



5 February 2021

OWNERS' FIXED PREMIUM P&I COVER TERMS & CONDITIONS – VERSION 7.01 – (FEBRUARY 2021)

The following amendments have been made to the Association's Owners' Fixed Premium P&I Terms & Conditions, reflected in the updated Version 7.01, which shall apply to new or renewing business from 20 February 2021 (new wording in bold; deleted wording struck through):

Section A - Heads of Cover

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A16 Towage

16.1 *Towage of an insured Ship:*

Liabilities **arising out of** ~~under the terms of any contract for customary~~ towage of the insured Ship **PROVIDED that there shall be no right of recovery for liabilities, costs and expenses incurred under or pursuant to the terms of a contract other than: ~~namely:~~**

16.1.1 **under or pursuant to the terms of any contract for customary** towage of an insured Ship, **namely:**

(i) towage of an insured Ship for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading; or

~~16.1.2~~ (ii) towage of an insured Ship which is habitually towed ~~or pushed~~ in the ordinary course of trading from port to port or from place to place, which has been so declared to the Association in writing, **PROVIDED that such liabilities shall only be covered by the Association to the extent that the Assured is not insured against such liabilities under the hull policies on the insured Ship.**

16.1.2. ~~under or pursuant to the terms of any other contract for the towage of an insured Ship, **PROVIDED that the terms of the towage contract have been previously**~~

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OWNERS' FIXED PREMIUM P&I COVER TERMS & CONDITIONS – VERSION 7.01 – (FEBRUARY 2021)

approved and cover agreed by the Association in writing, upon such terms as the Association may require. ~~PROVIDED that such liabilities shall only be covered by the Association to the extent that the Assured is not insured against such liabilities under the hull policies on the insured Ship.~~

16.1.3 ~~Liabilities under the terms of any other contract for the towage of an insured Ship,~~ **For the purpose of Section A Clause 16.1.2** ~~PROVIDED that the terms of the towage contract have been previously approved and cover agreed by the Association in writing, upon such terms as the Association may require. For the purpose of this Clause, the Association Managers will approve contracts for the towage of an insured Ship on terms not less favourable to the insured Ship than:~~

~~PROVIDED that the terms of the towage contract have been previously approved and cover agreed by the Managers in writing, upon such terms as the Managers may require. For the purpose of this Clause, the Managers will approve contracts for the towage of an insured Ship on terms not less favourable to the insured Ship than:~~

- (i) Lloyd's Open Form of Salvage Agreement (whether or not incorporating SCOPIIC); or
- (ii) a contract that contains **a Himalaya Clause and an enforceable** term that the parties to the towage contract, and any parties on whose behalf they contract, shall be responsible for any loss of or damage to or wreck removal of their own ship, cargo or property and for loss of life or personal injury thereon, without any recourse whatsoever against the other and will indemnify the other against any such liability.

16.2 *Towage by an insured Ship:*

Liabilities arising out of the towage by an insured Ship of **a vessel or floating structure PROVIDED that there shall be no recovery for liability for loss or of damage to or wreck removal of a vessel or other floating structure towed by an insured Ship or the cargo or other property on such tow (together with costs and expenses associated therewith) save insofar as either:** ~~another ship or object,~~

16.2.1 ~~6~~ ~~PROVIDED that:~~ ~~16.6.1~~ the insured Ship was specially designed or converted for the purposes of towage and was declared to the Association as intended to be used for towing at the time of conversion or when cover attached; and ~~16.6.2~~ the terms of the towage contract have been previously approved and cover agreed by the **Association Managers** in writing, upon such terms as the **Association Managers** may require; or

16.2.2 ~~6.3~~ the Members' Committee in its sole discretion shall determine that in the particular circumstances of the case it was reasonable for the insured Ship to undertake such towage.

16.2.3 For the purposes of Section A Clause 16.2.1, the following contracts are approved:

OWNERS' FIXED PREMIUM P&I COVER TERMS & CONDITIONS – VERSION 7.01 – (FEBRUARY 2021)

- (i) the United Kingdom, Netherlands, Scandinavian and German standard towage conditions; or
- (ii) 'Towcon' and 'Towhire'; or
- (iii) Lloyd's Standard Form of Salvage Agreement (whether or not incorporating SCOPIC).

16.2.4 For the purposes of Section A Clause 16.2.1 , the following contracts may be approved from time to time by the Association:

- (i) contracts incorporating a Himalaya Clause and an enforceable term as between the owner of the insured Ship on the one part, and the owner of the tow and the owners of any cargo or other property on board the tow on the other part, that each shall be responsible for any loss or damage to his own ship, cargo or other property and for loss of life or personal injury on his own ship, without any recourse whatsoever against the other, or
- (ii) other contracts where a term or terms of the contract complying with (i) above is or is likely to be unenforceable in whole or in part, where the contract does not impose on the owners of the insured Ship any liability to any person arising out of any act, neglect or default of the owner of the tow or any other person; and the contract limits the liability of the owner of the insured Ship under the contract or otherwise to the maximum extent possible by law.

16.3 There shall be no recovery in respect of liabilities, costs and expenses arising out of towage of or by an insured Ship otherwise than in accordance with this Section A Clause 16 and cover hereunder is in any event limited to the risks covered under Section A of these Terms & Conditions (excluding this Clause 16) to the extent that such risks are applicable to the Assured's' cover by the Association.

[Guidance: elaboration of cover in respect of towage risks, including contractual term requirements and setting out of contracts that the Association is able to approve.]

A23 Fines

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~~A23.1.2 smuggling or any infringement of any customs law or regulation other than in relation to cargo carried on the insured Ship, provided that the Assured upon becoming aware of the alleged offence immediately notifies the Association;~~

A23.1.32 short-delivery or over-delivery of cargo or failure to comply with any law or regulation relating to declaration or documentation of cargo (**other than fines or penalties arising from the smuggling of goods or cargo or any attempt thereat**), but only when the insured Ship is covered for cargo risks under **Section A** Clause 19 in which case such fines shall be aggregated with cargo claims for the

OWNERS' FIXED PREMIUM P&I COVER TERMS & CONDITIONS – VERSION 7.01 – (FEBRUARY 2021)

purposes of applying the cargo deductible to the same, and fines under this **Section A** Clause 23.1.2 shall not be subject to any other deductible;

[Guidance: cover for such fines may now be available on a discretionary basis].

A27 - Sue and Labour and Legal Costs

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A27.2 Legal costs and expenses **arising solely from** ~~relating to~~ any liabilities, costs or expenses against which **and during such time** the Assured is insured under these terms and conditions, but only to the extent either that such legal costs and expenses have been incurred with the **written** approval of the Association or that the Members' Committee in its sole discretion shall determine that the same should be recovered,

A27.3.2 losses, costs and expense relating to ransom shall not be recoverable unless and to the extent that the Members' Committee in its discretion shall otherwise decide.

[Guidance: clarification of cover under this part of the Sue and Labour and Legal Costs Head of Cover in general and also that cover for ransom is on a discretionary basis.]

Section B - Excluded risks

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B6 Corona Virus Exclusion

There shall be no recovery in respect of:

- 6.1 any loss, damage, liability, cost, or expense directly arising from the transmission or alleged transmission of:
 - 6.1.1 Coronavirus disease (COVID-19);
 - 6.1.2 Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2); or
 - 6.1.3 any mutation or variation of SARS-CoV-2;
 - 6.1.4 or from any fear or threat of Section B 6.1,1. B 6.1.2 or B 6.1.3 above;
- 6.2 any liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for Section B 6.1,1. B 6.1.2 or B 6.1.3 above;
- 6.3 any liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of any of Section B 6.1,1. B 6.1.2 or B 6.1.3) above or the fear or the threat thereof.

in excess of USD 1 Million (inclusive of fees, costs and expenses) any one accident or occurrence or series of accidents or occurrences arising out of one event.

[Guidance: the exclusion reflects new re-insurance requirements; the change also sets out the extension of cover in respect of loss, damage, liability, cost or expense that would otherwise cease to be recoverable by virtue of the exclusion up to a limit of USD1 million any one accident or occurrence or series of accidents or occurrences arising out of one event.]

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B7 Marine Cyber Exclusion

B.7.1 There shall be no recovery for 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.7.2 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.

[Guidance: the exclusion reflects new re-insurance requirements]

Section C – Extensions

C1.4 **Chemical, Biological, Bio-Chemical, Electromagnetic Weapons and Computer Virus Exclusion Clause**

In no case shall cover for War Risks cover loss, damage, liability, costs or expense directly or indirectly caused by or contributed to by or arising from:

- (i) any chemical, biological, bio-chemical or electromagnetic weapon;
- (ii) 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.. However, 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.**

However, this Clause (ii) shall **also** not operate to exclude losses (which would otherwise be covered under the terms of the War Risks cover) 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.

[Guidance: the exclusion reflects new re-insurance requirements]

Section F - General Provisions

F1 Guarantees, Certificates and Undertakings

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F1.8

PROVIDED ALWAYS that:

The Assured shall indemnify the Association to the extent that any payment under any such guarantee, certificate or undertaking in discharge of the said liabilities, costs and expenses is or would have been recoverable in whole or in part under a standard P&I war risk policy had the Assured **entered into such policies of insurance and** complied with the terms and conditions thereof.

OWNERS' FIXED PREMIUM P&I COVER TERMS & CONDITIONS – VERSION 7.01 – (FEBRUARY 2021)

[Guidance: clarification of indemnity in favour of the Association in respect of excluded risks where cover under a P&I war risks policy is available to the Assured].

F3 Cover for Co-assureds and Other Assureds

THIS CLAUSE HAS BEEN UPDATED AND REPLACED WITH THE FOLLOWING:

- 3.1 The Association may accept an application for insurance as a Co-assured of other interests in the same Ship than the interest of the Principal Assured PROVIDED that:**
- 3.1.1 The cover afforded to such Co-assureds shall extend only to risks, liabilities and expenses arising out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners and which are within the scope of the cover afforded by these Terms & Conditions and any special terms set out in the Certificate of Entry.**
 - 3.1.2 Each Co-assured shall have an independent right of recovery from the Association although the Association may in its sole discretion reject or reduce any multiple recovery by Co-assureds in respect of the same loss.**
 - 3.1.3 The Principal Assured and all Co-assureds and Other Assureds under the same entry warrant that the Co-assured is in relation to the insured Ship:**
 - 3.1.3.1 interested in its operation, management or manning; or**
 - 3.1.3.2 the holding company or the beneficial owner of the Principal Assured or any person insured as Co-assured and interested in its operation, management or manning; or**
 - 3.1.3.3 a mortgagee of the ship or a financial institution (or its subsidiary or affiliate) as the owner leasing the insured Ship to the Principal Assured; or**
 - 3.1.3.4 not a charterer of the ship other than as a bareboat charterer under Section F Clause 3.1.3.1.**
 - 3.1.4 Co-assureds shall be jointly and severally liable with the Principal Assured to pay all amounts due to the Association whether pursuant to these Terms & Conditions, the Articles or otherwise.**
- 3.2 The Association may accept an application for insurance as an Other Assured as follows:**
- 3.2.1 a contractor (including a charterer) who has entered into a contract with the Principal Assured for the provision of services by or to the insured Ship, and any subcontractor of the contractor PROVIDED that:**
 - 3.2.1.1 the contract has been approved by the Association; and**
 - 3.2.1.2 the contract includes a Knock for Knock agreement; and**

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3.2.1.3 the Other Assured shall only be covered for liabilities, costs and expenses which are to be borne by the Principal Assured under the terms of the contract and would, if borne by that Assured, be recoverable by that Assured from the Association.

3.2.2 a charterer affiliated to or associated with the Principal Assured PROVIDED that:

3.2.2.1 such charterer shall only be covered for the risks, liabilities, costs and expenses for which that Assured has cover;

3.2.2.2 for the purposes of this Section F Clause 3.2.2 a charterer shall only be affiliated to or associated with that Assured if:

3.2.2.2.1 both that Assured and the charterer have the same parent or

3.2.2.2.2 one of that Assured and charterer is the parent of the other and

3.2.2.2.3 a parent is a company which owns at least 50% of the shares in and voting rights of another or owns a minority of the shares in the other and the ability to procure that it is managed and operated in accordance with its wishes.

3.2.3 other persons or companies (for misdirected arrow claims) PROVIDED that:

3.2.3.1 the cover afforded to the Other Assured shall extend insofar only as that Other Assured may be found liable to pay in the first instance for loss or damage which is properly the responsibility of the Principal Assured.

3.2.3.2 nothing in the cover afforded hereunder shall be construed as extending cover in respect of any amount which would not have been recoverable from the Association by the Principal Assured had the claim in respect of such loss or damage been made or enforced against him.

3.2.3.3 once the Association has made indemnification under such cover it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including the Principal Assured in respect of that loss or damage.

3.2.3.4 the Principal Assured and all Co-assureds and Other Assureds under the same entry each warrant that it is not a charterer of the whole or any part of the insured Ship.

3.3 In relation to Co-assureds and Other Assureds:

3.3.1 each Co-assured and each Other Assured shall be named as such together with its interest in relation to the insured Ship in the relevant Certificate of Entry or by endorsement thereto;

OWNERS' FIXED PREMIUM P&I COVER TERMS & CONDITIONS – VERSION 7.01 – (FEBRUARY 2021)

- 3.3.2** the benefit of the insurance of the Principal Assured shall not be extended to third party persons or companies which are not referred to in the relevant Certificate of Entry or by endorsement thereto, whether by name, class, description or otherwise, notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999;
- 3.3.3** the cover afforded shall always be subject to:
- 3.3.3.1** the provisos in Section A Clause 1, and
- 3.3.3.2** the limit of liability of the Association in Section D Clause 3 of these Terms & Conditions;
- 3.3.4** there shall be no waiver of subrogation and any contractual or other legal liability of any Assured, Co-assured or Other Assured to each other shall not be excluded or discharged by reason of being insured under the same Entry. Any payment by the Association to any Assured, Co-assured or Other Assured in respect to any liabilities, losses and expenses shall operate only as satisfaction not exclusion or discharge of the liability of any Assured, Co-assured or Other Assured to each other;
- 3.3.5** the Association shall not be bound to issue any Certificate of Entry or any Endorsement Slip to more than one Assured delivery of which to whom shall be sufficient delivery to all;
- 3.3.6** payment to any one Assured of any sums payable by the Association shall be a sufficient discharge of the Association for the same;
- 3.3.7** failure by one Assured to provide particulars and information within his knowledge (or which could with reasonable diligence be ascertained by him) shall be deemed to have been the failure of all;
- 3.3.8** conduct of one Assured which is sufficient to bar that Assured's right under this policy shall bar the rights of recovery of all and the knowledge (including deemed knowledge) of one Assured shall be deemed to be the knowledge (including deemed knowledge) of all;
- 3.3.9** any provision of these Terms & Conditions which would entitle the Association to reject or reduce recovery in respect of one Assured shall be deemed to apply to all;
- 3.3.10** any communication from the Association to one Co-assured or Other Assured shall be deemed to have been communicated to all its other Co-assureds and Other Assureds and any communication from the Association to the Principal Assured shall be deemed to have been communicated to all of its Co-assureds and Other Assureds;
- 3.3.11** any communication from one Assured to the Association shall be deemed to have been made with the full approval and authority of all;
- 3.3.12** the Association shall be entitled to pay all sums to one Assured on behalf of all Co-assureds and Other Assureds; and

OWNERS' FIXED PREMIUM P&I COVER TERMS & CONDITIONS – VERSION 7.01 – (FEBRUARY 2021)

3.3.13 no Assured shall be entitled to recover from the Association in respect of any dispute or claim arising with any other Assured in respect of an entry.

[Guidance: clarification of the cover provided by:

- Introduction of the term Principal Assured to differentiate better between the different types of Assureds to whom cover can be offered on the same Entry. The types of such Assureds now consist of Principal Assured, Co-assureds and Other Assureds ;
- Clarification of the nature and conditions of the cover afforded to Co-assureds and Other Assureds;
- Express recognition of cover available to knock for knock contractors and affiliated charterers;
- Subjectivities applicable to both Co-assureds and Other Assureds grouped together for ease of reference].

F4 Cover for Affiliates and Associates not named in the Certificate of Entry

4.1 Should a claim in respect whereof ~~an Assured~~ **the Principal Assured** is insured by the Association be made or enforced through a person or company (other than a Co-assured or Other Assured in relation to that Assured) affiliated or associated with such Assured , the Association may if so requested by the ~~Assured~~ **Principal Assured** indemnify such person or company against any loss which as a consequence thereof such person or company shall have incurred in that capacity provided always that nothing herein contained shall be construed as extending to any amount which would not have been recoverable from the Association by the ~~Assured~~ **Principal Assured** had such claim been made or enforced against him. Once the Association has made such indemnification it shall not be under any further liability and shall not make any further payment to any person or company whatsoever, including the Principal Assured, in respect of that claim.

4.2 Conduct of ~~one Assured~~ **the Principal Assured** or affiliate or associate hereunder **or any Co-assured or Other Assured** which would entitle the Association to reject or reduce recovery shall be deemed to have been the conduct of all **and shall bar the rights of recovery of all of said insured.**

[Guidance: The changes reflect the amendments in Section F Clause 3 and clarify the misdirected arrow cover that may be available to parties other than Other Assureds named in a Certificate of Entry].

F14 Definitions

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Assured means a person whose application for insurance under these terms and conditions of any interest in a Ship has been accepted by the Association and includes, for the avoidance of doubt, **a Principal Assured**, a Co-assured and an Other Assured;

...

Himalaya Clause means a clause stipulating that the servant, agent, or independent contractor employed by the contracting party shall be entitled to the protection and benefit of every right, exemption, limitation, immunity

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or defence available to that contracting party and that the contracting party is contracting not only on his own behalf but as agent or trustee for such persons;

...

Knock for Knock means a provision or provisions stipulating that:

- (a) each party to a contract shall be similarly responsible for loss of or damage to, and/or death of or injury to, any of its own property or personnel, and/or the property or personnel of its contractors and/or of its and their subcontractors and/or of other third parties, and that
- (b) such responsibility shall be without recourse to the other party and arise notwithstanding any fault or neglect of any party, and that
- (c) each party shall, in respect of those losses, damages or other liabilities for which it has assumed responsibility, correspondingly indemnify the other against any liability that that party shall incur in relation thereto.

...

Other Assured a person to whom the benefit of an Assured's insurance is agreed to be extended by the Association pursuant to Section F Clause 3.2 of this Policy;

...

“Principal Assured” means the Assured who is named as Principal Assured in the Certificate of Entry (or any amendment thereto);

[Guidance: the changes reflect the amendments in Section A 16 and Section F 3.]