine@themecogroup.co.uk](mailto:transmarine@themecogroup.co.uk)

**Website:** [www.themecogroup.co.uk](http://www.themecogroup.co.uk)

**Chief Executive Officer:** Christopher Else

**Claims Director:** Edward Turner

**Chief Operating Officer:** Lee Wilson

**Underwriting Director:** Gavin Ritchie

**Class Underwriter:** Charlie Barnes

**Deputy Underwriter:** Deepa Nathvani

**Underwritten by:** Underwriters at Lloyd's

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## **CLASS I - STRIKE INSURANCE**

### **1. STRIKE INSURANCE**

#### **1.1 Risks Insured**

Always subject to these Terms and Conditions and the terms specified in the Certificate of Insurance 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:

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

#### **1.2 Amount of Compensation**

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 applicable to the Insured Vessel 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 has/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(s) is/are continuous.

### **2. LIMITATION OF COVER**

#### **THE FOLLOWING RISKS ARE NOT COVERED BY THIS INSURANCE**

#### **2.1 General Scope of Strike Cover**

There is no Insurance:

- (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) the Assured 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 16.2 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.
- (e) where the Strike, Lockout, or Crew Strike occurred as a result of circumstances within the control of the Assured, his agents and/or his servants.

## 2.2 War, Trade, Piracy and Terrorism

There is no Insurance for any Applicable Delay, or any other Claim whatsoever arising out of, from, or directly or indirectly caused, or contributed to, by or consequent upon:

- (a) the trade, voyage or operation upon which the Insured Vessel was engaged being unduly hazardous or otherwise imprudent;
- (b) 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;
- (c) the actual or attempted capture, seizure, arrest, restraint or detainment of the Insured Vessel, and any consequences of such an incident;
- (d) derelict mines, torpedoes, bombs or other derelict weapons of war;
- (e) the act of any terrorist or of any person acting maliciously or from a political, religious, ethnic or other motive;
- (f) violent theft by persons from outside the Insured Vessel;

- (g) piracy.

### 2.3 Prevailing and Pre-existing Circumstances, Conduct and Failure to Comply

There is no Insurance for any Applicable Delay, or any other Claim whatsoever arising out of, from, or directly or indirectly caused, or contributed to, by or consequent upon 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(s), to comply with the laws of any jurisdiction in which the Assured, or agents, 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(s), 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(s);
- (h) if the Assured has failed to comply with his obligations under this Insurance;
- (i) if the Assured and/or his agent(s) fail 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;
- (j) for loss arising from the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind, or any action taken by any party in response to any of the above, including but not limited to investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins;
- (k) if the loss arises as a consequence of the issue of any governmental or regulatory order, requirement, directive, mandate, decree or other direction that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind;
- (l) loss arising from the operation of ordinary judicial process, any debt, insolvency, failure to pay any fine or penalty, failure to provide any bond or security (whether on the court order or otherwise), or any other financial cause;
- (m) any delay caused by disputes arising out of any contract with the Assured;
- (n) cancellation, abandonment or curtailment of consecutive voyages due to insufficient financial resource, financial default or insolvency of the Assured;
- (o) the Assured having failed to comply with any recommendations, conditions, restrictions or requirements following any port state investigation or inspection;
- (p) the trade, voyage or operation upon which the Insured Vessel was engaged being unduly hazardous or otherwise imprudent.

## 2.4 **Radioactive, Chemical, Biological and Electromagnetic**

There is no Insurance for any Applicable Delay, or any other Claim whatsoever arising out of, from, or directly or indirectly caused, or contributed to, by or consequent upon:

- (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;

## 2.5 **Cyber and Computer Issues**

- (a) Subject only to clause 2.5 c), in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.
- (b) Subject to the conditions, limitations and exclusions of this policy wording, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.
- (c) Where this Insurance covers risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, clause 2.5 a) 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.

## 2.6 **Sanctions**

There is no Insurance where support, assistance, involvement, payment (whether in respect of any Claim, or settlement of disbursements or accounts of any third party), or other benefit to an Assured of whatever nature, may expose Underwriters, the Re-Insurers or Managers to Sanctions.

## 2.7 **Repeated Breach**

There is no Insurance where the Assured has breached a provision of these Terms and Conditions on more than one occasion and has previously been put on notice of such breach by the Underwriters. In addition in such circumstances the Underwriters will be entitled to give the Assured written notice that should the same breach occur again subsequent to the service of such written notice, they will be entitled to cancel the Insurance with immediate effect and retain all Premium paid. In addition Underwriters will still remain entitled to claim from the Assured any sums due.



### 3. OBLIGATIONS OF THE ASSURED IN RESPECT OF CLAIMS

- (a) Any occurrence or circumstance which is likely to give rise to a Claim shall be immediately notified in writing to Underwriters.
- (b) The Assured shall (at their cost and expense) immediately supply and preserve all documents, information, or evidence (such terms to include all electronically stored documentation, email, text message, metadata or other such electronic documentation or records, physical evidence, samples, machinery, parts or equipment) including evidence on oath, as Underwriters may require and until they determine that any preservation is no longer required.
- (c) 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.
- (d) An Assured shall in no circumstances make any admission, enter into any discussions or negotiations, or conclude any settlement in relation to any Claim unless he has obtained prior approval in writing from Underwriters (which they may grant or refuse on such terms as they may think fit).
- (e) There is no Insurance unless the Assured has complied with their obligations under this clause 3.

### 4. CLAIMS HANDLING

- 4.1 Acceptance of liability by Underwriters in respect of a Claim shall be notified to the Assured in writing by the 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 provision of such a notice.
- 4.2 Underwriters shall be entitled 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.
- 4.3 Underwriters may at any time appoint and employ, or discharge or discontinue such employment or engagement, on behalf of the Assured upon such terms as they think fit, surveyors, lawyers, adjusters or other persons, both within and outside the United Kingdom, for the purpose of investigating, handling or otherwise dealing with any matter giving rise, or liable to give rise, to a Claim and all such persons shall be under the following obligations;
  - (a) to retire from a matter where they consider that a conflict of interest has arisen or may arise between the Assured and the Underwriters; and
  - (b) to report directly to Underwriters and produce to Underwriters any documents or information in their possession or power relating to any Claim without prior reference to the Assured, in the same manner as if they had been appointed to act and had at all times been acting on Underwriters' behalf and whether or not any such documents or information would otherwise be the subject of legal or any other form of privilege which by entering into this Insurance the Assured has waived.
- 4.4 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. 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 Insurance or in respect of the Claim. Notwithstanding any payment on account these Terms and Conditions and the Certificate of Insurance will continue to be binding and to apply.
- 4.5 Underwriters shall be entitled 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 15(b) against Claims payments in respect of sums due.

4.6 Section 13A of the Insurance Act 2015 is excluded and accordingly all terms of the contract of insurance between the Underwriters and any Assured shall not be subject to nor shall Underwriters be in breach of any implied term that it will pay any sums due in respect of a Claim within a reasonable time save where the breach is deliberate or reckless. This provision is without prejudice to any other rights or remedies of the Underwriters in these Terms and Conditions including rights of set off, limitation or withholding of payment.

4.7 It is a condition precedent of this Insurance that the Assured and any broker or any other agent engaged by them have complied with their duty of fair presentation and have disclosed all the information which would influence the judgement of a prudent underwriter in determining whether to issue this Insurance on the terms set out in these Terms and Conditions and the relevant Certificate of Insurance. Should information later be disclosed or become known which shows that there was not a fair presentation, even if innocent, the Underwriter will not be bound by the terms of this Insurance the condition precedent having been breached with the result that the Insurance will be void from inception. In such circumstances the Underwriter shall be entitled to retain any Premium paid against the costs of any Claims paid and to the extent the amount of Claims paid exceeds the value of such Premium to be entitled to recover from the Assured the balance of any Claims paid. In addition Underwriters will remain entitled to claim from the Assured any sums due.

## 5. **INTEREST**

There is no Insurance for interest on the Assured's Claim whether before, after, or irrespective of whether any judgment and/or arbitration award has or will be made.

## 6. **FRAUD**

6.1 If an Assured makes any Claim which he knew, or ought to have known, was false or fraudulent in any respect, or where the Assured has intentionally made a false or untrue statement in support of any Claim, including but not limited to the background, factual nexus, circumstances, evidence or amount claimed, Underwriters will not be liable for the Claim and will be entitled to recover from the Assured any sums previously paid in respect of the Claim.

6.2 In addition to their rights under clause 6.1 Underwriters will in addition be entitled to give notice that the Insurance is terminated from the time of the fraudulent act with the result that they will be under no liability for any event occurring after the time of the fraudulent act.

6.3 Underwriters shall be under no obligation to return Premium in any circumstances covered by clauses 6.1 and 6.2.

## 7. **EXCESS**

7.1 No Claim shall be payable under this Insurance unless the Claim for each separate occurrence exceeds the Excess as specified in the Certificate of Insurance.

7.2 The Excess shall start to count from the moment when there is an Applicable Delay irrespective of whether the Strike, Lockout, or Crew Strike commenced at an earlier date.

7.3 There is no Insurance for the Excess.

## 8. **DUTY OF FAIR PRESENTATION**

8.1 It is the duty of the Assured and any broker retained by them to disclose all information which they ought to know and which would have been revealed by a reasonable search of information and documentation which may influence the judgement of a prudent underwriter in determining whether to accept the Insured Vessel and place the Insurance on the terms and for the amount of Premium set out in these Terms and Conditions and the relevant Certificate of Insurance.

- 8.2 The Assured's attention is specifically drawn to the queries raised during the application process concerning any special or unusual facts relating to the risks covered by the Insurance, the purpose for which the Assured seeks the Insurance and any material factors.
- 8.3 The Insurance has been placed in reliance upon the Assured's and their broker's confirmation that they have conducted a reasonable search of all information which is available to them which includes the personal knowledge of all senior management, insurance and claim management, designated person (as set out in the ISM Code), risk management, survey, technical and operations departments.
- 8.4 The Underwriters shall be entitled to refuse any application for Insurance where the Assured or their broker has failed to comply with any of their duties set out under sub clauses (8.1) – (8.3) above and further be entitled to restrict the level of Cover provided and/or charge an additional Premium where relevant information is disclosed or discovered following the issuance of the Insurance.

## 9. **TIME BAR**

It is a condition precedent to the Assured's right to recovery of any Claim that they have provided to Underwriters all available and necessary information concerning the Claim accompanied by all relevant documents (to include all electronically stored documentation, email, text message, metadata or other such electronic documentation or records) available to the Assured within nine Months from the date on which the relevant Strike or Lockout began.

## 10. **ADDITIONAL COVER**

Underwriters may provide cover at their discretion for additional perils on terms to be agreed in writing between the Underwriters and the Assured.

## 11. **TERMINATION OF INSURANCE**

- 11.1 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 the commencement of Chapter 11 proceedings before any appropriate court in the United States of America, 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) where in the opinion of Underwriters or Managers continuing with the Insurance of any Insured Vessel will expose either of them or the Re-Insurers to Sanctions;
- (e) where the Assured has been served with a notice in accordance with clause 2.6 and has again breached a provision of these Terms and Conditions or any Certificate of Insurance following the service of such notice.

11.2 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 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 or agreement between such underwriters and the Assured that the Insured Vessel shall be considered an arranged total loss or compromise total loss or compromise constructive total loss;
  - (3) immediately on the Insured Vessel being missing for ten 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.

11.3 When the Insurance of any Insured Vessel terminates under clause 11.1(a), (b) or (e) 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.

11.4 When an Assured ceases to be insured by virtue of clause 11.1(c) or (d) there shall be no Insurance in respect of any Insured Vessel for any Claims, 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 to the Claims was or was not known to Underwriters.

11.5 When the Insurance of any Insured Vessel terminates under clause 11.2 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.

11.6 All obligations of the Assured and rights of termination set out in clauses 11.1 (c), (d), (e), 11.3 and 11.4 above shall apply equally to each individual Assured named in the Certificate of Insurance and any joint Assured as described in clause 18 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.

## 12. **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.

## 13. **ASSIGNMENT**

No Insurance provided by Underwriters and no other right, benefit or interest under these Terms and Conditions, or under any other contract between Underwriters and any Assured may be assigned without the written consent of Underwriters.

## 14. **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) All and any rights in subrogation as set out in this clause or available to Underwriters as a matter of law shall survive and remain binding upon an Assured even following a termination of the Insurance as provided for in clause 11.

## 15. **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 any amount due from an Assured to Underwriters. Underwriters may 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.

## 16. **PAYMENTS AND RETURNS**

### 16.1 **Payment of sums due**

(a) The Assured shall be bound to pay and shall pay to Underwriters at such time as Underwriters may determine such sums as fall due in accordance with the Terms and Conditions and Certificate of Insurance or as have been agreed with Underwriters.

- (b) Payment of any sums whatsoever due to Underwriters by the Assured shall not be treated as paid to Underwriters until such time as the sums due have been received by Underwriters as cleared funds in their account.
- (c) The Assured shall upon demand reimburse the Underwriters such sum or sums as the Underwriters have paid on his behalf, or to him, in respect of a Claim or any other liability subsequently found not to be covered by the Insurance, or where due to Underwriters subsequently becoming aware of a breach of these Terms and Conditions any such payment should not have been made.
- (d) Without prejudice to the rights and remedies of Underwriters under these Terms and Conditions, including but not limited to clauses 11 and 12, if any sum whatsoever due to Underwriters from an Assured is not paid by such Assured to Underwriters on or before the date specified for payment then Underwriters shall be entitled to charge interest at a rate of two per cent over the London Interbank Offered Rate (LIBOR) from such Assured on the amount not paid for the period over which such sum remains due and unpaid.

## 16.2 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 ninety-five 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 Cover or Time Charterer's Cover the Assured shall be entitled to claim relief from Premiums in an amount equivalent to ninety-five 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 and any Claim made in writing within six Months of the Insured Vessel ceasing to be so unemployed and laid up, or so employed.
- (d) It is a condition precedent of the Assureds right to make a recovery under this section that they have notified Underwriters in writing when the period of such unemployment and lay-up, or employment, as applicable, ends. A provisional adjustment will be effected when the next Premium is charged and any further adjustment (if required) will be effected as soon as practicable thereafter.

## 17. FORBEARANCE

No act, omission, course of dealing, forbearance, delay or indulgence of any kind whatsoever by Underwriters or by anybody acting on Underwriters' behalf shall be treated as a waiver of any of Underwriters' rights.

## 18. JOINT INSURANCE

18.1 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;

- (b) for any failure to perform the obligations of any one or more of such Assureds under this Insurance including the failure to comply with the duty of fair presentation as set out in clause 8 above 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.

18.2 Receipt by any one of such Assureds of any sums payable under this Insurance shall be sufficient discharge of Underwriters' liability to all Assureds.

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

18.4 The provisions of this clause shall apply regardless of whether or not the Insured Vessel(s) is/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 may disallow any one or more of the provisions of this clause.

## 19. **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.

## 20. **LAW**

20.1 These Terms and Conditions, any Certificate of Insurance, and any non-contractual obligations arising out of or in connection with the same shall be governed by and construed in accordance with English Law.

20.2 Save for circumstances where there is a different choice of law and jurisdiction recorded in the Certificate of Insurance, the Assured irrevocably agrees, for the exclusive benefit of the Underwriters, that the English courts shall have jurisdiction in relation to any dispute and any suit, action or proceeding which may arise out of, or in connection with, the Insurance and for such purposes irrevocably submits to the jurisdiction of such courts.

20.3 Nothing in this clause shall affect the right of Underwriters to serve process in any manner permitted by law or limit the right of Underwriters to institute legal proceedings against the Assured in any other court of competent jurisdiction, nor shall the institution of legal proceedings in one or more jurisdictions preclude Underwriters from instituting legal proceedings in any other jurisdiction whether concurrently or not.

20.4 The Assured shall not commence any legal proceedings in any country other than England in relation to any matter arising out of, or in connection with, this Insurance and the Assured irrevocably waives any objection which it may now, or at any other time have, on the grounds of inconvenient forum or otherwise, to legal proceedings being brought in any court referred to in this clause and further irrevocably agrees that a judgment or order in any legal proceedings brought in the English courts shall be conclusive and binding upon them and may be enforced without review in the courts of any other jurisdiction.

20.5 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.

## 21. DISPUTE RESOLUTION

- (a) Save for any claim by Underwriters in relation to sums due and owing by the Assured any other dispute or difference between Underwriters and the Assured shall (if required by Underwriters) first be mediated in accordance with the current CEDR (The Centre for Effective Dispute Resolution – [www.cedr.co.uk](http://www.cedr.co.uk)) Model Mediation Procedure. Unless Underwriters and the Assured agree upon a mediator, a mediator will be nominated by CEDR. To initiate the mediation either Underwriters or the Assured must give notice in writing to the other requesting a mediation. A copy of this notice should be sent to CEDR at the same time. Where Underwriters call for mediation in accordance with this clause the Assured irrevocably agrees not to commence any court proceedings or arbitration until they have attempted to settle the dispute by mediation and either the mediation has terminated or Underwriters or the Assured has failed to participate in the mediation.
- (b) Should mediation as required by clause 21(a) fail to resolve, or not apply to, any dispute or difference between Underwriters and the Assured then notwithstanding the provisions of clause 20 Underwriters shall be entitled to direct that any such remaining dispute or difference shall be referred to arbitration in London before an arbitrator to be appointed by agreement between the parties.
- (c) In the absence of agreement within fourteen Days of a request by either party to agree to a sole arbitrator, an arbitrator who is a Member of the London Maritime Arbitrators Association shall be appointed by the President for the time being of the London Maritime Arbitrators Association at the request of either party, who shall thereafter conduct the arbitration proceedings as sole arbitrator.
- (d) The submission to arbitration and all proceedings shall be subject to the provisions of the Arbitration Acts 1950 to 1996 or any statutory re-enactment or modification thereto.
- (e) The arbitrator shall have power to admit any evidence whether legally admissible or not.
- (f) The obtaining of an arbitration award shall be a condition precedent to the right of any Assured to bring, or maintain, any action, suit or other legal proceedings against Underwriters including but not limited to seeking security for their claim.
- (g) Notwithstanding the provisions of sub clauses (a)–(f) above Underwriters may at any time prior to the service of claim submissions in arbitration have the right to have any dispute determined by reference to the High Court in London. Should Underwriters make such a determination then any dispute resolution procedures under way at the time shall immediately be discontinued with each party bearing their own costs incurred up to such date and the costs of any mediator or arbitrator being divided equally between them.

## 22. CORRESPONDENCE

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

## 23. NOTICES

- 23.1 Notices or any other communications required by these Terms and Conditions shall in the case of Underwriters be served to them by letter or courier addressed to Underwriters c/o Michael Else and Company Limited, 65 Leadenhall Street, London EC3A 2AD and in the case of any Assured or their successors be served to them by letter, courier, or email at the address which is the last known and used address of the Assured or upon any party or agent acting on their behalf to their registered office address.
- 23.2 In the case of joint Assureds the notice need only be served on the party first named in the Certificate of Insurance.



23.3 Service shall be effective in the case of post on the Day following the Day on which the letter was posted or dispatched by courier and if by electronic means the day on which the message was transmitted.

## 24. 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>Claim(s)</b>	Any claim or claims brought by an Assured for payment from Underwriters in accordance with the Insurance.
<b>Cover</b>	Insurance cover taken out by the Assured in respect of the Insured Vessel in accordance with the Terms and Conditions and Certificate of Insurance.
<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>	<p>The daily amount insured by Underwriters in respect of an Insured Vessel as agreed between the Assured and Underwriters.</p> <p>Note: 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:</p> <ol style="list-style-type: none"><li>(1) in the case of an Owner's Cover, by reference to the estimated daily running costs of the Insured Vessel whilst in port;</li><li>(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;</li><li>(3) in the case of a Voyage Charterer's Cover by reference to the daily demurrage liability for the Insured Vessel under the charter.</li></ol>
<b>Day</b>	A period of twenty-four hours from Midnight to Midnight.
<b>Excess</b>	Excess, deductible or franchise as specified in the Certificate of Insurance and which shall apply to each and every Claim (of which there may be more than one) arising as a result of any single accident or occurrence.
<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.

<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>	The year as stated in the Certificate of Insurance.
<b>Premium</b>	Any Premium or other sum or sums payable to the Underwriters pursuant to the provisions of the Insurance.
<b>Re-insurers</b>	Any organisation who provides re-insurance facilities of whatsoever nature to the Underwriters.
<b>Sanctions</b>	Any sanction, prohibition, restriction, or any other embargo or limitation of any kind whatsoever, whether in relation to the Insured Vessel or otherwise, imposed by a competent authority, or government under United Nations resolutions, or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.
<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>	Underwriters at Lloyd's.
<b>Voyage Charterer's Cover</b>	Insurance cover taken by or on behalf of a person who is the voyage or sub-voyage charterer of the Insured Vessel.

## **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 the Certificate of Insurance:

- (a) (1) delayed arrival or non-arrival of the Insured Vessel at a port or place of loading, transhipment 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, transhipment 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, transhipment 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 the 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 ALWAYS 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) the perils set out below or by other international marine hull clauses that may be agreed by Underwriters and endorsed to that effect in the Certificate of Insurance:
      - (1.1) perils of the seas, rivers, lakes or other navigable waters;
      - (1.2) fire, explosion;

- (1.4) jettison;
- (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;
- (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, in which case there is no Insurance for any resulting disruption to trade.

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) the perils set out below or by other war and strikes clauses that may be agreed by Underwriters and endorsed to that effect in the Certificate of Insurance (subject always to clause 2.6):
  - (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;
  - (g) violent theft by persons from outside the Insured Vessel;
  - (h) piracy.
- (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) subject to clause 2.6 and save as provided in clause 1.1(b)(7)(ii)(h), acts of piracy and any consequences thereof or any attempt thereat directly targeted at, involving and affecting the Insured Vessel, excluding any physical loss or damage to the Insured Vessel, or 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), 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 or 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) subject to clause 2.6 hereof 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.
- (c) Cover for those perils contained in clause 1.1(b)(20) and (22) shall only be available to the Assured in the event those perils 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 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 USD ten thousand in total.
- (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) where the disruption to trade to the Insured Vessel may occur at any time up until the expiry of the period set out in clause 2.5.
- (e) Unless otherwise specified in the Certificate of Insurance compensation under clause 1.2(a) shall not exceed sixty Days (after application of the Excess period) after the relevant Insured Disruption to Trade begins.

## 2. LIMITATIONS OF COVER

### THE FOLLOWING RISKS ARE NOT COVERED BY THIS INSURANCE

#### 2.1 Scope of Disruption to Trade Cover

There is no Insurance 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) the 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.

#### 2.2 War, Piracy and Terrorism

Save as expressly set out in clause 1.1(b) there is no Insurance for any disruption to trade or any other Claim whatsoever arising out of, from or 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) arrest, restraint, detainment, confiscation or expropriation by reason of infringement of any customs or trading regulations;
- (6) violent theft by persons from outside the Insured Vessel;
- (7) piracy.

### 2.3 Prevailing and Pre-existing Circumstances, Conduct and Failure to Comply

There is no Insurance for actual physical loss of or damage to the Insured Vessel or cargo, or for any disruption to trade or any other Claim whatsoever arising out of, from, or directly or indirectly caused or contributed to, by, or consequent upon:

- (1) the trade, voyage or operation upon which the Insured Vessel was engaged being unduly hazardous or otherwise imprudent;
- (2) loss arising from the operation of ordinary judicial process, any debt, insolvency, failure to pay any fine or penalty, failure to provide any bond or security (whether under court order or otherwise), or any other financial cause;
- (3) loss arising from any failure of the Assured or of his agent(s) to comply with the laws of any jurisdiction in which such Assured or agent(s) is incorporated or has a place of business or in which the cargo or the Insured Vessel is at any time located;
- (4) loss arising from any failure of the Assured or his agent(s) to obtain all necessary permits and authorisations;
- (5) loss arising out of or in any way contributed to by the wrongful act, negligence or wilful misconduct of the Assured or his agent(s) (other than negligence referred to in clause 1.1(b)(7));
- (6) any delay in dry-docking or repairs or redelivery of the Insured Vessel from dry-docking or repairs, unless specifically agreed by Underwriters;
- (7) loss where 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);
- (8) loss where the Insured Vessel was carrying contraband or was involved in blockade-running;
- (9) loss where the Insured Vessel was employed in any unlawful trade or used in any unlawful manner;
- (10) any delay caused by disputes arising out of any contract with the Assured;
- (11) cancellation, abandonment or curtailment of consecutive voyages due to insufficient financial resource, financial default or insolvency of the Assured;
- (12) any disruption to trade other than the disruption to trade caused directly by the relevant insured peril(s) under clauses 1.1(b) and 11;
- (13) 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;
- (14) the Assured failing to comply with his obligations under this Insurance;
- (15) any occurrence or series of occurrences resulting in the Insured Vessel becoming 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 fifteen per cent 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;
- (16) any occurrence or series of occurrences resulting in the Insured Vessel being considered an arranged loss or compromise total loss or compromise constructive total loss;



- (17) the Assured and/or his agent(s) having failed 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;
- (18) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind, or any action taken by any party in response to any of the above, including but not limited to investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins;
- (19) the issue of any governmental or regulatory order, requirement, directive, mandate, decree or other direction that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind;
- (20) the Assured having failed to comply with any recommendations, conditions, restrictions or requirements following any port state investigation or inspection.

#### 2.4 **Radioactive**

There is no Insurance for any disruption to trade or any other Claim whatsoever arising out of, from, or directly or indirectly caused or contributed to, by or consequent upon:

- (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.

#### 2.5 **Disruption to Trade After the Period of Cover**

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 there is no Insurance for any disruption to trade to the Insured Vessel occurring more than eighteen Months after the Period of Cover has ended, irrespective of whether or not such disruption to trade began before the eighteen Months ended or was continuing at the time when the eighteen Months ended.

#### 2.6 **Listed Areas**

Where the Insured Vessel is within the territorial waters of any countries or places which may from time to time be included in the Hull War, Strikes, Terrorism and Related Perils Listed Areas, there shall be no Cover under clauses 1.1 (b)(7)(ii), 1.1(b) (10) and 1.1(b) (22) of these Terms and Conditions 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 Hull War, Strikes, Terrorism and Related Perils Listed Areas as aforesaid) the territorial waters of any countries or places which may from time to time be included in the Hull War, Strikes, Terrorism and Related Perils Listed Areas and Underwriters decide to reinstate, in whole or in part, Cover as otherwise excluded above and have charged the Assured an additional Premium in respect thereof.

## 2.7 **Cyber and Computer Issues**

- (a) Subject only to clause 2.7 (c) below, in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.
- (b) Subject to the conditions, limitations and exclusions of this policy wording, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.
- (c) Where this Insurance covers risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, clause 2.7 (a) 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.

## 2.8 **Sanctions**

There is no Insurance where support, assistance, involvement, payment (whether in respect of any Claim, or settlement of disbursements or accounts of any third party), or other benefit to an Assured of whatever nature, may expose Underwriters, the Re-Insurers, or Managers to Sanctions.

## 2.9 **Repeated Breach**

There is no Insurance where the Assured has breached a provision of these Terms and Conditions on more than one occasion and has previously been put on notice of such breach by the Underwriters. In addition in such circumstances the Underwriters will be entitled to give the Assured written notice that should the same breach occur again subsequent to the service of such written notice, they will be entitled to cancel the Insurance with immediate effect and retain all Premium paid. In addition Underwriters will still remain entitled to claim from the Assured any sums due.

## 2.10 **Classification and Statutory**

There is no Insurance where the Assured is the owner, manager or the bareboat, time, or voyage charterer of the Insured Vessel unless:

- (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) are in compliance 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 any amendments thereto) and which are in force during the Period of Cover; and
- (c) the Assured promptly reports, 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

- (d) the Assured complies with all and 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
- (e) 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
- (f) 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; and
  - (2) a copy of the current Document of Compliance (DOC) as referred to in the ISM Code; and
  - (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; and
  - (4) a copy of the ISM Code system for the Assured and the Insured Vessel; and
  - (5) if the Assured is the time or voyage charterer of the Insured Vessel, in addition to any other documents which the Assured is required to provide to Underwriters on request, 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; and
- (g) the Assured complies with all directions, recommendations, reporting requirements and procedures set out in the ISM Code documentation for the Assured and the Insured Vessel and complies with the ISM Code system in place.

#### 2.11 Epidemic Disease

There is no Insurance for any disruption to trade or any other Claim whatsoever arising out of, from or directly or indirectly caused or contributed to, by or consequent upon any Epidemic Disease.

#### 2.12 Electronic Date Recognition

There is no Insurance for any disruption to trade or any other Claim whatsoever arising out of, from, or directly or indirectly caused or contributed to, by or consequent upon:

- (a) 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;
- (b) 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;

- (c) 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 (a) and/or (b) above.

### 3. **OBLIGATIONS OF THE ASSURED IN RESPECT OF CLAIMS**

- (a) Any occurrence or circumstance which is likely to give rise to a Claim shall be immediately notified in writing to Underwriters.
- (b) The Assured shall (at their cost and expense) immediately supply and preserve all documents, information, or evidence (such terms to include all electronically stored documentation, email, text message, metadata or other such electronic documentation or records, physical evidence, samples, machinery, parts or equipment) including evidence on oath, as Underwriters may require and until they determine that any preservation is no longer required.
- (c) 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 Underwriters' 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.

- (d) 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 unless he has obtained prior approval in writing from Underwriters (which they may grant or refuse on such terms as they may think fit).
- (e) There is no Insurance unless the Assured has complied with their obligations under this clause 3.

### 4. **CLAIMS HANDLING**

- 4.1 Acceptance of liability by Underwriters in respect of a Claim shall be notified to the Assured in writing by the 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 provision of such a notice.
- 4.2 Underwriters shall be entitled 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.
- 4.3 Underwriters may at any time appoint and employ, or discharge or discontinue such employment or engagement, on behalf of the Assured upon such terms as they think fit, surveyors, lawyers, adjusters or other persons, both within and outside the United Kingdom, for the purpose of investigating, handling or otherwise dealing with any matter giving rise, or liable to give rise, to a Claim and all such persons shall be under the following obligations:
  - (a) to retire from a matter where they consider that a conflict of interest has arisen or may arise between the Assured and the Underwriters.
  - (b) to report directly to Underwriters and produce to Underwriters any documents or information in their possession or power relating to any Claim without prior reference to the Assured, in the same manner

as if they had been appointed to act and had at all times been acting on Underwriters behalf and whether or not any such documents or information would otherwise be the subject of legal or any other form of privilege which by entering into this Insurance the Assured has waived.

- 4.4 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. 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 Insurance or in respect of the Claim. Notwithstanding any payment on account these Terms and Conditions and the Certificate of Insurance will continue to be binding and to apply.
- 4.5 Underwriters shall be entitled 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 16(b) against Claims payments in respect of sums due.
- 4.6 Section 13A of the Insurance Act 2015 is excluded and accordingly all terms of the contract of insurance between the Underwriters and any Assured shall not be subject to nor shall Underwriters be in breach of any implied term that it will pay any sums due in respect of a Claim within a reasonable time save where the breach is deliberate or reckless. This provision is without prejudice to any other rights or remedies of the Underwriters in these Terms and Conditions including rights of set off, limitation or withholding of payment.
- 4.7 It is a condition precedent of this Insurance that the Assured and any broker or other agent engaged by them have complied with their duty of fair presentation and have disclosed all the information which would influence the judgement of a prudent underwriter in determining whether to issue this Insurance on the terms set out in these Terms and Conditions and the relevant Certificate of Insurance. Should information later be disclosed or become known which shows that there was not a fair presentation, even if innocent, the Underwriter will not be bound by the terms of this Insurance the condition precedent having been breached with the result that the Insurance will be void from inception. In such circumstances the Underwriter shall be entitled to retain any Premium paid against the costs of any Claims paid and to the extent the amount of Claims paid exceeds the value of such Premium to be entitled to recover from the Assured the balance of any Claims paid. In addition Underwriters will remain entitled to claim from the Assured any sums due.

## 5. **INTEREST**

There is no Insurance for interest on the Assured's Claim whether before, after, or irrespective of whether any judgment and/or arbitration award has or will be made.

## 6. **FRAUD**

- 6.1 If an Assured makes any Claim which he knew, or ought to have known, was false or fraudulent in any respect, or where the Assured has intentionally made a false or untrue statement in support of any Claim, including but not limited to the background, factual nexus, circumstances, evidence or amount claimed, Underwriters will not be liable for the Claim and will be entitled to recover from the Assured any sums previously paid in respect of the Claim.
- 6.2 In addition to their rights under clause 6.1 Underwriters will in addition be entitled to give notice that the Insurance is terminated from the time of the fraudulent act with the result that they will be under no liability for any event occurring after the time of the fraudulent act.
- 6.3 Underwriters shall be under no obligation to return Premium in any circumstances covered by clauses 6.1 and 6.2.

## 7. **EXCESS**

- 7.1 No Claim shall be payable under this Insurance unless the Claim for each separate occurrence exceeds the Excess as specified in the Certificate of Insurance. There is no Insurance for the Excess.

7.2 The Excess shall start to count from the moment when there is an Insured Disruption to Trade irrespective of whether the insured peril which gave rise to the Insured Disruption to Trade occurred at an earlier date.

## 8. REPAIRS OF THE INSURED VESSEL

### 8.1 Deferred Repairs

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

### 8.2 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.

### 8.3 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 8.2, but the Excess period shall not begin until the time when the aforesaid damage repairs commence, or when the Insured Vessel suffers an Insured Disruption to Trade, whichever is the later.

## 9. DUTY OF FAIR PRESENTATION

9.1 It is the duty of the Assured and any broker retained by them to disclose all information which they ought to know and which would have been revealed by a reasonable search of information and documentation which may influence the judgement of a prudent underwriter in determining whether to accept the Insured Vessel and place the Insurance on the terms and for the amount of Premium set out in these Terms and Conditions and the relevant Certificate of Insurance.

9.2 The Assured's attention is specifically drawn to the queries raised during the application process concerning any special or unusual facts relating to the risks covered by the Insurance, the purpose for which the Assured seeks the Insurance and any material factors.

9.3 The Insurance has been placed in reliance upon the Assured's and their broker's confirmation that they have conducted a reasonable search of all information which is available to them which includes the personal knowledge of all senior management, insurance and claim management, designated person (as set out in the ISM Code), risk management, survey, technical and operations departments.

9.4 The Underwriters shall be entitled to refuse any application for Insurance where the Assured or their broker have failed to comply with any of the duties set out under sub clauses (9.1) – (9.3) above and further be entitled

to restrict the level of Cover provided and/or charge an additional Premium where relevant information is disclosed or discovered following the issuance of the Insurance.

#### 10. **TIME BAR**

It is a condition precedent to the Assured's right to recovery of any Claim that they have provided to Underwriters all available and necessary information concerning the Claim accompanied by all relevant documents (to include all electronically stored documentation, email, text message, metadata or other such electronic documentation or records) available to the Assured within nine Months from the date on which the relevant disruption to trade began.

#### 11. **ADDITIONAL COVER**

Underwriters may provide cover at their discretion for additional perils on terms to be agreed in writing between the Underwriters and the Assured.

#### 12. **TERMINATION OF INSURANCE**

12.1 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 the commencement of Chapter 11 proceedings before any appropriate court in the United States of America, 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 seven Days from Midnight at the end of the Day on which notice of cancellation was issued by Underwriters;
- (e) where in the opinion of Underwriter's or Manager's continuing with the Insurance of any Insured Vessel will expose either of them or the Re-Insurers to Sanctions;

- (f) where the Assured has been served with a notice in accordance with clause 2.9 and has again breached a provision of these Terms and Conditions or any Certificate of Insurance following the service of such notice.

12.2 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 owned Insured Vessel, at the time when the Assured was divested of his ownership or share in the Insured Vessel by transfer 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 or agreement between such underwriters and the Assured that the Insured Vessel shall be considered an arranged loss or compromise total loss or compromise constructive total loss;
  - (3) immediately on the Insured Vessel being missing for ten Days from the date she was last heard of, or, from her being posted at Lloyd's as missing, whichever shall be the earlier.

12.3 When the Insurance of the Insured Vessel terminates under clause 12.1(a), (b), (d) or (f) 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.

12.4 When an Assured ceases to be insured by virtue of clause 12.1(c) or (e) there shall be no Insurance in respect of any Insured Vessel for any Claims 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 to the Claims was or was not known to Underwriters.

12.5 When the Insurance of any Insured Vessel terminates under clause 12.2 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.

12.6 All obligations of the Assured and rights of termination set out in clauses 12.1(c), (e), (f), 12.3 and 12.4 above shall apply equally to each individual Assured named in the Certificate of Insurance and any joint Assured as



described in clause 19 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.

### **13. 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.

### **14. ASSIGNMENT**

No Insurance provided by Underwriters and no other right, benefit or interest under these Terms and Conditions, or under any contract between Underwriters and any Assured may be assigned without the written consent of Underwriters on such terms as they may agree.

### **15. 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) All and any rights in subrogation as set out in this clause or available to Underwriters as a matter of law shall survive and remain binding upon an Assured even following a termination of the Insurance as provided for in clause 12.

### **16. 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 any amount due from an Assured to Underwriters. Underwriters may, 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.

### **17. PAYMENTS AND RETURNS**

#### **17.1 Payment of sums due**

- (a) The Assured shall be bound to pay and shall pay to Underwriters at such time as Underwriters may determine such sums as fall due in accordance with the Terms and Conditions and Certificate of Insurance or as have been agreed with Underwriters.
- (b) Payment of any sums whatsoever due to Underwriters by the Assured shall not be treated as paid to Underwriters until such time as the sums due have been received by Underwriters as cleared funds in their account.
- (c) The Assured shall upon demand reimburse the Underwriters such sum or sums as the Underwriters have paid on his behalf, or to him, in respect of a Claim or any other liability subsequently found not to

be covered by the Insurance, or where due to Underwriters subsequently becoming aware of a breach of these Terms and Conditions any such payment should not have been made.

- (d) Without prejudice to the rights and remedies of Underwriters under these Terms and Conditions including but not limited to clauses 12 and 13, if any sum whatsoever due to Underwriters from an Assured is not paid by such Assured to Underwriters on or before the date specified for payment then Underwriters shall be entitled to charge interest at a rate of two per cent over the London Interbank Offered Rate (LIBOR) from such Assured on the amount not paid for the period over which such sum remains due and unpaid.

## 17.2 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 ninety-five 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 disruption to trade 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 fifty 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 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 and any Claim made in writing within six Months of the Insured Vessel ceasing to be so laid up and unemployed.
- (d) It is a condition precedent of the Assured's right to make a recovery under this section that they have notified Underwriters in writing when the period of such lay-up and unemployment ends. A provisional adjustment will be effected when the next Premium is charged and any further adjustment (if required) will be effected as soon as practicable thereafter.

## 18. FORBEARANCE

No act, omission, course of dealing, forbearance, delay or indulgence of any kind whatsoever by Underwriters or by anybody acting on Underwriters' behalf shall be treated as a waiver of any of Underwriters' rights.

## 19. JOINT INSURANCE

19.1 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;
- (b) for any failure to perform the obligations of any one or more of such Assureds under this Insurance including the failure to comply with the duty of fair presentation as set out in clause 9 above 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.

19.2 Receipt by any one of such Assureds of any sums payable under the Insurance shall be sufficient discharge of Underwriters' liability to all Assureds.

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

19.4 The provisions of this clause shall apply regardless of whether or not the Insured Vessel(s) is/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 may disallow any one or more of the provisions of this clause.

## 20. **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.

## 21. **LAW**

21.1 These Terms and Conditions, any Certificate of Insurance, and any non-contractual obligations arising out of or in connection with the same shall be governed by and construed in accordance with English Law.

21.2 Save for circumstances where there is a different choice of law and jurisdiction recorded in the Certificate of Insurance, the Assured irrevocably agrees, for the exclusive benefit of the Underwriters, that the English courts shall have jurisdiction in relation to any dispute and any suit, action or proceeding which may arise out of, or in connection with, the Insurance and for such purposes irrevocably submits to the jurisdiction of such courts.

21.3 Nothing in this clause shall affect the right of Underwriters to serve process in any manner permitted by law or limit the right of Underwriters to institute legal proceedings against the Assured in any other court of competent jurisdiction, nor shall the institution of legal proceedings in one or more jurisdictions preclude Underwriters from instituting legal proceedings in any other jurisdiction whether concurrently or not.

21.4 The Assured shall not commence any legal proceedings in any country other than England in relation to any matter arising out of, or in connection with, this Insurance and the Assured irrevocably waives any objection which it may now, or at any other time have, on the grounds of inconvenient forum or otherwise, to legal proceedings being brought in any court referred to in this clause and further irrevocably agrees that a judgment or order in any legal proceedings brought in the English courts shall be conclusive and binding upon them and may be enforced without review in the courts of any other jurisdiction.

21.5 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.

## 22. **DISPUTE RESOLUTION**

- (a) Save for any claim by Underwriters in relation to sums due and owing by the Assured any other dispute or difference between Underwriters and the Assured shall (if required by Underwriters) first be mediated

in accordance with the current CEDR (The Centre for Effective Dispute Resolution—www.cedr.co.uk) Model Mediation Procedure. Unless Underwriters and the Assured agree upon a mediator, a mediator will be nominated by CEDR. To initiate the mediation either Underwriters or the Assured must give notice in writing to the other requesting a mediation. A copy of this notice should be sent to CEDR at the same time. Where Underwriters call for mediation in accordance with this clause the Assured irrevocably agrees not to commence any court proceedings or arbitration until they have attempted to settle the dispute by mediation and either the mediation has terminated or Underwriters or the Assured has failed to participate in the mediation.

- (b) Should mediation as required by clause 22(a) fail to resolve, or not apply to, any dispute or difference between Underwriters and the Assured then notwithstanding the provisions of clause 21 Underwriters shall be entitled to direct that any such remaining dispute or difference shall be referred to arbitration in London before an arbitrator to be appointed by agreement between the parties.
- (c) In the absence of agreement within fourteen Days of a request by either party to agree to a sole arbitrator, an arbitrator who is a Member of the London Maritime Arbitrators Association shall be appointed by the President for the time being of the London Maritime Arbitrators Association at the request of either party, who shall thereafter conduct the arbitration proceedings as sole arbitrator.
- (d) The submission to arbitration and all proceedings shall be subject to the provisions of the Arbitration Acts 1950 to 1996 or any statutory re-enactment or modification thereto.
- (e) The arbitrator shall have power to admit any evidence whether legally admissible or not.
- (f) The obtaining of an arbitration award shall be a condition precedent to the right of any Assured to bring or maintain any action, suit or other legal proceedings against Underwriters including but not limited to seeking security for their claim.
- (g) Notwithstanding the provisions of sub clauses (a)–(f) above Underwriters may at any time prior to the service of claim submissions in arbitration have the right to have any dispute determined by reference to the High Court in London. Should Underwriters make such a determination then any dispute resolution procedures under way at the time shall immediately be discontinued with each party bearing their own costs incurred up to such date and the costs of any mediator or arbitrator being divided equally between them.

## 23. **CORRESPONDENCE**

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

## 24. **NOTICES**

- 24.1 Notices or any other communications required by these Terms and Conditions shall in the case of Underwriters be served to them by letter or courier addressed to Underwriters c/o Michael Else and Company Limited, 65 Leadenhall Street, London EC3A 2AD and in the case of any Assured or their successors be served to them by letter, courier, or email at the address which is the last known and used address of the Assured or upon any party or agent acting on their behalf to their registered office address.
- 24.2 In the case of joint Assureds the notice need only be served on the party first named in the Certificate of Insurance.
- 24.3 Service shall be effective in the case of post on the Day following the Day on which the letter was posted or dispatched by courier and if by electronic means the Day on which the message was transmitted.

## 25. 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>Claim(s)</b>	Any claim or claims brought by an Assured for payment from Underwriters in accordance with the Insurance.
<b>Cover</b>	Insurance cover taken out by the Assured in respect of the Insured Vessel in accordance with the Terms and Conditions and Certificate of Insurance.
<b>Day</b>	A period of twenty-four hours from Midnight to Midnight.
<b>Epidemic Disease</b>	Any disease which in the opinion of the Underwriters is an epidemic disease by reference to the time and place where it occurred.
<b>Excess</b>	The period as specified in the Certificate of Insurance and which shall apply to each and every Claim (of which there may be more than one) arising as a result of any single accident or occurrence.
<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>Hull War, Strikes Terrorism and Related Perils Listed Areas</b>	The Hull War, Strikes, Terrorism and Related Perils Listed Areas as issued by the Joint War Committee of the International Underwriting Association of London and the Lloyd's Market Association.
<b>Insurance</b>	Cover provided to an Assured in accordance with the Terms and Conditions and the Certificate of Insurance.
<b>Insured Disruption to Trade</b>	Any disruption covered under the provisions of clauses 1.1 and 11 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>	The year as stated in the Certificate of Insurance.
<b>Premium</b>	Any Premium or other sum or sums payable to the Underwriters pursuant to the provisions of the Insurance.

<b>Re-insurers</b>	Any organisation who provides re-insurance facilities of whatsoever nature to the Underwriters.
<b>Sanctions</b>	Any sanction, prohibition, restriction, or any other embargo or limitation of any kind whatsoever, whether in relation to the Insured Vessel or otherwise, imposed by a competent authority, or government under United Nations resolutions, or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.
<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>	Underwriters at Lloyd's.
<b>War Risks</b>	<p>Shall mean any one or more of the following:</p> <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> <li>(f) confiscation or expropriation;</li> <li>(g) violent theft by persons from outside the Insured Vessel;</li> <li>(h) piracy;</li> <li>(i) 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.</li> </ul>

## **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 the 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 ALWAYS 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) the perils set out below or by other international marine hull clauses that may be agreed by Underwriters and endorsed to that effect in the Certificate of Insurance:
      - (1.1) perils of the seas, rivers, lakes or other navigable waters;
      - (1.2) fire, explosion;
      - (1.4) jettison;
      - (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;
- (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, in which case there is no Insurance for any resulting disruption to trade.

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) the perils set out below or by other war and strikes clauses that may be agreed by Underwriters and endorsed to that effect in the Certificate of Insurance (subject always to clause 2.6):
  - (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;
  - (g) violent theft by persons from outside the Insured Vessel;
  - (h) piracy.
- (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) subject to clause 2.6 and save as provided in clause 1.1(b)(6)(ii)(h), acts of piracy and any consequences thereof or any attempt thereat directly targeted at, involving and affecting the Insured Vessel, excluding any physical loss or damage to the Insured Vessel, or 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), 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) subject to clause 2.6 hereof 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.
- (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 those perils 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 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).

- (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 USD ten thousand in total.
- (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) where the disruption to trade to the Insured Vessel may occur at any time up until the expiry of the period set out in clause 2.5.
- (e) Unless otherwise specified in the Certificate of Insurance compensation under clause 1.2(a) shall not exceed sixty Days (after application of the Excess period) after the relevant Insured Disruption to Trade begins.

## **2. LIMITATIONS OF COVER**

### **THE FOLLOWING RISKS ARE NOT COVERED BY THIS INSURANCE**

#### **2.1 Scope of Disruption to Trade Cover**

There is no Insurance, 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 actual 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.

#### **2.2 War, Piracy and Terrorism**

Save as expressly set out in clause 1.1(b) there is no Insurance for any disruption to trade or any other Claim whatsoever arising out of, from or 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) arrest, restraint, detainment, confiscation or expropriation by reason of infringement of any customs or trading regulations;
- (6) violent theft by persons from outside the Insured Vessel;
- (7) piracy.

### 2.3 **Prevailing and Pre-existing Circumstances, Conduct and Failure to Comply**

There is no Insurance for actual physical loss of or damage to the Insured Vessel or injury to or death of passengers, or any disruption to trade or any other Claim whatsoever arising out of, from, or directly or indirectly caused or contributed to, by, or consequent upon:

- (1) the trade, voyage or operation upon which the Insured Vessel was engaged being unduly hazardous or otherwise imprudent;
- (2) loss arising from the operation of ordinary judicial process, any debt, insolvency, failure to pay any fine or penalty, failure to provide any bond or security (whether under court order or otherwise), or any other financial cause;
- (3) loss arising from any failure of the Assured or of his agent(s) to comply with the laws of any jurisdiction in which such Assured or agent(s) is incorporated or has a place of business or in which the passenger(s) or the Insured Vessel is at any time located;
- (4) loss arising from any failure of the Assured or his agent(s) to obtain all necessary permits and authorisations;
- (5) loss arising out of or in any way contributed to by the wrongful act, negligence or wilful misconduct of the Assured or his agent(s) (other than negligence referred to in clause 1.1(b)(6));
- (6) any delay in dry-docking or repairs or redelivery of the Insured Vessel from dry-docking or repairs, unless specifically agreed by Underwriters;
- (7) loss where 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);
- (8) loss where the Insured Vessel was carrying contraband or was involved in blockade-running;
- (9) loss where the Insured Vessel was employed in any unlawful trade or used in any unlawful manner;
- (10) any delay caused by disputes arising out of any contract with the Assured;
- (11) cancellation, abandonment or curtailment of consecutive voyages due to insufficient financial resource, financial default or insolvency of the Assured;
- (12) any disruption to trade other than the disruption to trade caused directly by the relevant insured peril(s) under clauses 1.1(b) and 11;
- (13) 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;
- (14) the Assured failing to comply with his obligations under this Insurance;
- (15) any occurrence or series of occurrences resulting in the Insured Vessel becoming 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 fifteen per cent 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;

- (16) any occurrence or series of occurrences resulting in the Insured Vessel being considered an arranged loss or compromise total loss or compromise constructive total loss;
- (17) the Assured and/or his agent(s) having failed 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;
- (18) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind, or any action taken by any party in response to any of the above, including but not limited to investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins;
- (19) the issue of any governmental or regulatory order, requirement, directive, mandate, decree or other direction that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind;
- (20) the Assured having failed to comply with any recommendations, conditions, restrictions or requirements following any port state investigation or inspection;
- (21) 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.

#### **2.4 Radioactive**

There is no Insurance for any disruption to trade or any other Claim whatsoever arising out of, from, or directly or indirectly caused or contributed to, by or consequent upon:

- (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.

#### **2.5 Disruption to Trade After the Period of Cover**

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 there is no Insurance for any disruption to trade to the Insured Vessel occurring more than eighteen Months after the Period of Cover has ended, irrespective of whether or not such disruption to trade began before the eighteen Months ended or was continuing at the time when the eighteen Months ended.

## 2.6 **Listed Areas**

Where the Insured Vessel is within the territorial waters of any countries or places which may from time to time be included in the Hull War, Strikes, Terrorism and Related Perils Listed Areas, there shall be no Cover under clauses 1.1 (b)(6)(ii), 1.1(b)(9) and 1.1(b)(22) of these Terms and Conditions 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 Hull War, Strikes, Terrorism and Related Perils Listed Areas as aforesaid) the territorial waters of any countries or places which may from time to time be included in the Hull War, Strikes, Terrorism and Related Perils Listed Areas and Underwriters decide to reinstate, in whole or in part, Cover as otherwise excluded above and have charged the Assured an additional Premium in respect thereof.

## 2.7 **Cyber and Computer Issues**

- (a) Subject only to clause 2.7 (c) below, in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.
- (b) Subject to the conditions, limitations and exclusions of this policy wording, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.
- (c) Where this Insurance covers risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, clause 2.7 (a) 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.

## 2.8 **Sanctions**

There is no Insurance where support, assistance, involvement, payment (whether in respect of any Claim, or settlement of disbursements or accounts of any third party), or other benefit to an Assured of whatever nature, may expose Underwriters, the Re-Insurers, or Managers to Sanctions.

## 2.9 **Repeated Breach**

There is no Insurance where the Assured has breached a provision of these Terms and Conditions on more than one occasion and has previously been put on notice of such breach by the Underwriters. In addition in such circumstances the Underwriters will be entitled to give the Assured written notice that should the same breach occur again subsequent to the service of such written notice, they will be entitled to cancel the Insurance with immediate effect and retain all Premium paid. In addition Underwriters will still remain entitled to claim from the Assured any sums due.

## 2.10 **Classification and Statutory**

There is no Insurance where the Assured is the owner, manager or the bareboat, time, or voyage charterer of the Insured Vessel unless:

- (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) are in compliance 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 any amendments thereto) and which are in force during the Period of Cover; and

- (c) the Assured promptly reports, 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
- (d) the Assured complies with all and 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
- (e) 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
- (f) 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; and
  - (2) a copy of the current Document of Compliance (DOC) as referred to in the ISM Code; and
  - (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; and
  - (4) a copy of the ISM Code system for the Assured and the Insured Vessel; and
  - (5) if the Assured is the time or voyage charterer of the Insured Vessel, in addition to any other documents which the Assured is required to provide to Underwriters on request, 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; and
- (g) the Assured complies with all directions, recommendations, reporting requirements and procedures set out in the ISM Code documentation for the Assured and the Insured Vessel and complies with the ISM Code system in place.

## 2.11 Epidemic Disease

There is no Insurance for any disruption to trade or any other Claim whatsoever arising out of, from or directly or indirectly caused or contributed to, by or consequent upon any Epidemic Disease.

## 2.12 Electronic Data Recognition

There is no Insurance for any disruption to trade or any other Claim whatsoever arising out of, from, or directly or indirectly caused or contributed to, by or consequent upon:

- (a) 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;

- (b) 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;
- (c) 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 (a) and/or (b) above.

### 3. OBLIGATIONS OF THE ASSURED IN RESPECT OF CLAIMS

- (a) Any occurrence or circumstance which is likely to give rise to a Claim shall be immediately notified in writing to Underwriters.
- (b) The Assured shall (at their cost and expense) immediately supply and preserve all documents, information, or evidence (such terms to include all electronically stored documentation, email, text message, metadata or other such electronic documentation or records, physical evidence, samples, machinery, parts or equipment) including evidence on oath, as Underwriters may require and until they determine that any preservation is no longer required.
- (c) 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 Underwriters' 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.

- (d) 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 unless he has obtained prior approval in writing from Underwriters (which they may grant or refuse on such terms as they may think fit).
- (e) There is no Insurance unless the Assured has complied with their obligations under this clause 3.

### 4. CLAIMS HANDLING

- 4.1 Acceptance of liability by Underwriters in respect of a Claim shall be notified to the Assured in writing by the 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 provision of such a notice.
- 4.2 Underwriters shall be entitled 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.
- 4.3 Underwriters may at any time appoint and employ, or discharge or discontinue such employment or engagement, on behalf of the Assured upon such terms as they think fit, surveyors, lawyers, adjusters or other



persons, both within and outside the United Kingdom, for the purpose of investigating, handling or otherwise dealing with any matter giving rise, or liable to give rise, to a Claim and all such persons shall be under the following obligations:

- (a) to retire from a matter where they consider that a conflict of interest has arisen or may arise between the Assured and the Underwriters.
  - (b) to report directly to Underwriters and produce to Underwriters any documents or information in their possession or power relating to any Claim without prior reference to the Assured, in the same manner as if they had been appointed to act and had at all times been acting on Underwriters behalf and whether or not any such documents or information would otherwise be the subject of legal or any other form of privilege which by entering into this Insurance the Assured has waived.
- 4.4 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. 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 Insurance or in respect of the Claim. Notwithstanding any payment on account these Terms and Conditions and the Certificate of Insurance will continue to be binding and to apply.
- 4.5 Underwriters shall be entitled 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 16(b) against Claims payments in respect of sums due.
- 4.6 Section 13A of the Insurance Act 2015 is excluded and accordingly all terms of the contract of insurance between the Underwriters and any Assured shall not be subject to nor shall Underwriters be in breach of any implied term that it will pay any sums due in respect of a Claim within a reasonable time save where the breach is deliberate or reckless. This provision is without prejudice to any other rights or remedies of the Underwriters in these Terms and Conditions including rights of set off, limitation or withholding of payment.
- 4.7 It is a condition precedent of this Insurance that the Assured and any broker or other agent engaged by them have complied with their duty of fair presentation and have disclosed all the information which would influence the judgement of a prudent underwriter in determining whether to issue this Insurance on the terms set out in these Terms and Conditions and the relevant Certificate of Insurance. Should information later be disclosed or become known which shows that there was not a fair presentation, even if innocent, the Underwriter will not be bound by the terms of this Insurance the condition precedent having been breached with the result that the Insurance will be void from inception. In such circumstances the Underwriter shall be entitled to retain any Premium paid against the costs of any Claims paid and to the extent the amount of Claims paid exceeds the value of such Premium to be entitled to recover from the Assured the balance of any Claims paid. In addition Underwriters will remain entitled to claim from the Assured any sums due.

## 5. **INTEREST**

There is no Insurance for interest on the Assured's Claim whether before, after, or irrespective of whether any judgment and/or arbitration award has or will be made.

## 6. **FRAUD**

- 6.1 If an Assured makes any Claim which he knew, or ought to have known, was false or fraudulent in any respect, or where the Assured has intentionally made a false or untrue statement in support of any Claim, including but not limited to the background, factual nexus, circumstances, evidence or amount claimed, Underwriters will not be liable for the Claim and will be entitled to recover from the Assured any sums previously paid in respect of the Claim.

6.2 In addition to their rights under clause 6.1 Underwriters will in addition be entitled to give notice that the Insurance is terminated from the time of the fraudulent act with the result that they will be under no liability for any event occurring after the time of the fraudulent act.

6.3 Underwriters shall be under no obligation to return Premium in any circumstances covered by clauses 6.1 and 6.2.

## 7. **EXCESS**

7.1 No Claim shall be payable under this Insurance unless the Claim for each separate occurrence exceeds the Excess as specified in the Certificate of Insurance. There is no Insurance for the Excess.

7.2 The Excess shall start to count from the moment when there is an Insured Disruption to Trade irrespective of whether the insured peril which gave rise to the Insured Disruption to Trade occurred at an earlier date.

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

### 8.1 **Deferred Repairs**

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

### 8.2 **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.

### 8.3 **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 8.2, but the Excess period shall not begin until the time when the aforesaid damage repairs commence, or when the Insured Vessel suffers an Insured Disruption to Trade, whichever is the later.

## 9. **DUTY OF FAIR PRESENTATION**

9.1 It is the duty of the Assured and any broker retained by them to disclose all information which they ought to know and which would have been revealed by a reasonable search of information and documentation which may influence the judgement of a prudent underwriter in determining whether to accept the Insured Vessel and place the Insurance on the terms and for the amount of Premium set out in these Terms and Conditions and the relevant Certificate of Insurance.

- 9.2 The Assured's attention is specifically drawn to the queries raised during the application process concerning any special or unusual facts relating to the risks covered by the Insurance, the purpose for which the Assured seeks the Insurance and any material factors.
- 9.3 The Insurance has been placed in reliance upon the Assured's and their broker's confirmation that they have conducted a reasonable search of all information which is available to them which includes the personal knowledge of all senior management, insurance and claim management, designated person (as set out in the ISM Code), risk management, survey, technical and operations departments.
- 9.4 The Underwriters shall be entitled to refuse any application for Insurance where the Assured or their broker have failed to comply with any of the duties set out under sub clauses (9.1) – (9.3) above and further be entitled to restrict the level of Cover provided and/or charge an additional Premium where relevant information is disclosed or discovered following the issuance of the Insurance.

## 10. **TIME BAR**

It is a condition precedent to the Assured's right to recovery of any Claim that they have provided to Underwriters all available and necessary information concerning the Claim accompanied by all relevant documents (to include all electronically stored documentation, email, text message, metadata or other such electronic documentation or records) available to the Assured within nine Months from the date on which the relevant disruption to trade began.

## 11. **ADDITIONAL COVER**

Underwriters may provide cover at their discretion for additional perils on terms to be agreed in writing between the Underwriters and the Assured.

## 12. **TERMINATION OF INSURANCE**

- 12.1 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 the commencement of Chapter 11 proceedings before any appropriate court in the United States of America, 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 seven Days from Midnight at the end of the Day on which notice of cancellation was issued by Underwriters;
- (e) where in the opinion of Underwriters or Managers continuing with the Insurance of any Insured Vessel will expose either of them or the Re-Insurers to Sanctions;
- (f) where the Assured has been served with a notice in accordance with clause 2.9 and has again breached a provision of these Terms and Conditions or any Certificate of Insurance following the service of such notice.

12.2 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 owned Insured Vessel, at the time when the Assured was divested of his ownership or share in the Insured Vessel by transfer 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, or agreement between such underwriters and the Assured that the Insured Vessel shall be considered an arranged loss or compromise total loss or compromise constructive total loss;
  - (3) immediately on the Insured Vessel being missing for ten Days from the date she was last heard of, or, from her being posted at Lloyd's as missing, whichever shall be the earlier.

12.3 When the Insurance of the Insured Vessel terminates under clause 12.1(a),(b),(d) or (f) 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.

12.4 When an Assured ceases to be insured by virtue of clause 12.1(c) or (e) then there shall be no Insurance in respect of any Insured Vessel for any Claims 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.

12.5 When the Insurance of any Insured Vessel terminates under clause 12.2 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.

12.6 All obligations of the Assured and rights of termination set out in clauses 12.1 (c), (e), (f), 12.3 and 12.4 above shall apply equally to each individual Assured named in the Certificate of Insurance and any joint Assured as described in clause 19 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.

### 13. **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.

### 14. **ASSIGNMENT**

No Insurance provided by Underwriters and no other right, benefit or interest under these Terms and Conditions, or under any contract between Underwriters and any Assured may be assigned without the written consent of Underwriters on such terms as they may agree.

### 15. **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) All and any rights in subrogation as set out in this clause or available to Underwriters as a matter of law shall survive and remain binding upon an Assured even following a termination of the Insurance as provided for in clause 12.

### 16. **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 any amount due from an Assured to Underwriters. Underwriters may 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.

## 17. PAYMENTS AND RETURNS

### 17.1 Payment of sums due

- (a) The Assured shall be bound to pay and shall pay to Underwriters at such time as Underwriters may determine such sums as fall due in accordance with the Terms and Conditions and Certificate of Insurance or as have been agreed with Underwriters.
- (b) Payment of any sums whatsoever due to Underwriters by the Assured shall not be treated as paid to Underwriters until such time as the sums due have been received by Underwriters as cleared funds in their account.
- (c) The Assured shall upon demand reimburse the Underwriters such sum or sums as the Underwriters have paid on his behalf, or to him, in respect of a Claim or any other liability subsequently found not to be covered by the Insurance, or where due to Underwriters subsequently becoming aware of a breach of these Terms and Conditions any such payment should not have been made.
- (d) Without prejudice to the rights and remedies of Underwriters under these Terms and Conditions including but not limited to clauses 12 and 13, if any sum whatsoever due to Underwriters from an Assured is not paid by such Assured to Underwriters on or before the date specified for payment then Underwriters shall be entitled to charge interest at a rate of two per cent over the London Interbank Offered Rate (LIBOR) from such Assured on the amount not paid for the period over which such sum remains due and unpaid.

### 17.2 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 ninety-five 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 disruption to trade 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 fifty 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 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 and any Claim made in writing within six Months of the Insured Vessel ceasing to be so laid up and unemployed.

- (d) It is a condition precedent of the Assured's right to make a recovery under this section that they have notified Underwriters in writing when the period of such lay-up and unemployment ends. A provisional adjustment will be effected when the next Premium is charged and any further adjustment (if required) will be effected as soon as practicable thereafter.

## 18. **FORBEARANCE**

No act, omission, course of dealing, forbearance, delay or indulgence of any kind whatsoever by Underwriters or by anybody acting on Underwriters' behalf shall be treated as a waiver of any of Underwriters' rights.

## 19. **JOINT INSURANCE**

19.1 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;
- (b) for any failure to perform the obligations of any one or more of such Assureds under this Insurance including the failure to comply with the duty of fair presentation as set out in clause 9 above 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.

19.2 Receipt by any one of such Assureds of any sums payable under the Insurance shall be sufficient discharge of Underwriters' liability to all Assureds.

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

19.4 The provisions of this clause shall apply regardless of whether or not the Insured Vessel(s) is/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 may disallow any one or more of the provisions of this clause.

## 20. **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.

## 21. **LAW**

21.1 These Terms and Conditions, any Certificate of Insurance, and any non-contractual obligations arising out of or in connection with the same shall be governed by and construed in accordance with English Law.

21.2 Save for circumstances where there is a different choice of law and jurisdiction recorded in the Certificate of Insurance, the Assured irrevocably agrees, for the exclusive benefit of the Underwriters, that the English courts shall have jurisdiction in relation to any dispute and any suit, action or proceeding which may arise out of, or in connection with, the Insurance and for such purposes irrevocably submits to the jurisdiction of such courts.

21.3 Nothing in this clause shall affect the right of Underwriter's to serve process in any manner permitted by law or limit the right of Underwriter's to institute legal proceedings against the Assured in any other court of competent jurisdiction, nor shall the institution of legal proceedings in one or more jurisdictions preclude Underwriters from instituting legal proceedings in any other jurisdiction whether concurrently or not.

21.4 The Assured shall not commence any legal proceedings in any country other than England in relation to any matter arising out of, or in connection with, this Insurance and the Assured irrevocably waives any objection which it may now, or at any other time have, on the grounds of inconvenient forum or otherwise, to legal proceedings being brought in any court referred to in this clause and further irrevocably agrees that a judgment or order in any legal proceedings brought in the English courts shall be conclusive and binding upon them and may be enforced without review in the courts of any other jurisdiction.

21.5 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.

## 22. **DISPUTE RESOLUTION**

- (a) Save for any claim by Underwriters in relation to sums due and owing by the Assured any other dispute or difference between Underwriters and the Assured shall (if required by Underwriters) first be mediated in accordance with the current CEDR (The Centre for Effective Dispute Resolution – [www.cedr.co.uk](http://www.cedr.co.uk)) Model Mediation Procedure. Unless Underwriters and the Assured agree upon a mediator, a mediator will be nominated by CEDR. To initiate the mediation either Underwriters or the Assured must give notice in writing to the other requesting a mediation. A copy of this notice should be sent to CEDR at the same time. Where Underwriters call for mediation in accordance with this clause the Assured irrevocably agrees not to commence any court proceedings or arbitration until they have attempted to settle the dispute by mediation and either the mediation has terminated or Underwriters or the Assured has failed to participate in the mediation.
- (b) Should mediation as required by clause 22(a) fail to resolve, or not apply to, any dispute or difference between Underwriters and the Assured then notwithstanding the provisions of clause 21 Underwriters shall be entitled to direct that any such remaining dispute or difference shall be referred to arbitration in London before an arbitrator to be appointed by agreement between the parties.
- (c) In the absence of agreement within fourteen Days of a request by either party to agree to a sole arbitrator, an arbitrator who is a Member of the London Maritime Arbitrators Association shall be appointed by the President for the time being of the London Maritime Arbitrators Association at the request of either party, who shall thereafter conduct the arbitration proceedings as sole arbitrator.
- (d) The submission to arbitration and all proceedings shall be subject to the provisions of the Arbitration Acts 1950 to 1996 or any statutory re-enactment or modification thereto.
- (e) The arbitrator shall have power to admit any evidence whether legally admissible or not.
- (f) The obtaining of an arbitration award shall be a condition precedent to the right of any Assured to bring or maintain any action, suit or other legal proceedings against Underwriters including but not limited to seeking security for their claim.
- (g) Notwithstanding the provisions of sub clauses (a)–(f) above Underwriters may at any time prior to the service of claim submissions in arbitration have the right to have any dispute determined by reference to the High Court in London. Should Underwriters make such a determination then any dispute resolution procedures under way at the time shall immediately be discontinued with each party bearing their own costs incurred up to such date and the costs of any mediator or arbitrator being divided equally between them.

## 23. **CORRESPONDENCE**

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



## 24. NOTICES

- 24.1 Notices or any other communications required by these Terms and Conditions shall in the case of Underwriters be served to them by letter or courier addressed to Underwriters c/o Michael Else and Company Limited, 65 Leadenhall Street, London EC3A 2AD and in the case of any Assured or their successors be served to them by letter, courier, or email at the address which is the last known and used address of the Assured or upon any party or agent acting on their behalf to their registered office address.
- 24.2 In the case of joint Assureds the notice need only be served on the party first named in the Certificate of Insurance.
- 24.3 Service shall be effective in the case of post on the Day following the Day on which the letter was posted or dispatched by courier and if by electronic means the Day on which the message was transmitted.

## 25. 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>Claim(s)</b>	Any claim or claims brought by an Assured for payment from Underwriters in accordance with the Insurance.
<b>Cover</b>	Insurance cover taken out by the Assured in respect of the Insured Vessel in accordance with the Terms and Conditions and Certificate of Insurance.
<b>Day</b>	A period of twenty-four hours from Midnight to Midnight.
<b>Epidemic Disease</b>	Any disease which in the opinion of the Underwriters is an epidemic disease by reference to the time and place where it occurred.
<b>Excess</b>	The period as specified in the Certificate of Insurance and which shall apply to each and every Claim (of which there may be more than one) arising as a result of any single accident or occurrence.
<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>Hull War, Strikes Terrorism and Related Perils Listed Areas</b>	The Hull War, Strikes, Terrorism and Related Perils Listed Areas as issued by the Joint War Committee of the International Underwriting Association of London and the Lloyd's Market Association.
<b>Insurance</b>	Cover provided to an Assured in accordance with the Terms and Conditions and the Certificate of Insurance.
<b>Insured Disruption to Trade</b>	Any disruption covered under the provisions of clauses 1.1 and 11 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>	The year as stated in the Certificate of Insurance.
<b>Premium</b>	Any Premium or other sum or sums payable to the Underwriters pursuant to the provisions of the Insurance.
<b>Re-insurers</b>	Any organisation who provides re-insurance facilities of whatsoever nature to the Underwriters.
<b>Sanctions</b>	Any sanction, prohibition, restriction, or any other embargo or limitation of any kind whatsoever, whether in relation to the Insured Vessel or otherwise, imposed by a competent authority, or government under United Nations resolutions, or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.
<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>	Underwriters at Lloyd's.
<b>War Risks</b>	<p>Shall mean any one or more of the following:</p> <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> <li>(f) confiscation or expropriation;</li> <li>(g) violent theft by persons from outside the Insured Vessel;</li> <li>(h) piracy;</li> <li>(i) 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.</li> </ul>