



# Hull and Machinery

General Terms and Conditions



# BRITISH MARINE

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### General Terms and Conditions

Assured .....

Address .....

Facsimile .....

E-mail address .....

Insured Vessel(s) .....

Period From [ ] hrs on ..... to [ ] hrs on .....

In consideration of the premium payable in respect of this Insurance, the Insurer undertakes to insure the Insured Vessel(s) against loss, damage liability or expense, on the terms and conditions provided for under the Policy.

The cover provided by this Insurance is subject to these General Terms and Conditions. The General Terms and Conditions as well as any applicable Standard Clauses shall be read together along with the Policy. In the event that there is a direct contradiction between the provisions of the Policy, the General Terms and Conditions and the Standard Clauses, the Policy shall prevail. Where there is a direct contradiction between the provisions of the General Terms and Conditions and the Standard Clauses, the General Terms and Conditions shall prevail. When expressly agreed, cover, including war risks, may be provided on other customary Policy forms.

This Insurance covers only loss, damage, liability or expense which arises out of events which occur during the Policy period, in respect of the Assured's interest in the Insured Vessel, and only in connection with the operation of the Insured Vessel.

## 2021 Terms and Conditions

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## 1. Definitions

1.1 For the purpose of this Insurance the following words and phrases shall have the following meanings:

<i>Assured</i>	every owner or other person who is for the time being entitled to cover under the Policy.
<i>Day</i>	a calendar day computed according to Greenwich Mean Time (GMT).
<i>Insurance</i>	any Insurance or reinsurance provided by the Insurer against the risks specified in the Policy.
<i>Insured Vessel</i>	a Vessel which is insured by the Insurer under the Policy for any of the risks specified in the Policy.
<i>Insurer(s)</i>	the party or parties specified as insurer in the Policy.
<i>Joint Assured</i>	any party named as Assured under the Policy, where there is more than one named.
<i>Policy</i>	the policy of insurance or slip policy including any endorsement.
<i>Standard Clauses</i>	such standard clauses for hull and machinery or other insurances as shall be expressly incorporated into the Policy.
<i>Vessel</i>	any ship, boat, hovercraft or other description of vessel or structure (including any ship, boat, hovercraft or other vessel or structure under construction) used or intended to be used for any purpose whatsoever in navigation or otherwise on, under, over or in water or any part thereof or any proportion of the tonnage thereof or any share therein.
<i>Writing</i>	text in English communicated by letter, notice, facsimile, telex or e-mail.

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

1.3 Words importing the masculine shall include the feminine.

1.4 Words importing natural persons shall include individuals and any legal entity including corporations or partnerships.

1.5 The headings and sub-headings in the Policy are for guidance only and are not to be taken into account in its construction or interpretation.

## 2. Classification

Unless otherwise agreed by the Insurer, the Assured confirms that the Insured Vessel is at the time of inception of the Policy classed with a classification society approved by the Insurer and shall remain so classed throughout the Policy period. The Assured further confirms that it shall:

- 2.1 comply with the rules of such classification society and comply with any recommendation or requirement issued by it in accordance with those rules within any period or by any date stated by such classification society for compliance;
- 2.2 notify and secure the approval of the Insurer in Writing of any intended change of classification society in respect of the Insured Vessel, stating in full all outstanding requirements, recommendations and restrictions to which the Insured Vessel is subject;
- 2.3 notify such classification society as soon as practicable of any event of circumstance which may affect the Insured Vessel's class, including but not limited to any event or circumstance which might cause the classification society to impose a requirement or make a recommendation under its rules;
- 2.4 disclose to the Insurer all information and documents that they may require relating to the class of the Insured Vessel, including but not limited to information and documents relating to any requirements or recommendations imposed, any special survey or drydocking of the Insured Vessel, and the granting of any extensions by such classification society under its rules; and
- 2.5 authorise a nominated representative of the Insurer to inspect and copy the Insured Vessel's class records and be provided with any other information or documents that such classification society may hold.

In the event of a failure by the Assured to comply with the requirements provided for under this Clause 2 the Insurer may:

- a) terminate this Insurance in respect of the Insured Vessel by notice in Writing to the Assured. Such termination shall take effect from the date of such notice; or
- b) vary or restrict the terms of this Insurance.

### **3. Flag State**

It is a condition precedent to liability under this policy that at the time of inception of the Policy and throughout the duration of the policy period the Assured and the Insured Vessel is compliant with all requirements of the Insured Vessel's flag state including but not limited to:

- 3.1 the construction, condition, manning and equipping of the Insured Vessel;
- 3.2 the maintenance of valid statutory certificates issued by or on behalf of the Insured Vessel's flag state; and
- 3.3 the implementation and maintenance of any vessel(s) or office systems in accordance with flag state requirements.

### **4. Survey by Insurer**

The Assured shall permit the inspection of the Insured Vessel by a surveyor or surveyors appointed on behalf of the Insurer:

- 4.1 prior to inception of the Policy; or
- 4.2 at any time and as often as required by the Insurers during the Policy period;

and will cooperate fully in the performance of such an inspection. The Assured confirms that it will comply with all recommendations or requirements made by or on behalf of the Insurer following the inspection within the period required for compliance.

In the event of the Insured Vessel being laid up for a continuous period of 180 or more Days the Assured shall notify the Insurers in Writing at least seven (7) Days prior to the recommissioning of the Insured Vessel in order for the Insurer to have an opportunity to commission an inspection of the Insured Vessel pursuant to this Clause 4.

### **5. International Safety Management Code (ISM Code)**

If the Insured Vessel is required to comply with the ISM Code by the International Maritime Organisation the Assured confirms:

- 5.1 that the Insured Vessel has a valid Safety Management Certificate;
- 5.2 that the Assured, owner or manager of the Insured Vessel has a valid Document of Compliance; and
- 5.3 that the Assured, owner or manager of the Insured Vessel has implemented and continues to maintain and operate a Safety Management System in accordance with the ISM Code;

in accordance with the requirements of the ISM Code, and that they shall be maintained in accordance with such requirements throughout the Policy period.

The Assured further confirms that it shall notify the Insurer in Writing forthwith on the suspension or withdrawal of the said Safety Management Certificate or Document of Compliance.

### **6. Remedies for breach of Clauses 3 (Flag State), 4 (Survey by Insurer) and 5 (ISM Code)**

Except in respect of those requirements which constitute a conditions precedent to liability, in the event of a failure by the Assured to comply with the requirements provided for under Clauses 3, 4 and 5, the Insurer may:

- 6.1 terminate this Insurance by giving notice in Writing to the Assured. Such termination shall take effect from the date of such notice, but if the Insured Vessel is at sea on that date then the termination shall take effect from the date of the Insured Vessel's arrival at her next port; or
- 6.2 vary or restrict the terms of this Insurance



## **7. Radioactive, Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion**

In spite of any provision to the contrary, under no circumstances whatsoever shall this Insurance cover loss, damage, liability or expenses directly or indirectly caused by or contributed to by or arising from:

- 7.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- 7.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- 7.3 any weapon or device employing atomic or nuclear fission or fusion or other like reaction or radioactive force or matter;
- 7.4 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; or
- 7.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

## **8. Electronic Data Recognition Clause**

In spite of any provision to the contrary:

- 8.1 The cover provided by this Insurance shall not be prejudiced by reason of any failure of a system causing or contributing to any loss, damage, liability or expense insured under this insurance, provided always that this insurance will not cover any loss, damage, liability or expense which has resulted from want of due diligence by the Assured, owners or managers in respect of such failure of a system. Masters, officers, crew and pilots shall not be considered owners within the meaning of this Clause 8 should they hold shares in the Insured Vessel.
- 8.2 In no circumstances shall this Clause 8 cover:
  - 8.2.1 any expense incurred in respect of testing for, discovering, averting or minimising any failure of a system;
  - 8.2.2 the cost of rectifying, reprogramming, replacing or upgrading any computer equipment found to be defective or inadequate in respect of the matters referred to in the definition of failure of a system; or
  - 8.2.3 the cost of repairing or replacing any computer equipment that has broken down or malfunctioned as a consequence of any failure of a system.
- 8.3 For the purpose of this Clause 8 only:
  - 8.3.1 'failure of a system' means any failure or anticipated failure of or inability of any system 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;
  - 8.3.2 'computer equipment' means any hardware, software, microchip, integrated circuits, microcontrollers, computer operating system, programs, code or data; and
  - 8.3.3 'system' includes computer equipment and electrical and mechanical equipment linked to computer equipment.

The cover provided in this Clause 8 is subject in all other respects to all other terms, conditions, exclusions and limits contained in this Insurance.

## **9. Mitigation and Sue and Labour**

The Assured shall, on the occurrence of an event likely to give rise to a claim under the Policy, take all reasonable steps to avert or minimise any liabilities, costs and expenses which might be covered under the Policy.

## **10. Assignment**

Neither the Policy, nor any interest under the Policy, may be assigned by the Assured, unless the Insurer in their absolute discretion provide consent in Writing to such an assignment and on such terms as the Insurer shall impose.

## 11. Set Off

The Insurer shall be entitled to set off any sum due from the Assured against any sum due to the Assured under the Policy in respect of the Insured Vessel. The Assured shall not be entitled to set off any amount payable by the Insurer against any sum due from the Assured under the Policy.

## 12. Termination of Insurance

The Policy shall terminate automatically without notice in the following circumstances:

### 12.1 The Assured, being an individual:

- 12.1.1 fourteen (14) Days after he dies;
- 12.1.2 becomes bankrupt;
- 12.1.3 is the subject of a receiving order or of a scheme of arrangement or composition with his creditors; or
- 12.1.4 ceases to be able to manage his business by reason of mental illness or incapacity.

### 12.2 The Assured, being a corporation:

- 12.2.1 is the subject of a compulsory winding up order or resolution for its voluntary winding up;
- 12.2.2 is dissolved;
- 12.2.3 is the subject of the appointment of a receiver, administrator, manager or analogous person in respect of all or part of this business; or
- 12.2.4 initiates any proceedings to achieve legal protection from its creditors.

### 12.3 Termination of Insurance by notice:

The Insurer may, at any time and without giving reason, terminate the Insurance of an Insured Vessel by not less than fourteen (14) Days written notice of termination, effective from the expiry thereof.

The Assured (or in the case of an individual Assured who dies, his personal representative(s)) shall immediately notify the Insurer in Writing on the occurrence of an event referred to in this Clause 12.

## 13. Termination of Cover in respect of an Insured Vessel

### 13.1 Cover in respect of an Insured Vessel shall cease without notice on the occurrence of any of the following:

- 13.1.1 sale of the Insured Vessel;
- 13.1.2 divestment or assignment by the Assured of part or all of his interest in the Insured Vessel;
- 13.1.3 change of manager or flag state in respect of the Insured Vessel;
- 13.1.4 mortgage or hypothecation of the Insured Vessel; or
- 13.1.5 relinquishing of possession or control of the Insured Vessel by the Assured or foreclosure by a mortgagee bank in respect of the Insured Vessel;

unless the Insurer agrees in Writing to maintain or reinstate cover in respect of the Insured Vessel, on the same or on varied or restricted terms at the discretion of the Insurer. The Assured shall immediately notify the Insurer in Writing on the occurrence of a circumstance or event referred to in this Clause 13.

### 13.2 Cover in respect of an Insured Vessel shall cease by the Insurer giving to the Assured notice in Writing following the first inspection of the Insured Vessel by a surveyor or surveyors appointed on behalf of the Insurer pursuant to Clause 4 above. The Insurer shall be under no obligation to state the grounds for such termination of cover. Should the Insured Vessel, at the date the notice of termination of cover is provided in accordance with Clause 4 above be at sea or in port and in distress, the Insured Vessel shall, be held covered until arrival at the next port in safety or, if in port and in distress, until the Insured Vessel is made safe, at a pro-rata per Day premium.

### 13.3 Where cover ceases pursuant to this Clause the Insurer shall be liable only in respect of any claim arising prior to the time from when cover ceased.

## 14. Premium

Premium payable in respect of this policy shall be paid on such terms as the Insurer shall agree in writing.

In the event of failure by the Assured to pay premium or any instalment of premium due pursuant to the said terms, the Insurer may:

14.1 cancel this policy giving a minimum notice period of seven days; or

14.2 vary or restrict the terms on which cover under this policy is provided.

In the event of the cancellation of this policy by the Insurer under this Clause, the Insurer shall not be liable in respect of any claims whatsoever, whether arising before or after such cancellation.

The Insurer shall be entitled to interest at a rate of 2% over SONIA for any premium or part of the premium which is due and unpaid for the period over which such premium remains due and unpaid.

Where the Assured has paid the premium due under the Policy and:

14.3 termination of the Policy takes effect pursuant to Clause 13, premium under the Policy shall be returned to the Assured on a pro rata Day basis or may be otherwise agreed by the Insurer in Writing prior to commencement of the Policy period; and

14.4 termination of cover in respect of an Insured Vessel takes effect pursuant to this Clause 14, premium paid in respect of that Insured Vessel shall be returned to the Assured on a percentage of a pro rata per Day basis should the vessel be laid up for a minimum period of thirty (30) consecutive Days and for each completed thirty (30) Day-period thereafter only if agreed by the Insurer in Writing prior to the commencement of the Policy period. For the Insured Vessel to be deemed laid up under the terms of this clause it will need to be:

14.4.1 at a safe port or berth approved by the Insurer upon or before lay up;

14.4.2 without a crew on board except for security and maintenance; and

14.4.3 without cargo on board.

## 15. Waiver

No representation, act or omission, conduct or forbearance by the Insurer nor any agreement or acquiescence to the conduct of the Assured, shall amount to a waiver of any right of the Insurer under the Policy, nor shall it give rise to an estoppel in respect of any such right unless expressed in Writing and addressed by the Insurer to the Assured.

## 16. Joint Assureds

Joint Assureds shall not be covered in respect of any claim or liabilities between Joint Assureds. Joint Assureds shall:

16.1 be jointly and severally liable to pay premium due under the Policy;

16.2 be bound by the default of any one of the Joint Assureds in failing to disclose or misrepresenting material information to the Insurer;

16.3 be bound by the conduct of any one of the Joint Assureds which would give rise to:

16.3.1 the termination of the Policy;

16.3.2 the termination of cover in respect of an Insured Vessel;

16.3.3 the termination by the Insurer of cover provided under the Policy; or

16.3.4 the variation or restriction by the Insurer of the terms on which cover under the Policy is provided;

16.4 be deemed to have received any notice or communication sent by the Insurer to any one of the Joint Assureds; and

16.5 be deemed to have sent any notice or communication sent by any one of the Joint Assureds to the Insurer.

The deductibles and limits provided for in the Policy shall apply to any claim by any one of the Joint Assureds, as if the Joint Assureds were a single Assured. Receipt by any Joint Assured of any sum payable by the Insurer shall be deemed to be receipt on behalf of all the Joint Assureds and shall discharge the Insurer of their liability for any claim in respect of which such payment is made.

The cover provided under contracts of insurance evidenced by the Policy in respect of every Insured Vessel(s) and every Assured, shall be deemed to be provided under a single Policy, and not under separate individual contracts of insurance comprised in a composite Policy.

## 17. Notices

Any notice:

- 17.1 by the Assured to the Insurer shall be sent to:  
British Marine  
30 Fenchurch Street London EC3M  
Telephone: +44 (0) 20 7105 4000  
E-mail address: managers@britishmarine.com

or to such other address or by such other means of communication as the Insurer shall notify to the Assured from time to time;

- 17.2 by the Insurer to the Assured shall be sent to the address or e-mail address shown after the Assured's name on the first page of the Policy. Proceedings issued by the Insurer against the Assured shall be deemed to have been duly served if delivered to such address.

## 18. Claims Notification and Provision of Information

It is a condition precedent to the liability of the Insurer under the Policy that the Assured shall:

- 18.1 notify the Insurer immediately and also in Writing as soon as reasonably practicable of any event which may give rise to a claim under the Policy and in any event no later than twelve (12) months after the date of such event;
- 18.2 notify the Insurer in Writing forthwith of any legal or other proceedings brought against the Assured or in respect of the Insured Vessel;
- 18.3 provide to the Insurer or to any party nominated by the Insurer as soon as reasonably practicable all material, including documents, photographs or reports in the possession of the Assured or its agents and any information known to the Assured or its agents, relating to any event which may give rise to a claim under the Policy and continue to keep the Insurer advised of all material developments in respect of such an event or claim;
- 18.4 notify the Insurer as soon as practicable of any opportunity to obtain information, relating to an event which may give rise to a claim under the Policy, including but not limited to an opportunity to conduct medical examinations or surveys in respect of any cargo, ship or any other object;
- 18.5 give full cooperation to the Insurer in any investigation conducted by or on behalf of the Insurer into any event which may give rise to a claim under the Policy; or
- 18.6 not make any admission of liability, responsibility or blame to any third party in respect of any event which may give rise to a claim under the Policy, unless agreed by the Insurer in Writing.

## 19. Claims Handling

The Insurer shall be entitled on such terms as they may require to assume control of the conduct of any claim, legal proceedings, arbitration or participation by the Assured in any inquiry or investigation, in respect of any event or matter which may give rise to a claim under the Policy.

The Insurer may direct the Assured to take any step in connection with the conduct of such a claim, legal proceedings, arbitration, inquiry or investigation, including the conclusion of a settlement or compromise agreement.

In the event of a failure by the Assured to act as directed by the Insurer, any claim under the Policy shall be limited to the amount of the claim which would have been recoverable had the Assured acted as directed by the Insurer.

In spite of the Assured's obligations under Clause 18, the brokers (where applicable) shall endeavour to ensure that all parties are kept advised of the incident and that surveyors, adjusters and lawyers are instructed as required by the Assured or Insurer.

Where the Assured requests the appointment of an average adjuster such request will be put to the Insurer who will recommend which adjuster should be appointed. The average adjuster's fees as are reasonable and agreed by the Insurer shall be paid by the Insurer but only to the extent of the proportion insured hereunder. Should the Assured decline to accept the Insurer's recommendation, then the fees of the adjuster appointed by the Assured will be borne by the Assured to the extent that they would otherwise be paid by the Insurer under the Policy.



## **20. Assistance in Handling Claims**

The Insurer may, subject to the terms of the Policy, appoint on behalf of the Assured any person to assist in or advise on the conduct of any investigation, claim or legal or other proceedings, in respect of any event that may give rise to a claim under the Policy.

Any person so appointed, or appointed by the Assured with the Insurer's consent, will act for and on the instructions of the Assured as principal, but shall, without reference to the Assured, disclose all material, documents or information relating to such investigation, claim or legal or other proceedings to the Insurer, as if the Insurer were his principals.

In the event that there is a requirement to instruct a lawyer to protect the Assured's interests and those of the Insurer, the instruction must be referred to the Insurer for approval in Writing prior to being made.

## **21. Provision of Security**

The Insurer are under no obligation, but may, provided all sums due to the Insurer from the Assured are paid and otherwise on such terms as they shall agree, provide security in respect of any claim against the Assured by any party in respect of the risks covered by the Policy. The Assured shall indemnify the Insurer for the costs of, or liability incurred to any third party under the security so provided, save to the extent that such costs or liability are recoverable under the Policy.

## **22. Recoveries and Subrogation**

Where the Insurer has made a payment to or on behalf of the Assured in respect of a claim under the Policy, and the Assured, or any person on the Assured's behalf, obtains the recovery or reimbursement or any sum representing all or part of the liability, loss, cost or expense which was the subject of the claim so paid, such sum shall be applied in favour of the Insurer and the Assured in the proportions of their respective contributions to such payment.

The Insurer shall be subrogated to all rights which the Assured may have against any third party in respect of any payment made under the Policy, to the extent of such payment, and the Assured shall, at the request of the Insurer, execute forthwith any document required by the Insurer for the purpose of the exercising of such rights.

## **23. Limitation of Liability**

Cover under the Policy for a liability incurred by the Assured or in respect of the Insured Vessel shall be limited to such liability as may be established under the applicable law, or as may be agreed to in Writing by the Insurer, and shall be limited in particular by reference to any legal provision under the applicable law providing for the limitation of liability in respect of the Insured Vessel or the Assured.

## **24. Basis of Contract**

Any reference to 'basis of the contract' in this Insurance is of no effect.

## **25. Duty of Fair Presentation**

The Assured must make a fair presentation of the risk (as set out in the Insurance Act 2015 or successor or amending legislation) in proposing for, or proposing to vary, this Insurance.

## **26. Duty of Fair Presentation – Remedies for Breach – Proposing for this Insurance**

If the Assured or anyone acting on its behalf breaches the Assured's duty of fair presentation the following remedies shall be available to the Insurer::

26.1 if such breach is deliberate or reckless, the Insurer may:

- 26.1.1 treat the Policy as having been terminated from its inception; and
- 26.1.2 retain the premium;

26.2 if such breach is not deliberate or reckless and the Insurer would not have entered into the Policy but for the breach, the Insurer may by notice to the Assured treat the Policy as having been terminated from its inception in which case the Insurer shall return premium; and

26.3 in all other cases if, but for the said breach, the Insurer would have entered into the Policy but:

26.3.1 on different terms (other than terms relating to the premium), the Insurer may require that the Policy is treated as if it had been entered into on those different terms from the outset; or

26.3.2 would have charged a higher premium, the Insurer may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, the Insurer shall pay only X% of what it would have been required to pay, where  $X = (\text{premium actually charged/higher premium}) \times 100$ .

## **27. Duty of Fair Presentation – Remedies for Breach – Variation**

If the Assured or anyone acting on its behalf breaches the Assured's duty of fair presentation in relation to a variation of the Policy, the remedy of the Insurer shall be as follows:

27.1 If such breach is deliberate or reckless, the Insurer may:

27.1.1 by notice to the Assured treat the Policy as having been terminated from the time when the variation was concluded; and

27.1.2 retain the premium;

27.2 if such breach is not deliberate or reckless, and the Insurer would not have entered into the variation but for the breach, the Insurer may treat the Policy as if the variation was never made, in which case the Insurer shall return any additional premium relating to the variation; and

27.3 in all other case if, but for the said breach, the Insurer would have entered into the variation but:

27.3.1 on different terms (other than terms relating to the premium), the Insurer may require that the variation is treated as if it had been entered into on those difference terms;

27.3.2 would have increased the premium by more than it did or at all, the Insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/higher premium}) \times 100$ ; or

27.3.3 would not have reduced the premium by as much as it did or at all, the Insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/reduced total premium}) \times 100$ .

## **28. Late Payment of Claims**

The Insurer shall, pursuant to section 13A of the Insurance Act 2015, pay any sum due in respect of a valid claim within a reasonable time (which includes a reasonable time to investigate and assess the claim).

## **29. Disputes**

29.1 The Assured hereby submits to the jurisdiction of the High Court of Justice of England in respect of any action brought by the Insurers to recover sums which the Insurers may consider to be due to them from the Assured. Without prejudice to the foregoing, the Insurers shall be entitled to commence and maintain in any jurisdiction any action to recover sums which the Insurers may consider to be due to them from the Assured.

29.2 Any other dispute or difference arising between the Insurers and the Assured under the Policy shall in the first instance be referred to a panel of three mediators, or a single mediator if the Insurers and Assured so agree in Writing. Any mediator must be a commercial person. The mediation procedure shall operate as follows:

29.2.1 the Insurers or the Assured shall notify the other in Writing of their intention to submit a difference or dispute to mediation, and of the mediator appointed on their behalf;

29.2.2 within fourteen (14) Days of such notification, the party so notified shall appoint a mediator and notify the other party in Writing;

29.2.3 the two mediators shall, within fourteen (14) Days of the appointment of the second mediator, select a third mediator who shall act as chairman of the mediation panel; and

29.2.4 the single mediator or the mediation panel through the chairman will, within fourteen (14) Days of the appointment of the sole mediator or the constitution of the mediation panel, notify the parties of a timetable for the following:

29.2.4.1 a first meeting of the mediation panel if required;

29.2.4.2 service of principal written submissions by each party;

29.2.4.3 service of written submissions in response by each party;

29.2.4.4 service of any further submissions the mediator or mediation panel may invite either party to make;

29.2.4.5 a date of discussion of the submissions by the mediation panel; and

29.2.4.6 a date for the attendance of the parties (together or separately) before the mediator or mediation panel.

The mediator or mediation panel shall be entitled to levy reasonable charges for acting and shall notify the parties of an estimate of those charges at the same time as notification of the timetable for the conduct of the mediation process is given.

The mediator or mediation panel shall have the power to regulate the conduct of the mediation and the parties agree to make available all documents, information or materials (subject to the operation of legal privilege), as the mediator or mediation panel may require.

The costs of the mediation shall be borne equally by Insurer and the Assured.

29.3 If at any time either party fails to comply with the provisions in this Clause 29 in relation to the mediation process, or gives notice to the other that it will no longer participate in the mediation process, such difference or dispute shall be referred to the arbitration in London of two Arbitrators (one to be appointed by the Insurer and the other by the Assured) and an Umpire to be appointed by the Arbitrators, and the submission to arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Act 1996, and any statutory modification or re-enactment thereof for the time being in force.

### **30. Governing Law**

The Policy shall be governed by and construed in accordance with English law.

### **31. Third Parties**

The Policy does not confer or create any right enforceable under the Contracts (Rights of Third Parties) Act 1999 or any amending or subsequent legislation by any person who is not named as the Assured and both the Insurer and the Assured may amend, cancel, or lapse this Insurance without giving notice to, or requiring the consent of, any other third party. However, this will not preclude rights enforceable under the Third Parties (Rights against Insurers) Act 2010.

This exclusion will be valid notwithstanding any term of the Policy which purports to confer a right or benefit on any such person.

### **32. Cyber Attack Exclusion**

32.1 Subject only to Clause 32.3 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 or process or any other electronic system.

32.2 Subject to the conditions, limitations and exclusions of this policy, 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.

32.3 Where the Insurer is covering 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 32.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system, computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

### **33. Sanctions Limitation and Exclusion**

There shall be no cover under the Policy and the Insurer shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer or any member of the Insurer's group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

There shall be no entitlement under any circumstances for the Assured to recover under the Policy that part of any liability, cost or expense which is not recovered or recoverable by the Insurer from any reinsurer because of a shortfall in recovery or non-recovery from such reinsurer by reason of any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

The terms 'shortfall' or 'non-recovery' include, but are not limited to, any failure or delay in payment to the Insurer by such reinsurer, and/or payment to an account other than an account of, or for the benefit of, the Insurer, in compliance with a requirement imposed by any recognised authority of competent jurisdiction to enforce any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

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