



## STEAMSHIP MUTUAL

### LONDON CLUB

**With Effect From 20 February 2019 12:00 hrs GMT**

#### **EUROPEAN INLAND & SHORT SEA FACILITY - CLARIFICATION TO THE CHARTERERS' TERMS OF ENTRY**

Cover is in accordance with the Charterers' Terms of Entry of the Steamship Mutual Underwriting Association Limited, hereinafter referred to as 'the Club'. The risks covered are as set out under Clause **21 and 22** reproduced below and the Clarifications set out hereafter, and are further subject to any special terms of entry agreed and endorsed on the Certificate of Entry.

#### **Clause 21 P and I Risks**

- a** Where cover is excluded under the Member's terms of entry, in respect of any sub-clause of this Clause **21**, there shall be no recovery of costs, liabilities and expenses consequential upon such excluded risk under any other sub-clause of this Clause **21** ;
- b** The Club shall not insure under this Clause **21** any Member to any extent whatsoever against liabilities, costs and expenses against which the Member would be insured if entered under Clause **22**, without deductible, irrespective of whether the ship is entered for Damage to Hull or Time Charterers' Bunkers cover.

#### **i Liability to Persons**

Liabilities, costs and expenses as set out in Clause **21 ii** and in respect of the categories of persons set out in Clause **21 iii**:

- a** arising by operation of law; or
- b** arising under any contract including any collective agreement approved in writing by the Managers prior to the event giving rise to the claim, and upon such terms as the Managers may require.

#### **ii Covered Risks**

##### **a Damages or Compensation for Loss of Life or Personal Injury or Illness**

Liability for damages or compensation in respect of personal injury, illness or death;

##### **b Medical and Funeral Expenses**

Hospital, medical and/or funeral expenses, including repatriation of remains, in relation to injury, illness or death of any person, or any Seaman whilst engaged as crew of, or arising out of employment on board, an entered ship, provided reasonably incurred;

##### **c Repatriation**

Repatriation expenses in respect of persons on board an entered ship in consequence of a casualty thereto or consequent on illness or injury to such persons, or in any other case where the Managers in their discretion determine that such expenses have been necessarily and reasonably incurred;

##### **d Crew Substitutes**

Expenses necessarily incurred in sending abroad substitutes, or in securing, engaging, repatriating or deporting a substitute engaged abroad, to replace any Seaman on board an entered ship who shall have died, or who shall have been disembarked due to injury, illness, or deserted, or in any other case in which the Managers determine that such expenses were reasonably incurred, save that wages shall only be recoverable as part of such expenses when payable to substitutes, engaged abroad, whilst awaiting and during repatriation;

##### **e Shipwreck Unemployment Indemnity**

Wages or other compensation for loss of employment payable to Seamen in consequence of the loss or constructive total loss of an entered ship;

*Provided always that*

in respect of paragraphs **c**, **d** and **e** of Clause **21 ii** no such expenses shall be recoverable by or reimbursable to the Member in consequence of the termination of any agreement whether in accordance with its terms, by mutual consent or by the Member's breach, or by dismissal, or the sale of the entered ship or by reason of industrial action, or any other voluntary act of the Member giving rise to such expenses or where such expenses could reasonably have been avoided.

**f Compensation following a casualty**

(i) Damages or compensation for which a Member may be liable under a contract for carriage to passengers on board an entered ship in consequence of a casualty to that entered ship while they are on board, "casualty" meaning an incident involving either:

- (a) collision, stranding, explosion, fire or any other cause affecting the physical condition of the entered ship so as to render it incapable of safe navigation to its intended destination; or
- (b) a threat to the life, health or safety of passengers.

Provided that any claim on the Club under this paragraph **f** shall be reduced by the amount of any savings accruing to the Member as a result of the casualty.

(ii) Damages or compensation payable in respect of passengers under this paragraph **f** or any other paragraph applicable to passengers under Clause **21 ii** shall include a Member's liability for the cost of forwarding them to destination, returning them to port of embarkation, and their maintenance ashore.

**g Deviation Expenses**

Port and deviation expenses when solely incurred:

- (i) For the purpose of landing or disposing of stowaways, refugees or other persons rescued at sea; or
- (ii) In order to secure the necessary treatment for an injured or sick person being carried on an entered ship; or
- (iii) While awaiting a substitute for a deceased, injured or sick crewmember or deserter; or
- (iv) In attempting to save or saving life at sea; or
- (v) In order to search for, and/or recover, persons missing from the ship;

*Provided* that such expenses have in the opinion of the Managers been reasonably incurred.

The expenses recoverable are limited to those additional costs of fuel, insurance, crew wages, stores, provisions and port charges over and above the ordinary operating costs of the Member, which are incurred as a direct result of the deviation, less any savings in expenditure which would have been incurred by the Member but for the deviation.

**h Loss of Baggage and Effects**

Loss of or damage to baggage and effects save for specie, bullion, precious or rare metals or stone, plate or other objects of a rare and precious nature, bank notes or other forms of currency, bonds or other negotiable instruments, whether the value is declared or not, unless in any such case the Managers have been notified prior to any such carriage, and any directions made by them complied with, provided that in respect of crew, cover hereunder is limited to their "effects" as defined in Clause **2**.

**i Expenses in respect of Deserters and Stowaways**

Repatriation expenses in respect of crewmembers posted as deserters, stowaways, refugees and persons rescued at sea.

*Provided always that*

- (i) such expenses have in the opinion of the Managers been reasonably incurred;
- (ii) the Directors may agree in their discretion to cover any other expenses and costs incurred by the Member in respect of such persons.

**j Exclusion of Pollution Liabilities**

Without prejudice to any other provision, conclusion, limitation or condition set out in these Clauses, cover under Clauses **21 i – iii** or any other Clause is subject to Clause **17 vi**.

**iii Categories of Persons**

Those persons in the categories **a – e** below, but always excluding:

- (i) Personnel (other than marine crew) on board the entered ship (being an accommodation ship), employed otherwise than by the Member under a contract with a third party which has been approved by the Managers;

- (ii) Hotel and restaurant guests and other visitors and catering crew of the entered ship where the ship is moored (otherwise than on a temporary basis) and is open to the public as a hotel, restaurant, bar or other place of entertainment.

**a Crew**

Seamen, including any replacement or substitute.

**Covered risks:**

The following risks as set out in Clause **21 ii** are covered in respect of these persons:

- a damages or compensation for loss of life or personal injury or illness
- b medical or funeral expenses
- c repatriation
- d crew substitutes
- e shipwreck unemployment indemnity
- g deviation expenses
- h loss of baggage and effects

**b Supernumeraries**

Supernumeraries and persons being carried other than pursuant to a contract for carriage.

**Covered risks:**

The following risks as set out in Clause **21 ii** are covered in respect of these persons:

- a damages or compensation for loss of life or personal injury or illness
- b medical or funeral expenses
- c repatriation
- g deviation expenses
- h loss of baggage and effects

**Note:** *It is recommended that whenever practicable an indemnity is taken from persons being carried other than pursuant to a contract for carriage. The Managers will provide a form of indemnity on request and may also arrange a separate insurance to cover such persons' risks and liabilities.*

**c Passengers**

**Covered risks:**

The following risks as set out in Clause **21 ii** are covered in respect of these persons:

- a damages or compensation for loss of life or personal injury or illness
- b medical or funeral expenses
- c repatriation
- f compensation following a casualty
- g deviation expenses
- h loss of baggage and effects

*provided always that:*

- (i) There shall be no recovery in relation to any liabilities, costs or expenses whatsoever arising out of travel by air save during:
  - (a) Repatriation by air of an injured or sick passenger or of a passenger following a casualty as defined in paragraph **f (i)** of Clause **21 ii**; or
  - (b) Excursions from the insured vessel, (subject to proviso **(ii)** below);
- (ii) There shall be no recovery in respect of contractual liabilities, costs or expenses incurred by a Member in respect of a passenger whilst on an excursion from the entered ship if:
  - (a) A separate contract has been entered into by the passenger for the excursion whether or not with the Member; and/or
  - (b) The Member has waived any or all of its rights of recourse against any sub-contractor or any third party in respect of the excursion.

**d Third Parties**

Third parties within the categories set out below.

**Covered risks:**

The following risks as set out in Clause **21 ii** are covered in respect of these persons:

- a** damages or compensation for loss of life or personal injury or illness
- b** medical or funeral expenses

For a person :

- (i)** In respect of liability resulting from negligent navigation or management of the entered ship or other negligent act or omission on board or in relation to an entered ship; or
- (ii)** In respect of liabilities arising in relation to any act, neglect or default in the handling of the cargo of an entered ship or in consequence of the negligence of persons employed solely for that purpose, from the time of receipt for shipment on quay or wharf until final delivery ex quay or wharf at the port of discharge.

**e Deserters**

Deserters, stowaways, refugees and persons rescued at sea.

**Covered risks**

The following risks as set out in Clause **21 ii** are covered in respect of these persons:

- g** Deviation expenses
- i** Expenses in respect of deserters and stowaways

*Provided always that:-*

Any wages due to a deserter shall, if and to the extent permissible by law, be retained by the Member and such savings deducted from a claim for reimbursement under paragraph **i** of Clause **21 ii**.

**iv Life Salvage**

- a.** To the extent not recoverable from Hull underwriters, cargo owners or underwriters, sums awarded to third parties, or in the Managers absolute discretion, where claimed by third parties to be lawfully recoverable, for the saving of, or attempting to save, the life of any person on or from an entered ship.
- b.** To the extent not recoverable from any other party, the costs of search and rescue operations which do not result in the rescue of persons to the extent that these fall within Clause **21 ii g (iv)** and the proviso thereto.

**v Collision Liability**

Liabilities, costs and expenses (other than in respect of, or consequent upon the loss of, or damage to, or for loss of earnings of, the entered vessel) arising within the categories and subject to the terms set out below, consequent upon collision between an entered ship and any other ship:

- a** Liability for loss of, damage to, or interference with rights in relation to the other ship, or cargo or property therein, occasioned by collision with the entered ship.
- b** A Member's liability to indemnify the owner of the other ship against, or to pay, liabilities, costs and/or expenses of or incidental to:
  - (i)** Raising, removal, destruction, lighting or marking of the wreck of such other ship, its cargo or other property on board.
  - (ii)** Loss of, or damage to, or interference with rights in relation to any fixed or movable property, whether on or above, in or below land or water, caused by such other ship.
  - (iii)** An actual or threatened escape or discharge of oil or any other substance (other than from the entered ship) save for that causing damage to the ship with which the entered ship is in collision or that causing damage to any property on board that ship.
  - (iv)** Remuneration payable under the Special Compensation P&I (SCOPIC) Clause or special compensation and any increment awarded thereon under the provisions of Article 14 of the International Convention on Salvage 1989.
- c** Loss or damage to cargo or other property being carried on an entered ship consequent upon collision;

*Provided always that*

- (i)** the Member is insured by the Club for liabilities in respect of cargo, and subject to the terms of entry and the Clauses applicable to such cover.

- (ii) Clause **21 xiii** proviso (vii) shall apply in respect of cargo being carried in the entered ship which is owned by the Member.

**Note:** *It is recommended that bills of lading or any other relevant contract of carriage should whenever possible incorporate a 'Both-to-Blame' collision clause. A recommended form of such a clause is set out under 'Clauses Recommended by the Association' at the end of the Clauses.*

- d** If a claim arises under this Clause following a collision involving a ship owned by the same Member, the Member shall be entitled to recover from the Club, and the Club shall have the same rights, as if the ship which is lost or damaged and owned by the Member had belonged to a third party.
- e** Without prejudice to any other provision, exclusion, limitation or condition set out in these Clauses, cover under this Clause **21 v** is subject to Clause **17 vi**.

## **vi Pollution**

Liabilities, losses, damages, costs and expenses caused by or consequent on the escape or discharge or threatened escape or discharge of oil or any other substance from the entered ship, including cargo or any other property intended to be, being, or having been carried on the Entered Ship, as follows:

### **a Actual escape of pollutants**

Liability for loss, damage or contamination.

### **b Clean up costs**

Costs of any measures reasonably taken for the purpose of avoiding, minimising or cleaning up any pollution, or any resulting loss, damage or contamination, together with any liability for any loss of or damage to property caused by any measures so taken.

### **c Prevention costs**

Costs of any measures reasonably taken to prevent an imminent danger of discharge or escape from the entered ship of oil or any other substance which may cause pollution.

### **d Costs pursuant to Government Directions**

Liabilities, costs or expenses following a casualty to the entered ship incurred as a result of compliance with the order or direction of any government or authority (other than in respect of repair or salvage or any permanent structural alteration to an entered ship) for the purpose of avoiding, minimising or cleaning up any pollution or preventing the imminent danger of pollution.

### **e Salvors' Expenses**

If entered for pollution risks under Clause **21 vi**, liability for special compensation and any increment awarded thereon payable to salvors under the terms of the Special Compensation P&I Club (SCOPIIC) Clause or under the provisions of Article 14 of the International Convention on Salvage 1989 or assumed under the terms of a standard form of salvage contract on usual terms no less favourable to Owners than Lloyd's standard form of salvage agreement (1980. 1990. 1995 or 2000, whether or not incorporating SCOPIIC) - no cure, no pay, or under such terms as may otherwise be approved by the Managers

*provided always that:-*

- (i) Unless otherwise agreed by the Managers in writing prior to the event giving rise to a claim, or unless the Directors shall in their discretion otherwise determine, there shall be no recovery under paragraphs **a - c** of this Clause **21 vi** in respect of liabilities, costs and expenses which would have been recoverable by the Owner in general average if the relevant charterparty or other contract of carriage had incorporated the unamended York - Antwerp Rules 1994.
- (ii) Without prejudice to any other provision, exclusion, limitation or condition set out in these Clauses, cover under this Clause **21 vi** is subject to Clause **17 vi**.

## **vii Damage to fixed and floating objects**

Liability for loss of, or damage to, or interference with rights in relation to any fixed or movable property, whether on or above, in or below land or water, and whether or not on board the entered vessel.

*Provided always that:*

- a** There shall be no recovery under this Clause **21 vii** in respect of:

- (i) the liabilities set out in the following Clauses:

Clause <b>21 i-iii</b>	Persons
Clause <b>21 ii h</b>	Baggage and effects of seamen, supernumeraries or passengers
Clause <b>21 v</b>	Collision
Clause <b>21 vi</b>	Pollution

Clause <b>21 viii</b>	Non contact damage to ships
Clause <b>21 ix</b>	Towage contracts
Clause <b>21 xi</b>	Wreck

to the extent that those liabilities are recoverable under the respective Clauses set out above or would be recoverable but for any exclusions or other conditions of those Clauses and/or under the terms of the Member's entry.

- (ii) Liabilities in respect of cargo intended to be or having been carried in the entered ship to the extent that those liabilities are recoverable under Clause **21 xiii** or would be recoverable but for any exclusions or other conditions of that Clause and/or under the terms of the Member's entry.
  - (iii) Liabilities arising under the terms of any contract or undertaking, other than a charterparty of the entered ship to which the Member is party, unless approved in writing by the Managers on such terms as they may require.
- b** If a claim is made on the Club under this Clause **21 vii** for loss of or damage to or interference with rights in relation to any property belonging to the Member in respect of whose entered ship the claim arose, the Member shall be entitled to recover from the Club and the Club Clauses shall apply in all respects, as if such property belonged to a third party, but to the extent only that such claim is not recoverable under any other insurance upon the said property, and provided that there shall be no recovery under this Clause in respect of any such claim which is not recoverable under any other insurance only by virtue of the existence of the cover provided by the Club.
- c** Without prejudice to any other provision, exclusion, limitation or condition set out in these Clauses, cover under this Clause **21 vii** is subject to Clause **17 vi**.

#### **viii Damage to Vessels without collision**

Liability for loss of, or damage to, or interference with rights in relation to any other ship or property therein occasioned otherwise than by collision with the entered ship.

- a** Without prejudice to any other provision, exclusion, limitation or condition set out in these Clauses, cover under this Clause **21 viii** is subject to the following provisions:
- (i) Clause **17 vi**; and
  - (ii) There shall be no recovery in respect of any liabilities relating to cargo or other property carried on the entered ship unless the Member is insured by the Club under Clause **21 xiii**, and cover in respect of any such liabilities shall be subject to the terms of that Clause and to the applicable terms of entry.
- b** If a claim is made on the Club under this Clause **21 viii** for loss of or damage to or interference with rights in relation to any property belonging to the Member, in respect of whose entered ship the claim arose, the Member shall be entitled to recover from the Club and the Club Clauses shall apply in all respects, as if such property belonged to a third party, but to the extent only that such claim is not recoverable under any other insurance upon the said property, and provided that there shall be no recovery under this Clause in respect of any such claim which is not recoverable under any other insurance only by virtue of the existence of the cover provided by the Club.

#### **ix Towage**

- a** Liabilities of a Member, other than for loss of, or damage to, or for loss of earnings or use of the entered ship or the cost of any contracted services, arising from and/or in respect of the towage of an entered ship
- Provided that there shall be no recovery in respect of liabilities, costs and expenses incurred under or pursuant to the terms of a contract for towage of an entered ship, unless that contract:
- (i) Is entered into during the ordinary course of trading for the purpose of entering, leaving or manoeuvring within a port;
  - (ii) Is entered into during the ordinary course of trading, when the entered ship is habitually towed from place to place and has been declared as such to the Managers;
  - (iii) Is on Lloyd's Open Form of Salvage Agreement (1980, 1990, 1995 or 2000, whether or not incorporating SCOPIC) or any other form of salvage contract approved by the Managers in writing on such terms as they may require; or
  - (iv) Incorporates a term to the effect that each of the Owner of the entered Ship and the owner of the towing vessel shall be responsible for any loss or damage to his own vessel, and for loss of life or personal injury on his own vessel, without any recourse whatsoever against the other.
- b** Liabilities of a Member arising from and/or in respect of towage by the entered ship,
- Provided that in respect of liability for loss of or damage to or wreck removal of a vessel or other floating structure towed by the entered Ship or the cargo or other property on such tow (together

with costs and expenses associated therewith), there shall be no recovery under this Clause save insofar as:

- (i) the towage or attempt thereat is made for the purpose of saving or attempting to save life or property at sea, or
  - (ii) the entered ship is towing under a contract approved in writing by the Managers on such terms as they may require; or
  - (iii) If the entered Ship is working under a time charter and there is no contract between the Owner and the owner of the tow, the Managers have approved in writing the terms of that time charter.
- c** There shall be no recovery in respect of liabilities, costs and expenses arising out of towage otherwise than in accordance with this Clause **21 ix**, and in the case of Members entered for DTH cover, Clause **22** and cover hereunder is in any event limited to the liabilities set out under Clauses **21 i –xxi** (excluding this Clause **21 ix**) to the extent that such Clauses are applicable to the Member's entry in the Club.
- d** Without prejudice to any other provision, exclusion, limitation or condition set out in these Clauses, cover under this Clause **21 ix** is subject to Clause **17 vi**.

**Note:**

*The Managers will ordinarily only approve contracts for towage by an entered Ship pursuant to paragraph **b (ii)** above of this Clause **21 ix** in terms not less favourable to the towing vessel than:*

- a) *United Kingdom, Netherlands and Scandinavian standard towage conditions.*
- b) *Towcon and Towhire*
- c) *The Lloyds standard form of salvage agreement (1980, 1990, 1995 or 2000, whether or not incorporating SCOPIC) - no-cure no pay*
- d) *A contract that contains a term that the parties to the towage contract, and any parties on whose behalf they contract, shall be responsible for any loss or damage to or wreck removal of their own ship, cargo or property and for loss of life or personal injury thereon, without recourse against the other and will indemnify the other against any such liability (a "knock for knock" clause).*
- e) *Other contracts where*
  - (i) *A term or terms of the contract complying with **(d)** above is or is likely to be unlawful or unenforceable in whole or in part; and*
  - (ii) *The contract does not impose on the Member any liability to any person arising out of any act, neglect or default of the owner of the tow or any other person; and*
  - (iii) *The contract limits the liability of the Member under the contract or otherwise to the maximum extent possible by law.*

*In addition, the Managers recommend in all cases, and particularly when cargo is carried on board the towed vessel, that;*

- 1) *a Himalaya clause or similar provision should be incorporated in the towage or other contract under which the entered ship is hired to perform towage services, to protect the tug owner's own employees, servants and sub-contractors from being sued in tort by the hirer or charterer of the tug; and*
- 2) *the towage or other contract under which the entered ship is hired to perform towage services should include a requirement that any other contract entered into by the hirer or charterer of the tug with any third party should contain a Himalaya clause, under which the tug is afforded the same defences as the hirer or charterer.*

**x Contracts and Indemnities**

- a** Liabilities in respect of risks covered under any Clause (other than this Clause **21 x**) which is applicable to and not excluded by the terms of the Member's entry in the Club, arising under the terms of an indemnity, undertaking or contract made by the Member, other than a charterparty of the entered ship to which the Member is party;

*provided always that:*

*the terms of the indemnity, undertaking or contract shall have been approved in writing by the Managers, or the Directors have in their discretion determined that a particular claim falls within the scope of Club cover.*

- b** Without prejudice to any other provision, exclusion, limitation or condition set out in these Clauses, cover under this Clause **21 x** is subject to Clause **17 vi**.

**xi Removal of Wreck**

- a** Costs and expenses of or incidental to or liabilities arising out of the actual, or attempted raising, removal, destruction, lighting or marking of:
  - (i)** the wreck of an entered ship, including any part thereof; or,
  - (ii)** cargo, equipment or other property carried on the entered ship, to the extent that those costs are not recoverable from the owner of such property or from any other party;

*Provided always that:*

- (a)** Such raising, removal, destruction, lighting or marking is compulsory by law, or the costs thereof are legally recoverable from the Member or a party whom the Member is liable to indemnify under the terms of the charter; and
- (b)** The casualty or event giving rise to a claim under paragraph **a** of this Clause **21 xi** occurred during the period of the ship's entry in the Club, and in the case of actual, constructive or compromised total loss of the entered ship the Member shall continue to be covered by the Club in respect of such liabilities notwithstanding the provisions of Clause **33 ii**.

- b** Liabilities arising out of the presence or involuntary shifting of, or obstruction caused by, the wreck of an entered ship, including any part thereof or cargo, equipment or other property carried thereon.

*Provided always that*

in respect of paragraph **b** of this Clause **21 xi**:

- (i)** The event causing the loss or wreck of the entered ship has occurred during the period of entry of that ship in the Club and liability is attributable to such event;
- (ii)** Unless the Directors in their absolute discretion otherwise determine, there shall be no recovery in respect of:
  - (a)** Liabilities resulting from the failure of the Member to take such measures as are reasonable to raise, remove, destroy, light or mark the wreck; and
  - (b)** Any liabilities incurred more than two years after the entered ship became a wreck.

- c** To the extent of the Member's interest therein, the value of:

- (i)** The wreck itself and all stores and materials saved shall be deducted from any reimbursement made by the Club under this Clause **21 xi**; and/or
- (ii)** All cargo saved, shall be deducted from any reimbursement made by the Club under either Clause **21 xi a (ii)** or Clause **21 xiii**.

Provided that if any such proceeds are realised by the Member after reimbursement by the Club and without deduction in accordance with paragraphs **(i)** and **(ii)** above, the Member shall pay any such proceeds to the Club up to the amount of any prior reimbursement.

- d** Unless the Managers otherwise agree in writing, there shall be no recovery under this Clause **21 xi** or any other Clause in respect of any liability, costs or expenses incurred by the Member after the transfer of its interest in the cargo or wreck, otherwise than by abandonment, prior to the actual or attempted raising, removal, destruction, lighting or marking of the wreck or prior to incurring any other liabilities covered by this Clause **21 xi**;

- e** There shall be no recovery under this Clause **21 xi** in respect of any liabilities arising under the terms of any contract or undertaking other than a charterparty of the entered ship to which the Member is a party, unless approved in writing by the Managers on such terms as they may require.

- f** Without prejudice to any other provision, exclusion, limitation or condition set out in these Clauses, cover under this Clause **21 xi** is subject to Clause **17 vi** and provisos **(x)** and **(xii)** to Clause **21 xiii**.

## **xii Quarantine Expenses**

Extraordinary expenses consequent on the outbreak of infectious or contagious disease upon an entered ship or in respect of quarantine as follows:-

- a** The disinfection of the entered ship or of persons on board her under quarantine or pursuant to any public health order, including the cost of taking in fuel in quarantine, and of loading and discharging cargo and of the victualling of the crew and passengers provided that there shall be deducted from any recovery under this Clause **21 xii** any of such costs and expenses as would have been incurred but for the quarantine or public health order;
- b** Fuel consumed or towage in proceeding to and from and lying at a special station or place solely in accordance with quarantine or public health orders;



- c** Expenses directly consequent upon deviating to a port or place of refuge and resuming the voyage thereafter by reason of quarantine or public health orders;

*provided always that:*

There shall be no recovery under this Clause **21 xii** if the entered ship, not already being so contracted, is ordered or sub-chartered to proceed to a port at which it was known or should in the determination of the Directors have reasonably been anticipated that the entered ship would be subject to quarantine.

### **xiii Cargo Liabilities**

Liabilities and costs insofar as they relate to cargo intended to be or being or having been carried in an entered ship as follows:

#### **a Loss, Shortage, Damage and other Responsibility**

Liability for loss, shortage, damage or other responsibility arising out of any breach by the Member, or by any person for whose acts, neglect or default he may be legally liable, of his obligation as carrier by sea properly to load, handle, stow, carry, keep, care for, discharge or deliver the cargo or property or out of unseaworthiness or unfitness of the entered ship.

#### **b Handling of Damaged or Worthless Cargo**

The extra costs (over and above those required by and/or incurred in the performance of his obligations under the contract of carriage) incurred by the Member in restowing, discharging or disposing of damaged or worthless cargo, provided that the Member has no recourse to recover such costs from any other party and, in respect of such cargo, the Member shall only be entitled to recover such extra costs if and to the extent that they exceed any proceeds of sale of the cargo payable to the Member.

#### **c Failure of cargo interests to collect cargo**

The extra costs and liabilities incurred by the Member arising directly out of the failure by cargo interests to collect or remove cargo from the port or place of discharge or delivery provided that:

- (i)** The Member is legally liable for such costs or is liable as Charterer to indemnify a party who is so liable or has incurred such costs under the direction or with the approval of the Managers; and
- (ii)** The Member has no recourse to recover such costs from any other party; and
- (iii)** The Member shall only be entitled to recover such extra costs if and to the extent that they exceed the proceeds of the sale of the cargo; and
- (iv)** In any event there shall be no recovery in respect of
  - (a)** storage charges for the first 30 days following discharge and
  - (b)** any costs and liabilities (including storage charges), under paragraph **c** of this Clause **21 xiii**, which have been incurred prior to notification of the failure to collect or remove cargo being received by the Managers.

#### **d Through Transport**

Liability for loss and shortage of, damage to or other responsibility in respect of cargo for which the Member may be liable under a through or transshipment bill of lading or other form of contract of carriage providing for carriage partly to be performed by an entered ship, provided that:

- (i)** the terms of any such contract of carriage for the cargo in respect of which the Member is liable as carrier have been approved in writing by the Managers on such terms as they may require.
- (ii)** where a Member is liable as carrier for carriage which is performed by transshipment between ships, of both of which the Member is either Charterer or Owner, but only one of which is entered by the Member in the Club, the Member may recover from the Club for liability in respect of loss, shortage, damage or other responsibility in respect of cargo only to the extent that it occurred during or was consequent upon that part of the carriage performed by the entered vessel.

*Provided always that:*

in relation to paragraphs **a – d** of this Clause **21 xiii**

#### **Hague Rules and Hague-Visby Rules**

- (i)** Unless and to the extent that the Directors in their discretion otherwise determine or special terms have been agreed in writing by the Managers, there shall be no recovery from the Club in respect of any liabilities, costs and expenses which would not have been incurred or become payable by the Member if the cargo had been carried under a bill of lading or other

contract of carriage incorporating terms no less favourable to the carrier than the Hague Rules or Hague-Visby Rules.

**Note:** A Member should ensure wherever possible that any bill of lading or other contract of carriage to which any other is the contracting party contains a provision in the same or substantially the same form as the "Himalaya" clause set out under the 'Clauses recommended by the Association' at the end of these terms, extending any exemptions and immunities of the carrier to that Member, and to each of his servants, agents and subcontractors.

#### Through and transshipment bills of lading

- (ii) Where a through or transshipment bill of lading or other contract of carriage has been issued by the Member in accordance with paragraph **d** of this Clause **21 xiii** there shall be no recovery from the Club in respect of liabilities, costs or expenses incurred by the Member under or in connection with such a bill of lading or other contract of carriage, unless the Member preserves its rights of recourse against any sub-contractor by sub-contracting only on terms that:
  - (a) the sub-contractor shall be liable to the Member to the same extent as is the Member to any other person under the Member's bill of lading or other contract of carriage, or
  - (b) have been approved in writing by the Managers.

#### Deviation

- (iii) There shall be no recovery from the Club in respect of any liabilities, costs and expenses arising out of or incurred in consequence of a deviation of an entered ship and/or a deviation in relation to cargo before, during or after being carried in an entered ship, including without limitation any geographical or other departure from the contractually agreed voyage or adventure, unless
  - (a) in the case of a deviation authorised by the Member, it shall prior thereto have given notice of the same to the Managers, or in the case of a deviation without its authority, it shall have given notice to the Managers immediately upon receiving information thereof, and the Managers have in writing agreed cover in respect of such losses, costs and expenses on such terms as they may require; or
  - (b) to the extent that the Directors in their discretion otherwise determine.

**Note:** If the contract of carriage contains an appropriate Voyage Liberty Clause, an example of which is set out under 'Clauses Recommended by the Association' at the end of these terms, some unplanned deviations may be permissible. The Managers may in such circumstances determine that no additional premium is to be paid by the Member. (The shipment of cargo on deck without a specific statement to that effect in the Bill of Lading may amount to a deviation in addition to an infringement of the requirements of proviso **(x)** to this Clause **21 xiii**).

#### Valuable Cargo

- (iv) There shall be no recovery from the Club in respect of any liabilities, costs or expenses arising out of the carriage of specie, bullion, precious or rare metals or stones, plate, jewellery or other objects of a rare or precious nature, banknotes or other forms of currency, bonds or other negotiable instruments, unless the contract of carriage relating thereto and the spaces, apparatus and means in which the same are to be carried and the instructions given with regard to the safe custody thereof have been approved in writing by the Managers on such terms as they may require.

#### Ad valorem bills of lading

- (v) There shall be no recovery from the Club in respect of any liabilities, costs or other expenses arising out of carriage under an ad valorem bill of lading or other document of title, waybill or other contract of carriage in which a value of more than United States dollars two thousand five hundred (USD 2,500) (or the equivalent in any other currency) is declared and/or inserted by reference to a unit, piece, package or otherwise, where the effect of such a declaration/insertion is to deprive the carrier of any right or rights of limitation to which he would otherwise have been entitled and cause him to incur a greater liability than he would have done but for such declaration/insertion, to the extent that such liability thereby exceeds United States dollars two thousand five hundred (USD 2,500) (or the equivalent in any other currency) in respect of any such unit piece or package, unless the contract of carriage has been approved in writing by the Managers on such terms as they may require.

#### Refrigerated Cargo

- (vi) The Managers may at any time require to be satisfied as to the spaces, plant and apparatus, and means used for the carriage of refrigerated cargo in an entered ship, the instructions given to those on board and the terms of the contract of carriage under which the same is to be carried, and the Member shall upon such request supply the relevant

information to the Managers. In the event the Managers withhold their approval and so notify the Member in writing, there shall be no recovery from the Club in respect of any loss of or damage to such refrigerated cargo carried upon any voyage which began after the service on the Member of such notice.

#### **Member's Own Cargo**

- (vii) If the cargo in respect of which a claim is made on the Club under paragraphs **a - d** of this Clause **21 xiii** is owned by the Member and where agreed in writing by the Managers upon such terms as they may require, the Member shall be entitled to recover from the Club and the Club Clauses shall apply in all respects as if such cargo belonged to a third party, and that third party had concluded a contract of carriage of the cargo with the Member on the terms of the Club's recommended standard terms of carriage as referred to in **proviso (i)** above.

#### **Discretionary Claims**

- (viii) Unless and to the extent that the Directors shall in their absolute discretion otherwise determine, (and in any event only if they are satisfied that the Member took such steps as appear to those Directors to be reasonable to avoid the event or circumstances giving rise to such liabilities, costs and expenses), there shall be no recovery from the Club under paragraphs **a - d** of this Clause **21 xiii** in respect of the Member's liabilities, costs or expenses arising out of:
- (a) the discharge of the cargo or any part thereof at any port or place other than a port or place permitted by the relevant contract of carriage;
  - (b) the delivery of cargo carried on an entered ship under a negotiable bill of lading or similar document of title (including an electronic bill of lading) without the production ( or equivalent thereof in the case of an electronic bill of lading) of that bill of lading or document by the person to whom delivery is made, except where cargo has been carried on an entered ship:
    - (i) under the terms of a non-negotiable bill of lading, waybill or other non-negotiable document, and despite having been properly delivered as required by that document, liability nevertheless arises under the terms of a negotiable bill of lading or other similar document of title (issued by or on behalf of a party other than the Member) providing for carriage in part upon the entered ship and in part upon another ship or by another mode of transport, or
    - (ii) under the terms of an approved electronic trading system and has been properly delivered to the person so entitled in accordance herewith;
  - (c) the delivery of cargo carried under a non-negotiable bill of lading, waybill or similar document without production of such document by the person to whom delivery is made, where such production is required pursuant to the terms of and/or the law applicable to that document, except where the Member is obliged by law to deliver or relinquish custody of the cargo, without production of such document;
  - (d) the issue of an ante dated or post dated bill of lading, waybill or other document containing or evidencing the contract of carriage;
  - (e) the issue of a bill of lading, waybill or other document containing or evidencing the contract of carriage known by the Member or the Master of the entered ship to contain an incorrect description of the cargo or its condition or quantity;
  - (f) the failure to arrive or late arrival of an entered ship at any port of loading, or out of the failure to load or delay in loading any particular cargo or cargoes in an entered ship otherwise than under a bill of lading already issued.
  - (g) the carriage of cargo to the port or place identified in the contract of carriage as the destination from any other port or place at which the cargo has been discharged and/or storage or other charges or expenses of any intermediate port or place.

#### **Loss of Freight or Hire, Detention or Demurrage**

- (ix) Loss of freight or hire or any proportion thereof, or claims for demurrage on, detention of, or delay to an entered ship shall be recoverable under this Clause **21 xiii** if, but only if, such loss or claim forms part of a claim for liabilities in respect of cargo or is, with the consent of the Managers, included in the settlement of a claim;

#### **Deck Cargo**

- (x) Unless and to the extent otherwise agreed in writing by the Managers, there shall be no recovery from the Club in respect of liabilities for loss, shortage, damage or other responsibility arising out of the carriage of cargo on deck unless the cargo and the ship are, in the opinion of the Managers, suitable for carriage on deck and the Bill of Lading or other contract of carriage:

- (a) states that the cargo is carried on deck and either provides that the carrier is free from all liability for loss of or damage to cargo or provides the carrier with rights, immunities and limitations no less favourable than those contained in the Hague Rules or Hague-Visby Rules; or
- (b) contains an appropriate liberty to carry cargo on deck and provides for the Hague Rules or the Hague-Visby Rules to apply to such cargo.

**Note:** A suitably worded deck cargo carriage clause may exclude liability for deck cargo where the Hague Rules or Hague-Visby Rules do not apply. Two examples are set out under the 'Clauses Recommended by the Association' at the end of these terms. A clause giving general permission to carry on deck may not be "an appropriate liberty" for the purposes of paragraph (b) of proviso (x) to this Clause 21 xiii. The Managers will on request but at the Member's expense endeavour to arrange an insurance to cover the Member's liability in respect of cargo carried otherwise than in accordance with paragraphs (a) and (b) of proviso (x) to this Clause 21 xiii.

#### Exclusion of pollution liabilities

- (xi) There shall be no recovery under this Clause 21 xiii in respect of:
  - (a) any liabilities, losses, damages, costs or expenses caused by or consequent on the escape or discharge or threatened escape or discharge of oil or any other substance from the entered ship, including cargo or any property intended to be, being, or having been carried on, the entered ship;
  - (b) any liability, loss, damage, cost or expense, including, without limitation, liability for the cost of remedial works or clean-up operations, arising as a result of the disposal or discharge at, presence in, or the escape or discharge or threat of escape or discharge from, any land based dump, site, storage or disposal facility of any substance previously carried or intended for carriage on the entered ship whether as cargo, fuel, stores or waste and whether at any time mixed in whole or in part with any other substance whatsoever, unless the Directors shall in their absolute discretion otherwise determine

#### Heavy Lift Cargo

- (xii) There shall be no recovery from the Club in respect of loss of or damage to or wreck removal of cargo carried on a semi-submersible heavy lift vessel or any other vessel designed exclusively for the carriage of heavy lift cargo, save to the extent that such cargo is being carried under the terms of a contract on Heavycon terms or on such terms as the Managers may otherwise agree in writing.
- (xiii) Where the Member is liable by way of a claim for indemnity under a charterparty, recovery under this Clause 21 xiii shall be excluded or limited to the extent that the liability would have been avoided or reduced had provisos (i) to (xi) applied to the liability in respect of which indemnity is sought.

#### Livestock

- (xiv) Unless and to the extent otherwise agreed in writing by the Managers, there shall be no recovery from the Club under paragraphs a to d of this Clause 21 xiii in respect of any liabilities, costs and expenses arising out of or incurred in consequence of the intended or actual carriage of live animals.

#### xiv Cargo's Proportion of General Average

Contribution by cargo or some other party to the maritime adventure to general average, special charges or salvage which is not legally recoverable solely by reason of a breach of the contract of carriage;

provided always that:

- a Provisos (i) – (xiii) to Clause 21 xiii shall apply to any claim under this Clause 21 xiv;
- b Any cargo allowance stated in the adjustment, but for which credit has not in fact been taken by cargo, shall be deducted.

**Note:** No proportion of any sacrifices of ship or interest, commission or adjustment charges on sacrifices of ship (which are normally recoverable from Hull Underwriters) are payable under this Clause.

#### xv Fines

Fines for which a Member is liable or for which a Member, with the approval of the Managers, assumes responsibility, imposed in respect of an entered ship by any court, tribunal or authority of competent jurisdiction as follows:

- a **Cargo**

Fines for short or over delivery of cargo, or for failure to comply with regulations concerning the declaration of goods, or the documentation of cargo;

*provided always that:*

The Member is insured by the Club for liability in respect of cargo, and subject to the terms of entry and the Clauses applicable to such cover.

**b Immigration laws**

Fines for breach of any law or regulation relating to immigration;

**c Pollution**

Fines in respect of the accidental escape or discharge of oil or any other substance or the threat thereof;

*provided always that:*

the Member is insured for pollution liability by the Club, and subject to the terms of entry, the Clauses, and the limit of liability applicable to such cover.

**d Smuggling**

Fines for smuggling or any infringement of any customs law or customs regulation other than in relation to cargo carried on the entered ship.

**e Other Fines**

There shall be no recovery in respect of fines other than those specified in paragraphs **a - d** of this Clause **21 xv** unless the Member has satisfied the Directors that it took such steps as appear to the Directors to be reasonable to avoid the event giving rise to the fine;

*provided always that:*

Any amount claimed under paragraph **e** of this Clause **21 xv** in respect of any such fine shall be recoverable to such extent only as the Directors in their absolute discretion may determine without having to give any reason for their decision; and without prejudice to any other provision, exclusion, limitation or condition set out in these Clauses, cover under this or any other Clause is subject to Clause **17 vi**.

**xvi Confiscation**

Notwithstanding the terms of Clause **17**, the Directors in their discretion may authorise the payment, in whole or in part, of a Member's claim for loss of an entered ship following confiscation of the ship by any legally empowered court, tribunal or authority by reason of the infringement of any customs law or customs regulation;

*provided always that:*

- a** the amount recoverable from the Club shall under no circumstances exceed the market value of the ship without commitment at the date of the confiscation;
- b** the Member shall have satisfied the Directors that it took such steps as appear to the Directors to be reasonable to prevent the infringement of the customs law or customs regulation giving rise to the confiscation;
- c** any amount claimed under this Clause **21 xvi** shall be recoverable to such extent only as the Directors in their absolute discretion may determine without having to give any reason for their decision;
- d** no such claim shall be considered by the Directors until such time as the Owner has been finally deprived of his full interest in the entered ship.

**xvii Enquiry**

Costs and expenses incurred by a Member in defending himself or in protecting his interests before a formal enquiry into the loss of or casualty to an entered ship in cases which, in the opinion of the Managers, may affect any claim upon the Club arising out of such loss or casualty.

**xviii Expenses Incidental to Chartering**

Liabilities, costs and expenses incidental to the business of chartering, operating or managing ships which the Directors may decide to be within the scope of the cover of the Club. Claims under this paragraph shall be recoverable to such extent only as the Directors in their absolute discretion may determine without having to give reasons for their decision.

**xix Legal and other Expenses**

**a Legal costs and Expenses**

Costs and expenses including legal costs and charges, which a Member may incur in respect of any liability or expenditure against which he is insured by the Club;

**b Sue and Labour**

Extraordinary costs and expenses reasonably incurred upon or after any casualty, occurrence or event which is likely to give rise to a claim covered by the Club, solely for the purpose of avoiding or minimising any liability or expenditure arising from such claim;

**c Expenses incurred under direction of Club**

Costs, expenses and losses which a Member may incur by special direction of the Club in relation to claims which the Directors consider affect or may affect the interests of the Members or the Club ;

*provided always that:*

There shall be no recovery under this Clause **21 xix** in respect of any costs or expenses save to the extent that

- (i) the same have been incurred with the consent in writing of the Managers, or
- (ii) the Directors in their absolute discretion shall otherwise determine.

**xx Loss of or Damage to Containers**

loss of or damage to containers owned or leased by the Member;

*provided always that:*

there shall be no recovery under this Clause **21 xx** unless the Member has obtained the prior written agreement of the Managers to extend his cover in terms of this Clause and the Member has agreed to such special terms, and has agreed to pay such additional premium, as the Managers may require.

**xxi Deductibles and Policy Limits**

Unless otherwise agreed;

- a** any liabilities, costs and expenses recoverable under Clause **21** shall be subject to such deductible(s) as may have been agreed between the Managers and the Member, and
- b** any amount recoverable by the Member hereunder up to the policy limit shall be reduced by the amount of such deductible(s).

Deductibles to be applied to particular claims will be on the basis agreed between the Managers and Members as part of the terms and conditions upon which the entry of the ship is either accepted or continued. In the absence of contrary notification from the Club, the deductibles applicable to any particular entry at the end of any policy year shall be deemed to continue to apply to that entry in the next policy year.

**22 Damage to Hull, Charterers' Proportion of General Average and Salvage Contributions**

The liabilities, loss, damage, costs and expenses against which a Member may be protected and indemnified if entered in the Club for any of the risks set out in sub-Clauses

**22 (i)** – Damage to Hull;

**22 (ii)** – Charterers' Proportion of General Average and Salvage contributions;

are limited to those set out hereunder;

Subject always to:

- a** The terms of this Clause and of all other Clauses of Charterers' cover; and
- b** Any other terms and conditions applicable to the Member's entry.

**Damage to Hull**

**i a** In respect of its liabilities as Charterer to the Owner of the entered ship:

- (i) For physical loss of or damage to the entered ship, its equipment, fittings, stores and supplies, excluding any property on board of whatsoever nature owned or leased by the Member or any other party in common or associated ownership or management, save that where the Member's liability for such loss arises under the terms of any contract with, or indemnity to the Owners, (other than the charterparty of the entered ship to which the Member is a party), or any third party, such terms have been approved in writing by the Managers.
- (ii) For delay, detention or loss of use of the entered ship consequent on its physical loss or damage. Where by virtue of the provisions of the charterparty to which the Member is party the entered ship remains on hire, or time continues to run during periods of time lost in consequence of physical loss or damage to the entered ship for which the Member is responsible:
  - (a) hire or demurrage; and
  - (b) bunker consumption;

for that period shall be recoverable under this sub-Clause.

- b** For extraordinary costs and expenses reasonably and necessarily incurred by the Member in his capacity as Charterer of the entered ship for the removal and replacement of bunkers in order to avoid or minimise the Member's liability for physical damage to the entered ship, its engines or other equipment:
  - (i)** to remove from the ship bunkers (including any fuel oil and/or lubricating oil);
  - (ii)** to replace the bunkers so removed with new and sound bunkers;
  - (iii)** to clean the ship's engines, tanks, pipelines and/or other similar affected areas; and
  - (iv)** to lawfully dispose of removed bunkers from the entered ship as well as substances resulting from the cleaning of the Entered Ship's engines, tanks, pipelines and/or other similar affected areas.

Notwithstanding the above, the following are not covered:

- (a)** The economic value of the bunkers removed from the entered ship and/or the new and sound bunkers supplied to the entered ship;
  - (b)** Costs and expenses resulting from measures which have been or could have been accomplished by personnel employed by the Member or by the reasonable use of equipment owned and controlled by the Member, and
  - (c)** Costs and expenses incurred by the Member in any capacity other than as a charterer of the ship, including, without limitation, where acting as supplier of the bunkers removed and/or replaced.
- c** In respect of towage of or by the entered ship as provided for in Clause **21 ix** and provided in addition that:
    - (i)** Such liabilities arise out of physical loss of or damage to the entered ship; and
    - (ii)** the Owners or Master of the entered ship have first consented to such towage.
  - d** To pay or indemnify another party or parties for its/their General Average and/or Salvage contributions levied upon or attributable to the entered ship and/or bunkers owned by parties other than the Member, including in respect of sacrifices.

Provided that there shall be no recovery under this Clause **22 i** in respect of liabilities howsoever arising out of transshipment operations including ship to ship transfers and/or bunkering other than in port, or at anchorage where it is customary for such operations to be carried out, in the absence of the Managers' prior agreement in writing to cover such operations under this sub-Clause, on such terms as they may require.

#### **Charterers' Proportion of General Average and Salvage Contributions**

- ii** In respect A Member shall be entitled to recover its liability to contribute to general average and/or salvage on freight or, to the extent not covered by other insurances, bunkers and/or property other than cargo on board the entered ship.

### **Clarifications to Clause 21**

#### **Clause 21 i, ii, iii - various Crew aspects:**

Members are reminded that liability in respect of permanent, temporary or substitute crew may vary largely on the basis of the actual conditions of the crew contract or other type or form of contract for service or employment of crew.

Unless the agreed terms of entry state otherwise, there shall be no cover in respect of any liability, cost or expense arising under any contract including any collective agreement.

Cover in respect of crew is available for recourse actions from health insurers or other insurers and in respect of claims for general damages subject always to the Clauses and terms of entry.

#### **Clause 21 (ii) h – Loss of Baggage and Effects:**

Members are reminded that cover for seamen's effects is restricted to the liability as per the Applicable Law and does not therefore automatically include coverage for cars, motorcycles or other exceptional property of the crewmember, irrespective of possible contractual terms. Please also refer to the definition of 'Effects' under Clause 2. Any special terms of entry stating otherwise shall be endorsed on the Certificate of Entry.

#### **Clause 21 iii c - Passengers:**

Members are reminded that cover for any liabilities, costs and expenses in respect of passengers, meaning any person carried on board the entered ship pursuant to a contract for carriage, is excluded unless prior approval has been obtained and special terms of entry agreed and endorsed on the Certificate of Entry.

**Clause 21 ix- Towage:**

The expression "towage" in the Clauses includes any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of or standing by of the "towed" vessel.

Reference to "habitually towed" includes, inter alia, dumb barges.

Cover in respect of liabilities under other special or dedicated contracts may be possible, but only subject to the Managers' approval prior to the towage and special terms of entry being agreed and endorsed on the Certificate of Entry.

The Directors may in their absolute discretion reject or reduce a claim if they consider it was unreasonable, having regard to all the circumstances of the case, to have entered into the particular contract.

Members are reminded that with regard to tugs, pushboats and any other type of vessel performing operations as mentioned under the expression "towage" cover is excluded for liabilities in respect of damage to and / or caused by the towed or pushed object including the cargo therein, up to the entered vessels' Hull and Machinery insured value.

**Clause 21 x – Contracts and Indemnities:**

Members are reminded that cover is excluded for liabilities arising under the terms of an indemnity or contract, unless prior approval has been obtained and special terms of entry agreed and endorsed on the Certificate of Entry.

Note: to avoid cover being prejudiced it is strongly recommended Members do not contract on an individual basis in respect of the normal operations of the entered ship without consulting the Managers.

**Clause 21 xi - Removal of Wreck:**

Members are reminded that where the liability arises, or the costs or expenses are incurred, under the terms of any contract or indemnity and would not have arisen but for those terms, such liability, costs or expenses are only recoverable if and to the extent that:

- (i) those terms have been approved and special terms of entry agreed and endorsed on the Certificate of Entry,
- (ii) the Directors in their absolute discretion decide that the Member should be reimbursed.

Where the liability arises, or the costs or expenses are incurred at a place owned, leased or occupied by the Member, the Member shall be entitled to the same rights of recovery from the Club, and the Club shall have the same rights as if the place were owned, leased or occupied by a third party, provided that the total liability of the Club in respect of any one incident shall not exceed the sum of USD 1,000,000 unless the Managers have agreed to provide additional cover upon such terms and conditions as they think fit and endorsed on the Certificate of Entry.

**Clause 21 xiii - various Cargo aspects:**

In relation to the proviso thereunder, a claim by the Member will not be rejected or reduced where the contract of carriage under which any cargo is or is intended to be carried on, in or by the entered ship on any voyage, is subject to terms no less favourable to the carrier than those of the Applicable Law.

Cargo carried by the entered vessel includes cargo on, in or by any other ship, lighter or barge or similar floating object, when it is actually carried as cargo in or on the entered vessel or such other ship, lighter or barge or similar floating object forming part of a combined unit which includes the entered vessel. Any such ship, lighter or barge or similar floating object in a combined unit as aforesaid is not itself considered to be "cargo" for the purposes of this Clause.

**Clause 21 xiii - specific Cargo aspects:**

- (a) Cover includes the liabilities and additional costs and expenses incidental thereto, (over and above the costs which would have been incurred by the Member under the terms of the contract of carriage), incurred by the Member in reducing, averting, mitigating or minimising any loss,



shortage or damage to cargo provided that there shall be no right of recovery unless the action taken by the Member has been approved by the Managers or the Member proves to the satisfaction of the Managers that, having regard to all the circumstances prevailing at the time, the Member acted with utmost care to prevent or reduce possible claims. In the case of temporary storage being required whilst awaiting recooling or repacking or after such recooling or repacking until delivery or on-carriage, cover shall only be available if and to the extent that the Managers have given their prior written approval.

- (b) NOTE: In the case of cargo carried in open holds there will be no right of recovery from the funds of the Club unless, in addition to anything provided for elsewhere in the Clauses or terms of entry, the cargo is suitable for carriage in open holds and such carriage (a) has been agreed with the Shipper in writing and (b) either is in accordance with the customary practice of the particular trade or is required by Regulations in force.

**Clause 21 xiii proviso (iii) - Deviation:**

Cover includes liabilities, costs and expenses arising from a deviation, in the sense of a departure from the contractually agreed voyage or adventure, or from events occurring before, during or after a deviation, if as a result of such deviation the Member is not deprived of any defences or rights of limitation which would otherwise have been available to him to eliminate or reduce his liability.

**Clause 21 xiii proviso (viii) (b) – Delivery of Cargo:**

Where for the "inland" trade cargo is carried without the issuing of bills of lading, there shall be no right of recovery from the Club unless the Member proves that such carriage is customary in the particular trade and at the particular port or place, and the Managers are satisfied that the Member took all reasonable steps to ensure the cargo was delivered to the rightful Owner.

**Clause 21 xiv – Cargo's proportion of General Average:**

A claim by the Member will not be rejected or reduced where the contract of carriage under which any cargo is or is intended to be carried on, in or by the entered ship on any voyage, is subject to terms no less favourable to the carrier than those of the Applicable Law.

**Clause 21 xv (a) to (d) - Fines:**

Cover includes the fines described therein if imposed upon any crewmember whom the Member may be legally liable to reimburse or reasonably reimburses with the agreement of the Managers.

**Clause 21 xxi - Deductibles:**

Where one incident gives rise to claims of a different nature, the aggregate of all claims resulting therefrom shall only be subject to the highest applicable deductible, unless any special terms of entry set out in the Certificate of Entry state otherwise.

**Additional general clarifications and provisions**

In the context of these Clarifications to Clause **21**: the Club, Certificate of Entry and the Clauses are defined as:

The Club : The Steamship Mutual Underwriting Association Limited

Certificate of Entry: The Certificate of Entry and Acceptance issued

The Clauses : The Charterers Terms of Entry of The Steamship Mutual Underwriting Association Limited.

Members are further reminded that

- (a) With regard to General Average and "inland" trade the Rhine Rules 1979 or the I.V.R. Rules for G.A. are a suitable and approved alternative to the York Antwerp Rules 1994.
- (b) The Member shall pay on demand to the Club or its order the amount of any premium tax or other tax levied on or in connection with the insurance or reinsurance provided by the Club to the Member for which the Club determines it or the Member has or may become liable, and shall indemnify and hold harmless the Club in respect of any loss, damage, liability, cost or expense which the Club may incur in respect of such premium tax or other tax

and that the following provisions, exclusions and extensions apply:

**Applicable Law:**

The phrase "Applicable Law" means the provisions of Law in relation to the responsibilities, obligations, duties, rights, liabilities, immunities, exceptions and limitations of a carrier by water which are or would be applied by the competent Court to the particular contract but without regard to any express or special provisions contained therein relating to or otherwise regulating any of the aforesaid matters.

**Trading Limits**

Members are reminded that cover is provided solely in respect of vessels trading in European "inland waters" only and any deviation therefrom requires the prior approval of the Managers and shall be subject to special Terms of Entry to be agreed and endorsed on the Certificate of Entry. In this context "inland waters" means any harbour, dock, basin, lake, river, canal, or other inland water (whether natural or artificial and whether tidal or non-tidal) including any estuary or arm of the sea within or adjacent to a specified area, but otherwise excluding the open sea within territorial waters and the high seas.

**Aerial or Aquatic Activities Exclusion Clause**

Cover excludes liabilities to any person in respect of any claim arising as a result of any aerial or aquatic activities.

Aerial or aquatic activities in this context being waterskiing, parasailing, scuba diving, the operation of speed boats and jet-skis, boom-netting and other similar water sports.

**Specialist Craft Exclusion Clause**

Excluding liabilities, costs and expenses incurred by a Member during the course of performing specialist operations including but not limited to dredging, blasting, pile-driving, well-stimulation, cable or pipelaying, construction, installation or maintenance work, core sampling, depositing of spoil, professional oil spill response or professional oil spill response training and tank cleaning (otherwise than on the entered vessel) (but excluding fire-fighting) to the extent that such liabilities, costs and expenses arise as a consequence of:

- a) Claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not), in respect of the specialist nature of the operations; or
- b) The failure to perform such specialist operations by the Member or the fitness for purpose or quality of the Member's work, products or services, including any defect in the Member's work, products or services; or
- c) Any loss of or damage to the contract work.

Provided that this exclusion shall not apply to liabilities, costs and expenses incurred by the Member in respect of:

- i) loss of life, injury or illness of crew and other personnel on board the entered vessel,
- ii) the wreck removal of the entered vessel,
- iii) oil pollution emanating from an entered vessel or the threat thereof.

But only to the extent that such liabilities, costs and expenses are covered in accordance with the Clauses.

Excluding liabilities, costs and expenses arising out of salvage operations conducted by an entered ship, other than where the purpose of such operations is saving or attempting to save live at sea.

NOTE: Members are reminded that any additional cover is only available if prior approval has been obtained and special terms of entry agreed and endorsed on the Certificate of Entry.

**Delay Cover Extension**

Limit of liability: USD 5,000,000.-- any one incident, all vessels in the aggregate. If all claims from Members of E.I.S.S.F., any one incident, exceed the aggregate limit, then each claim to be paid in proportion to the whole.

It has been agreed to extend the Members' cover to include financial losses incurred by the Member as a direct consequence of the entered vessel concerned being delayed following:

- (a) An obstruction of any navigable waterway or port as a direct result of:
  - (i) an accident to a bridge, lock, dike or similar structure, as a result of coming into contact with a vessel or vessels and/or,
  - (ii) sinking of another ship and/or her cargo or part thereof, and/or
  - (iii) a collision between other ships, and/or
  - (iv) pollution by any substance from any source.
- (b) Any event, not mentioned under (a), having the same effects, but only to the extent that the Directors in their absolute discretion decide that the Member should recover from the Club.

provided that:

- (a) the appropriate Authorities have prohibited the free use of the waterway for all ships of the same type and size as the entered vessel and this extension shall only take effect from the time and date of such prohibition, and
- (b) the entered vessel has not contributed to the accident in any way whatsoever, or howsoever, directly or indirectly.
- (c) cover hereunder shall be subject to a deductible of 48 hours each incident, per vessel
- (d) cover hereunder shall be subject to a Limit of 20 days each incident, per vessel, or 30 days in the aggregate, per vessel, per Policy Year.
- (e) cover is restricted to a figure of EUR 0.50 per entered ton or € 0.50 per KW engine power for tugs and pushboats , per day, per vessel, pro rata per hour.

### **Sanctions Clause**

It is a condition of this insurance that no coverage will

be provided and no entries will be accepted in respect

of:

- 1 Vessels owned, managed, operated or chartered by a party (who need not be a Member or prospective Member of the Club); and/or
- 2 Vessels;

designated under any legislation, regulation or order of any State or International Organisation which howsoever exposes those vessels and/or the Club and/or the Member entering such vessels and/or any other Member of the Club to the risk of being or becoming subject to any sanction, prohibition or adverse action whatsoever.

If, notwithstanding this condition,

- (a) a vessel, in relation to which cover has been provided, or the entry of which has been accepted by the Club (whether or not a certificate of entry has been issued) ; or
- (b) such vessel's owner, manager, operator or charterer, (whether or not a Member of the Club)

is or becomes so designated, the entry of that vessel and/or the coverage provided to the Member, shall cease forthwith and no claims, liabilities, costs or expenses shall be paid by or recoverable from the Club in relation thereto.

In the event that any vessel entered (whether or not a certificate of entry has been issued), or a vessel in relation to which cover has been provided, is employed on any voyage, in any trade, or for the carriage of cargo in breach of any legislation, regulation or order of any State or International Organisation which howsoever exposes the Club to the risk of being or becoming subject to any sanction,

prohibition or adverse action whatsoever, the insurance of that vessel and/or the coverage provided to the Member shall cease forthwith and no claims, liabilities, costs or expenses in relation thereto, and arising after the date of such cessation, shall be recoverable hereunder. Save that at any time after such cessation, if the Directors in their absolute discretion so determine, that vessel's entry in the Club or the coverage in relation to that vessel, may be reinstated on such terms and conditions and from such date and time as the Directors or the Managers direct.

### **General**

These Clarifications should be read in conjunction with the Clauses. The full text can be downloaded at the website of Post & Co (P & I) B.V. – [www.post-co.com](http://www.post-co.com)