



Sunderland Marine

Marine Insurance Company Limited

## SMMI - GENERAL CONDITIONS

### 1. INSURANCE

- 1.1 By the issue of a Certificate of Insurance to the Insured the Company undertakes to indemnify the Insured, **in the manner and to the extent set out in these General Conditions and subject to the terms and provisions of the Certificate of Insurance itself**, against loss incurred during the Period of Insurance directly as the result of the perils insured against. In the event of any conflict between these General Conditions and the terms and conditions of the applicable Certificate of Insurance the latter shall prevail.
- 1.2 Proposal and acceptance of the insurance shall constitute the Insured as a Member of the Company. The Insured's rights and obligations as a Member of the Company are set out in the Company's Memorandum of Incorporation and Articles of Association (both as they may be revised from time to time) and are separate from the rights and obligations arising under the insurance provided by the Company.
- 1.3 Each successive Period of Insurance shall be regarded on expiry and renewal as subject to a separate contract of insurance and not as a continuation of a pre-existing contract.

### 2. BASIS OF COVERAGE - THE DUTY OF UTMOST GOOD FAITH

- 2.1 In agreeing to provide coverage of a particular risk or set of risks during a Period of Insurance the Company relies entirely on the accuracy and completeness of the description by the Insured (or as applicable by the broker concerned acting as the agent of the Insured) of the true nature and extent of the risk both immediately before and during the Period of Insurance. The duty of the Insured to bring promptly to the attention of the Company on first proposing a risk for insurance and on each successive renewal of that insurance **each and every material fact** which could affect the judgement of the Company's underwriters in accepting or rating the risk, or deciding whether or not to continue to provide coverage, and if so on what terms, is **absolute** and continues throughout the Period of Insurance.

- 2.2 The consequence of any breach **before** the inception of the Period of Insurance of the Insured's duty of full and accurate disclosure of all material circumstances affecting the risk will be to give the Company the right to **avoid the insurance** from its inception.
- 2.3 The consequence of any breach of the Insured's duty promptly to make full disclosure **after** the inception of the Period of Insurance of any material change in the circumstances of the insured or affecting the risk shall be to entitle the Company immediately by written notice to **cancel** the insurance with effect on and from the date of its discovery of the material change of circumstances and to reject any claim arising on or after the date on which the material change of circumstances took place.
- 2.4 Should the Insured, or any person acting on the Insured's behalf, make a less than full, fair and frank presentation of all the true circumstances of a loss in the context of making or pursuing a claim for indemnity from the Company, then the Company shall have the right:
- 2.4.1 to reject that claim in its entirety; and
- 2.4.2 to recoup from the Insured any monies paid by way of indemnity or otherwise in connection with the loss in question to the Insured or to any third party; and
- 2.4.3 by written notice to **cancel** the insurance with effect on and from the date on which the loss in question is said to have occurred.
- 2.5 Where there are two or more Insureds interested in the same risk they shall each be jointly and severally liable to discharge the duties of the Insured.

### 3. **SPECIFIC UNDERTAKINGS BY THE INSURED**

- 3.1 The Insured expressly **warrants**:
- That **due diligence** will be exercised throughout the Period of Insurance to maintain all insured property in good condition and fit for use for the purpose for which it is intended; and if the insured property is a Vessel that due diligence will be exercised to ensure that it is seaworthy and properly equipped and manned for its intended employment; and

- That insured property will be used only for lawful purposes, for purposes for which it was designed and intended, and in a manner which complies with all applicable governmental rules and regulations whether statutory or otherwise, and only as declared in the application for insurance; and if the insured property is a Vessel that it will be kept in full compliance with the practices and standards of its state of registry, and will only be navigated within the limits detailed in the Certificate of Insurance.
- That any surveyors or assessors instructed by the Company to inspect the subject matter of the insurance will be permitted access to that subject matter without let or hindrance at any time of their choosing.

3.2 The consequence of any breach of any part of these warranties or any other warranties arising by operation of law or pursuant to the terms of the applicable Certificate of Insurance issued by the Company will be to entitle the Company to **reject any claim** in respect of any loss incurred between the date of the breach and the date of its rectification, whether or not the loss concerned occurs directly as a result of the breach.

#### 4. **PREMIUMS**

4.1 Each instalment of premium due to the Company must be paid to the Company in full without set-off or deduction of any kind by the **Due Date** stated on the Company's invoice.

4.2 The consequence of failure to pay premium by the Due Date will be:

- To entitle the Company to **withhold payment** of any claim then outstanding and to **reject any claim** in respect of any loss incurred after the Due Date; and
- Unless the late premium together with interest at a commercial rate set at the Company's discretion is subsequently received within a reasonable period, also determined by the Company at its sole discretion, to entitle the Company to **cancel** the insurance with effect from the Due Date.

#### 5. **CLAIMS**

- 5.1 **Notice** of the occurrence of any event likely to lead to a claim on, or for the support of, the Company must be given to the Company as **soon as possible** after the event has occurred. Notice should be given first by telephone and then promptly confirmed in writing.
- 5.2 The Insured must comply **promptly** with all instructions issued by the Company in connection with the handling of the consequences of any loss event, and also with all requests made by the Company for the provision of vouchers, survey reports, loss adjustments and other documents or information in support of or in connection with a claim.
- 5.3 The Insured must **not**, without having first obtained the express written authority of the Company to do so, admit any form of liability in any degree, nor settle or compromise any claim in respect of which indemnity will be sought from the Company.
- 5.4 The consequence of any breach by the Insured of any of the obligations set out in this clause will be to entitle the Company to **reject the claim** concerned or to **restrict** the amount of the indemnity payable to the Insured to a value that it in its sole discretion deems appropriate.
- 5.5 When the Insured is entitled to **limit** any liability arising from a loss event, the maximum amount of indemnity payable by the Company shall be restricted to the limitation figure irrespective of any waiver of the right of limitation by the Insured whether by contract or otherwise.
- 5.6 When a claim on the Company arises out of the loss of or physical damage to insured property, the Company shall have the **option**, exercisable in its sole discretion, either to **reinstate** the Insured Property or to pay **indemnity** by reference to the realisable immediately pre-damage market value of the property concerned or the cost of its repair.
- 5.7 In no case will the Company provide indemnity in respect of any loss, liability, costs or expenses which either:
- Is or are recoverable under any other insurance taken out by the Insured, or
  - Would have been recoverable under any such other insurance had that other insurance not contained any terms excluding or limiting

the liability of the other insurer on the grounds of **double insurance**.

5.8 In no case will the Insured be entitled to **interest** on any indemnity payment from the Company.

5.9 Where two or more persons are named as the Insured, and are therefore “Co-Insureds” under the Certificate of Insurance, the Company shall, before making any indemnity payment, be entitled to establish that each such person is agreed that the payment shall be made to a particular nominated account. If no such agreement is forthcoming within what the Company in its sole discretion regards as a reasonable time, it shall be entitled to discharge its liability in full by crediting the payment to an escrow account and leaving it to the Co-Insureds subsequently to determine either by agreement between themselves or by reference to the courts or other dispute resolution process to what extent each of them is entitled to benefit from that payment.

5.10 Where the person entitled to benefit from a payment to be made by the Company under the insurance has died or is incapacitated, the Company shall be entitled fully to discharge its liability to the beneficiary by making that payment to the beneficiary’s legally accredited personal representatives.

## 6. **TERMINATION OF INSURANCE “WITHOUT CAUSE” BY THE INSURED OR BY THE COMPANY**

6.1 The **Insured** may, for its own reasons, terminate the insurance at any time by giving the Company 28 clear days **notice in writing** to that effect and shall then be entitled to the return or any unearned premium calculated in accordance with the applicable termination scale.

6.2 **The Company** may also terminate the insurance at any time if, for its own reasons, it does not wish to continue to underwrite the risk(s) insured. In this case the Company will give the Insured at least 28 days clear **notice in writing** of its intention to terminate so that alternative cover can be arranged and will refund any unearned premium as at the termination date pro-rata to its time on risk.

## 7. **CANCELLATION OR AMENDMENT OF INSURANCE BY THE COMPANY**

- 7.1 On being properly notified during the Period of Insurance as required by 2.1 above of a **material change in the circumstances** of the Insured or affecting the risk, the Company may in its sole discretion decide either to continue the insurance, or to cancel it, or to amend its terms.
- 7.2 The consequence of the decision by the Company to **cancel** the insurance shall be that the insurance will cease on a specific date being not less than 14 days after the dispatch of written notice to that effect to the Insured or the broker through whom the insurance was originally placed. In this event the Insured shall be entitled to the return of any unearned premium calculated as at the effective Date of Cancellation pro rata to time on risk.
- 7.3 The consequence of a decision to **amend the terms** of the insurance, which may include shortening the Period of Insurance, shall be that the amended terms proposed by the Company shall apply from the date of the material change of circumstances, and that the Insured has a specified period of time being not less than 14 days from the dispatch (as above) of notice to that effect in which to agree the terms on which the insurance shall continue. If the Insured fails to reach agreement with the Company as to continuing terms within the specified period, then the insurance shall **automatically be cancelled** at the end of that period, and the Insured shall be entitled to the return of any unearned premium calculated as at the effective Date of Cancellation in accordance with the applicable termination scale.
- 7.4 If, where appropriate according to the nature of the insurance provided, insured property is accepted by the Company to have become an actual or constructive **total loss**, or it is agreed by the Company and the Insured that it shall be accepted as a compromised or arranged total loss, then coverage in respect of the property concerned shall cease from the time of such acceptance, except that (but only where liability coverage is part of the insurance provided) the Insured shall remain entitled to indemnity for liabilities, costs and expenses covered by the Company and arising directly from the event which gave rise to the total loss itself.

## 8. **COMMUNICATION AND NOTICES**

- 8.1 All notices which the Insured is required to give to the Company shall be sent to the office address stated in the Certificate of Insurance. The delivery by the Insured of any such notice to an intermediary, broker, or other agent

acting on the Insured's behalf is ineffective for these purposes unless and until perfected by onward delivery to the Company.

8.2 All notices which the Company is required to give to the Insured shall for all purposes be deemed to be valid if they are sent by it, or by the Managers on its behalf, to the Insured at the address, and using the details, stated on the Insured's proposal or other application for insurance, or, if applicable, the latest renewal form or change of address advice provided by the Insured. It is the responsibility of the Insured to keep the Company advised of any change of address. In the event that the Insured is a partnership, the sending by the Company of a notice to the partnership's last notified place of business, or alternatively (if no such place of business has been specified) to the last known home address of any one of the partners, shall be deemed for all purposes to constitute due delivery of that notice to all of the members of the partnership.

8.3 All notices must be in writing and sent by first class post and, if internationally, by airmail. Any notices sent by e-mail or by fax must be confirmed in writing.

#### 9. **NON-WAIVER**

In certain circumstances when it seems to it in its sole discretion to be appropriate to do so, the Company may decide not to exercise, either at all or to some extent, one or more of the rights which are given to it by the terms of the insurance. In the event that it does so, and whatever form such decision may take, no relaxation of the Company's insistence on exercising its rights to the full shall in any way constitute any form of **precedent** binding upon the Company in respect of any future claims, nor may it be relied upon by the Insured in any dispute with the Company over a claim.

#### 10. **ASSIGNMENT**

The Insured may **assign the benefit** of the insurance to a mortgagee or similar person for a similar purpose, but no such assignment shall in any way be binding on the Company unless and until the Company has approved the assignment in writing both to the assignor and to the assignee.

#### 11. **GENERAL EXCLUSIONS**

- 11.1 Without prejudice to any specific exclusions of, or limitations on, the Company's liability to provide indemnity in relation to particular classes of insurance, as set out in the applicable Certificate of Insurance or any clauses or special terms endorsed on the Certificate of Insurance, no insurance provided by the Company covers, and the Company will in no circumstances whatsoever provide indemnity to any Insured or any person claiming through or in or by association with that Insured in respect of, any loss:
- 11.1.1 directly or indirectly caused by war, invasion, acts of foreign enemies (whether war be declared or not), acts of terrorism (whether directed at the Insured or the Insured's property or otherwise), civil war, rebellion, revolution, insurrection, subversion of or protest or demonstration against the established order, mutiny, riot, strike, lock out, acts of sabotage (whether carried out for political or other reasons), civil commotion, military usurpation of power, confiscation, commandeering, requisition, or damage or destruction by any government de jure or de facto or by any public authority;
  - 11.1.2 by reason of any wilful act of the Insured or any of the Insured's employees or persons whom the Insured has invited on to the Insured's premises or property;
  - 11.1.3 by reason of sonic bangs and their subsequent effects;
- 11.2 In no case shall this insurance cover loss, damage, liability or expense directly caused by or contributed to by or arising from:
- 11.2.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
  - 11.2.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
  - 11.2.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
  - 11.2.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. [The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear

fuel, when such isotopes are being prepared, carried, stored or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.]

11.3 In no case shall this insurance cover loss, damage, liability or expense directly caused by or contributed to by or arising from:

11.3.1 Any chemical, biological, bio-chemical or electromagnetic weapon:

11.3.2 The use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or any other electronic system.

## 12. **MEDIATION, ARBITRATION AND GOVERNING LAW**

12.1 The Contract of Insurance between the Insured and the Company is governed by and is to be construed in accordance with **English law and practice** and in particular, except to the extent specifically contradicted in the policy documentation, by the Marine Insurance Act 1906.

12.2 If any dispute or difference arises between the Company and the Insured concerning the construction of the Contract of Insurance or the validity or value of any claim on the Company by the Insured, such dispute or difference must be referred to **Mediation** in London or elsewhere as agreed. The Mediation must be agreed upon by the parties within 14 days of one party requesting the appointment of a Mediator. Unless otherwise agreed the parties will share the cost of the Mediation equally. The use of Mediation will not be construed under any legal doctrine adversely to affect the legal rights of either party, and in particular either party may seek an injunction or other preliminary or ancillary judicial relief at any time that it consider that such action is necessary to protect its interests. Should the parties fail to resolve their differences or disputes through Mediation then it will be referred to two **Arbitrators** in England or elsewhere as agree (one to be appointed by the Company and the other by the Insured) and an Umpire to be appointed by the Arbitrators, and the submission to Arbitration will be subject to the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

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