



## **Freight Demurrage and Defence Insurance (FD&D) Terms and Conditions**

This insurance product can only be part of a Charterers Liability Insurance policy and not as a stand alone cover.

### **SCOPE OF COVER**

#### **CLAUSE 1**

An Assured only has Insurance for legal cost and expense incurred by him if the event, claim or dispute giving rise thereto in connection with an Insured Ship; and during the Policy Period; and in his capacity as Charterer, of a Insured Ship.

An Assured who has an Insured Ship in this Cover is bound to pay Premium to the Underwriters in accordance with the provisions of these Terms and Conditions and the relevant Certificate of Insurance.

#### **CLAUSE 2**

Financial limitation of the Underwriters liability

The liability of the Underwriters in respect of each accident or occurrence relating to an Insured Ship giving rise to one or more claims under these Terms and Conditions shall be limited to the sum set out in the insurance Certificate

All claims under this insurance is subject to a minimum deductible of one quarter (twenty-five per cent) of all claims in respect of legal cost and expense incurred.

## CLAUSE 3

### **Risks covered**

This Insurance is limited to cover legal cost and expenses only relating to or incidental to any legal or arbitration or other proceedings which an Assured may take or defend with the support of the Underwriters for the purpose of asserting or defending any of the claims specified in part 1 to 17 of this Clause, including any such costs relating to or incidental to any of the legal or other proceedings specified in part 15 and 17 of this Clause to which an Assured may be a party or at which he may be represented, in both cases with the support of the Underwriters, including any such costs which the Assured may become liable to pay to any other party to those proceedings;

ALWAYS that:

An Assured shall not have Insurance in respect of asserting or defending any of the claims referred to in Sections 1 to 14 and 17 of this Clause if the amount in dispute is less than such sum as the Underwriters shall from time to time decide, such decision to be effective at the commencement of the Policy Period immediately following the date on which such a decision was taken.

PART 1 Claims for hire, freight, deadfreight and passage money arising under any Charterparty, bill of lading, waybill or other contract;

PART 2 Claims for general and particular average contributions or charges;

PART 3 Claims for demurrage or despatch;

PART 4 Claims in respect of the detention of an Insured Ship (including, without prejudice to the generality of the foregoing, detention for any cause by any department of state or local or public authority or body or any person or persons in authority);

PART 5 Claims in respect of the loss of or damage to an Insured Ship;

PART 6 Claims for the breach of any Charterparty, bill of lading, waybill or contract of affreightment or for the breach of any legal duty arising in connection with the carriage of goods;

PART 7 Claims in respect of improper loading, lightering, stowage, trimming or discharge of cargo;

PART 8 Claims in respect of the supply of inferior, unsatisfactory or unsuitable fuel, outfit or equipment, or other necessaries;

PART 9 Claims connected with overcharges in accounts, howsoever arising;

PART 10 Claims in respect of salvage and towage services rendered by or to an Insured Ship;

PART 11 Claims by or against passengers intended to be or being or having been carried on an Insured Ship or their personal representatives or dependants;

PART 12 Claims by or against masters, officers, crew, stowaways and other persons on or about an Insured Ship;

PART 13 Claims arising in connection with:

(a) any sale or proposed sale of the Insured Ship by the registered owner which interferes or threatens to interfere with the rights or obligations of the Assured; or

(b) the purchase or proposed purchase of the Insured Ship by the Assured pursuant to the exercise of rights acquired under the Charterparty in respect of the Insured Ship; or

(c) any action or proposed action by a mortgagee of the Insured Ship which interferes or threatens to interfere with the rights or obligations of the Assured;

PART 14 Claims by or against Revenue or Customs Authorities in connection with an Insured Ship;

PART 15 Representation of an Assured at official investigations, or other enquiries whatsoever in relation to an Insured Ship;

PART 16 The cost of obtaining information and legal advice on matters of general concern to Charterers, provided that:

(a) the Assured has received the prior approval of the Underwriters before seeking such information or advice;

and

(b) the amount recoverable by an Assured under this section shall not exceed such sum as the Underwriters may decide;

PART 17 All claims, disputes, matters, legal, arbitration or other proceedings (other than those specified in the foregoing sections of this Clause) as the Underwriters shall decide fall within the scope of the Insurance, other than any risks which are specifically excluded from the Insurance.

#### CLAUSE 4

Limitations, exceptions, conditions and warranties

(A) Payment first by the Assured

Save for circumstances where the Assured and the Underwriters otherwise decide by way of a separate agreement, it is a condition precedent of an Assured's right to make recovery under the Insurance that he shall first have discharged or paid any legal cost and expense out of funds belonging to him unconditionally and not by way of loan or otherwise.

(B) Set-off

Without prejudice to anything contained herein in these Terms and Conditions the Underwriters shall be entitled to set-off any amount due from an Assured against any amount due to such Assured from the Underwriters.

(C) Double Insurance

Unless otherwise agreed in writing between the Assured and the Underwriters, there is no Insurance for cost and expense of whatsoever nature recoverable under any other insurance or which would have been so recoverable:

- (i) apart from any terms in such other insurance excluding or limiting liability on the grounds of double insurance; and
- (ii) if the Ship had not been an Insured Ship.

(D) Contraband, blockade running, unlawful trade, imprudent or hazardous operations

There is no Insurance for cost and expense of whatsoever nature directly or indirectly caused by or in any way contributed to, by or in consequence upon an Insured Ship carrying contraband, blockade running or being employed in an unlawful trade or if the Underwriters, having regard to all the circumstances, shall be of the opinion that the carriage, trade or voyage was imprudent, unsafe, unduly hazardous or improper.

(E) Associated Persons

There is no Insurance for cost and expense of whatsoever nature, in respect of any claims, disputes or other matters referred to in Clause 3 of these Terms and Conditions which arise between the Assured and an Associated Person, unless the Underwriters and Assured shall otherwise decide by way of a separate agreement.

(F) ISM Clause

The Insured Ship and "the company" (as defined by Chapter IX of the International Convention for the Safety of Life at Sea (as amended), hereinafter referred to as "SOLAS 1974" and, as defined in the International Safety Management Code, hereinafter referred to as the "ISM Code") shall throughout the Policy Period comply at all times with all necessary directions, provisions and/or requirements of SOLAS 1974 (and any amendments thereto) and the ISM Code which pertain to the Insured Ship and which are in force during the Policy Period. The Assured shall on request by the Underwriters provide copies of any documents in their control relating to compliance of the Insured Ship with such directions, provisions and/or requirements. Unless the Underwriters and the Assured shall otherwise decide by way of a separate agreement, there is no Insurance where the Insured Ship and/or the company fails to comply with any applicable directions, provisions and/or requirements of SOLAS 1974 and the ISM Code.

(G) Electronic Date Recognition Clause

(a) There is no Insurance for cost or expense of whatsoever nature directly or indirectly caused by or in any way contributed to, by or in consequence upon:

(i) 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;

(ii) 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;

(iii) 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 (i) and/or (ii) above.

(b) Paragraph (a) of this Clause shall not apply to exclude a claim which the Assured can demonstrate to the satisfaction of the Underwriters

(i) would be recoverable under these Terms and Conditions in the absence of the exclusion in paragraph (a); and

(ii) has not resulted from want of due diligence by the Assured, his agents or servants or any of their onshore management in respect of any of the matters referred to in paragraph (a).

(c) Notwithstanding paragraph (b) above there is no Insurance for cost or expense of whatsoever nature directly or indirectly caused by or in any way contributed to, by or in consequence upon:

(i) any software, programming, operating system, code or data;

(ii) any measures taken with the intention of averting or minimising any of the matters referred to in paragraphs

(a)(i) or (a)(ii) above or any of their possible or anticipated consequences.

(H) Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause

There is no Insurance for cost or expense of whatsoever nature directly or indirectly caused by or in any way contributed to, by or in consequence upon:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (d) 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;
- (e) any chemical, biological, bio-chemical, or electromagnetic weapon.

(I) Cyber Attack Exclusion Clause

There is no Insurance for cost or expense of whatsoever nature directly or indirectly caused by or in any way contributed to, by or in consequence upon the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

(J) Dispute with Underwriters Exclusion Clause

There is no Insurance for cost and expense of whatsoever nature, in respect of any claims, disputes or other matters which arise between the Assured and Underwriters.

(K) Sanctions Exclusion Clause

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 or Managers to Sanctions.

CLAUSE 5

Powers of the Underwriters to support the Assured

(A) The Underwriters shall be entitled to decide whether an Assured should be supported in respect of any claim, dispute, matter or proceedings within any of the categories specified in Clause 3.

(B) The Underwriters shall be entitled to support an Assured in connection with any claim, dispute, matter or proceedings to such stage or extent, in such manner and on such terms and conditions as the Underwriters may think fit, including (without prejudice to the generality of the foregoing) a term that the Assured will not be reimbursed by the Underwriters in respect of any specified amount or proportion of the costs referred to in Clause 3.

(C) The Underwriters shall be entitled at any time to discontinue their support or to refuse further support in connection with any claim, dispute, matter or proceedings notwithstanding any previous decision by the Underwriters to support the same.

(D) The Underwriters shall have the right to control the conduct of any claim, dispute, matter or proceedings undertaken with their support, whether conditional or otherwise and may at any time direct an Assured

to take whatever course in connection therewith the Underwriters may consider expedient, including (without prejudice to the generality of the foregoing) directions to abandon, settle, compromise, pay or admit liability for any claim, issue or matter and to continue or discontinue any proceedings.

(E) Without prejudice to the generality of paragraphs (A) to (D) of this Clause, the Underwriters shall be entitled to consider:

(i) whether an Assured has shown that he has reasonable grounds for taking steps to assert or dispute the claim or for taking, defending or being a party to or being represented at the proceedings; and

(ii) whether in the particular circumstances of the case it appears appropriate to the Underwriters that the Assured should be supported.

(F) If the Underwriters shall be of the opinion that it is not appropriate for an Assured to be supported in connection with any claim, dispute, matter or proceedings having regard solely to the probable legal cost and expense likely to be incurred in such proceedings as compared with the amount in dispute, then the Underwriters may (in addition to refusing to support the Assured in such proceedings) pay to the Assured the whole or any part of the Assured's claim, as the Underwriters may think fit.

## CLAUSE 6

Irrecoverable legal cost and expense

(A) If an Assured incurs any legal cost and expense in connection with any proceedings at a time when either:

(i) the Assured is not supported by the Underwriters in respect of those proceedings; or

(ii) the Assured has not complied with any terms or conditions imposed by the Underwriters in giving their support to those proceedings; or

(iii) the Assured has failed or refused to comply with any such directions as have been given by the Underwriters pursuant to Clause 5(D),

there is no Insurance for any such legal cost or expense and the Assured shall be liable to repay to the Underwriters any cost and expense which the Underwriters may have incurred in connection with the matter, unless and insofar as the Underwriters may otherwise determine.

(B) An Assured who incurs any legal cost and expense in connection with any claim, dispute, matter or proceedings (whether or not the Underwriters have previously supported such claim, dispute, matter or proceedings), otherwise than with the express prior approval in writing of the Underwriters or with the approval and under the superintendence of a lawyer or other person appointed or previously expressly approved in writing by the Underwriters, shall not be entitled to be reimbursed in respect of any such legal cost and expense unless:

(i) the Underwriters shall otherwise determine; or

(ii) the Assured can prove that the said legal cost and expense was reasonably incurred.

#### CLAUSE 7

Powers of the Underwriters to recover costs from an Assured

Where an Assured has in respect of an Insured Ship become entitled by judgment, award, agreement, admission or otherwise to recover in whole or in part the costs of or incidental to any legal or other proceedings from any other party to such proceedings but the Assured has been unable to recover the full amount of the claim and costs to which he has become entitled,

the Assured shall be obliged, if the Underwriters so require, to pay to the Underwriters such proportion of the sum actually recovered by him as the costs would have borne to the claim including costs, if the Assured had recovered his entitlement to both in full.

## CLAUSE 8

### Claims

#### (1) Notification

(A) An Assured must promptly notify the Underwriters of every casualty, claim, dispute, matter or event which is liable to give rise to a claim by him under the Insurance.

(B) (i) An Assured must at all times promptly notify the Underwriters of any documents, reports, evidence or other information (such terms to include all electronically stored documentation, email, text message, metadata or other such electronic documentation or records) relevant to any claim, dispute, matter or event which has led or which is liable to lead to a claim by the Assured under the Insurance, and which are in the possession or power of the Assured or his agents or otherwise within his knowledge.

(ii) When so requested by the Underwriters, an Assured shall promptly produce, or cause his agents promptly to produce to the Underwriters and/or allow the Underwriters or their agents (including any lawyer appointed by the Underwriters) to inspect, copy, or photograph all such documents (to include all electronically stored documentation, email, text message, metadata or other such electronic documentation or records) of whatsoever nature which are or may be relevant to the Assured's claim or intended claim.

(iii) An Assured shall permit the Underwriters or its agents (including

any lawyer appointed by the Underwriters) to interview any servant or agent or other person who may have been working for the Assured at the material time or at any time thereafter or whom the Underwriters may consider likely to have any direct or indirect knowledge of the matter giving rise to the Assured's claim for legal cost or expense under the Insurance, or who may have been under a duty at any time to report to the Assured in connection with the said matter.

(C) An Assured shall not settle or admit liability for any claim in connection with which the Underwriters may be liable for legal cost and expense without first obtaining the written consent of the Underwriters.

(D) Where any of the provisions of paragraphs (A) to (C) above are not complied with there shall be no Insurance for any cost or expense of whatsoever nature unless the Assured and Underwriters shall otherwise decide by way of a separate agreement.

(E) If an Assured wilfully or negligently withholds any relevant information, document or evidence (such terms to include all electronically stored documentation, email, text message, metadata or other such electronic documentation or records) or knowingly conceals any relevant information, document or evidence (such terms to include all electronically stored documentation, email, text message, metadata or other such electronic documentation or records) or makes any false statement with a view to obtaining the support of the Underwriters in any matter or if an Assured causes or knowingly permits any other person to act as hereinbefore mentioned, such Assured shall thereupon cease to have Insurance in respect of the matter and shall be liable to repay to the Underwriters any cost or expense which the Underwriters may have incurred in connection therewith.

PROVIDED ALWAYS that:

The Underwriters shall have power to pay or reimburse an Assured in whole or in part in respect of any legal cost and expense for which the Underwriters would not be liable under this Clause.

(2) Powers of the Underwriters relating to the handling and settlement of claims

(A) Whenever a claim has been or may be made by an Assured for the support of the Underwriters in any matter or for legal or other advice in connection with any matter, the Underwriters may at any time appoint and employ on behalf of an Assured at their expense and upon such terms as they think fit, lawyers or other persons with a view to investigating, advising upon or otherwise dealing with such matter and the Underwriters may thereafter at any time discontinue such employment in connection with the matter.

(ii) Such lawyers and other persons may (without prejudice to their right to retire from the matter on any other grounds) retire from the matter if they consider that a conflict of interest has arisen or may arise between the Assured and the Underwriters so that they ought to retire from the matter.

(iii) Such lawyers and other persons shall further at all times give advice and report to the Underwriters in connection with the matter without prior reference to the Assured and produce to the Underwriters without prior reference to the Assured any documents or information in their possession or power relating to such matter in the same manner as if they had been appointed to act and had at all times been acting on behalf of the Underwriters and whether or not any such documents or information would otherwise be the subject of legal or any other form of privilege.

The Underwriters may at any time whatsoever rely upon such advice, reports, documentation or information to discontinue or refuse further support and any failure to rely on such advice, reports, documentation or information within a reasonable time after receipt of the same or at all shall in no circumstances prejudice or affect such reliance by the Underwriters and shall not be treated as any evidence of waiver of the Underwriters' rights.

(B) If the Underwriters shall decide to support an Assured in any legal or other proceedings, the Underwriters may appoint and employ on behalf of the Assured at their expense and upon such terms as they think fit, such lawyers as they may think suitable for the purpose of taking, continuing or defending the relevant proceedings or acting for or representing the Assured; further, the Underwriters may at any time discontinue such employment or appoint new lawyers. The Underwriters and the lawyers concerned shall have the same rights and duties as are specified in paragraph (2)(A).

(C) The 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 4(B) against claims payments in respect of sums due.

### (3) Time Bar

Without prejudice to paragraph (1)(D) of this Clause if an Assured fails within three months:

(A) to notify the Underwriters of the date on which the Assured became aware, or ought to have become aware, of any casualty, claim, dispute, matter or event referred to in paragraph (1)(A) of this Clause; or

(B) to submit a claim to the Underwriters for reimbursement of any legal cost or expense discharged or settled; or

(C) to supply information concerning the claim as requested by the Underwriters,

the Assured's claim against the Underwriters shall be discharged and the Underwriters shall be under no further liability in respect thereof.

**Choice of law and disputes**

If a dispute arises concerning the indemnity obligation of the insurer as a result of this contract, the dispute shall be determined according to Swedish Law by arbitration with the **Swedish Average Adjuster** as sole arbitrator.

The seat of arbitration shall be Gothenburg Sweden

All other terms and conditions as per SPL (Swedish marine insurance plan)



