

CANADIAN (PACIFIC) PROTECTION AND INDEMNITY CLAUSES

The Assurer(s) hereby undertakes to make good to the Assured or the Assured's executors, administrators and/or successors all such Liabilities and/or Expenses as the Assured or the Assured's executors, administrators and/or successors shall have become liable to pay and shall have in fact paid on account of the liabilities, risks, events and/or happenings arising out of ownership, use or operation of the vessel(s) hereby insured (hereinafter referred to as "The Vessel"), as follows:

1. LIABILITY FOR LOSS OF LIFE, BODILY INJURY

Liability for loss of life of, or bodily injury to, or illness of any person, excluding however, unless otherwise agreed by endorsement hereon, liability to any employee of the Assured or in the case of death, to his beneficiaries or others, under any Compensation Acts or similar legislation, order or regulations, where the Assured is required to insure under such compensation provisions.

Protection hereunder for loss of life or injury arising in connection with the handling of cargo shall commence from the time of receipt by the Assured of the cargo on dock or wharf or on craft alongside the vessel for loading thereon, and shall continue until delivery thereof from dock or wharf of discharge or until discharge from the vessel on to another vessel or craft.

2. HOSPITAL, MEDICAL OR OTHER EXPENSES

(a) Liability for hospital, medical or other expenses necessarily and reasonably incurred in respect of loss of life of or bodily injury to, or illness of any member of the crew of the vessel or any other person. Protection hereunder shall also include burial expenses not exceeding \$500.00 when necessarily and reasonably incurred by the Assured for the burial of any seaman of the vessel and such burial expenses shall not be subject to any deductible provision in the policy.

This insurance EXCLUDES any claim recoverable under any Provincial or other applicable Hospital or Medical Insurance Plan where the claimant is required to be insured under such a plan.

(b) Port Charges and Owner's Expenses

Port Charges incurred solely for the purpose of landing an injured or sick person shall be allowed as well as the net loss of the Assured in respect of bunkers, insurance, stores and provisions solely caused by the landing of such person.

3. REPATRIATION EXPENSES

Liability for repatriation expenses of any members of the crew of the vessel necessarily and reasonably incurred in case of wreck or abandonment of the vessel or under statutory obligation, excepting such liability and expenses as arise out of or ensue from the termination of any agreement in accordance with the terms thereof, or by mutual consent, or by the sale of the vessel, or by any other act of the Assured. Wages shall only be included in such expenses where payable under statutory obligations during unemployment due to wreck or loss of the vessel.

4. LIABILITY FOR DAMAGE TO OTHER VESSELS**(a) By Collision**

- (i) Loss of or damage to any other vessel or craft or to the freight thereof or property thereon, caused by collision with the vessel to the extent that the same would not be recoverable if the vessel were at all times fully insured under hull and machinery and, where applicable, excess liabilities policies on terms at least equivalent to those of the current Canadian Hulls (Pacific) Clauses and current Canadian (Pacific) Total Loss and Excess Liabilities Clauses.
- (ii) Where there would be a valid claim hereunder but for the fact that the damaged property belongs to the same Assured, the Assurer(s) shall be liable in the same way and shall have the same rights as if the damaged property belonged to different owners.
- (iii) When both vessels are to blame, then unless the liability of the Owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross liabilities as if the Owner of each vessel had been compelled to pay to the Owner of the other vessel one half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

Notwithstanding the foregoing, if any one or more of the various liabilities arising from such collision has been compromised, settled or adjusted without the written consent of the Assurer(s), the Assurer(s) shall be relieved of liability for any and all claims under this clause.

(b) Other Than By Collision

- (i) Loss of or damage to any other vessel or craft or to the freight thereof or property thereon not caused by collision with the vessel provided such liability does not arise solely by reasons of a contract made by the Assured.
- (ii) Where there would be a valid claim hereunder but for the fact that the damaged property belongs to the Assured, the Assurer(s) shall be liable in the same way and shall have the same rights as if the damaged property belongs to different owners.

5. LIABILITY FOR DAMAGE TO FIXED OR MOVABLE OBJECTS

- (i) Loss of or damage to any fixed or movable object or property thereon, except another vessel or craft or property on board another vessel or craft.
- (ii) Where there would be a valid claim hereunder but for the fact that the damaged property belongs to the Assured, the Assurer(s) shall be liable in the same way and shall have the same rights as if the damaged property belongs to different owners.

6. LIABILITY FOR POLLUTION

Loss, damage, cost, liability or expense that the Assured, as owner of the vessel(s), shall have become liable to pay and shall pay in consequence of the accidental, actual or potential discharge, spillage or leakage of oil, fuel, cargo, petroleum products, chemicals or other substances of any kind or description; Provided, However, that this policy shall not insure any liability resulting directly or indirectly or arising out of or having relation to:

- (a) Any loss damage, cost, liability or expense paid or incurred in consequence of any such actual or potential discharge, spillage or leakage unless proximately caused by fault on the part of the Assured.
- (b) Punitive or exemplary damages.

7. REMOVAL OF WRECK

Liability for costs or expenses of, or incidental to the removal of the wreck of the vessel, when such removal is compulsory by law, PROVIDED HOWEVER, that the value of all stores and materials saved as well as the value of the wreck itself, shall first be deducted from such costs or expenses and only the balance thereof, if any, shall be recoverable from the Assurers, ALWAYS PROVIDED THAT the Assurers are not liable for such costs, or expenses as would be covered by insurance under the current-Canadian Hulls (Pacific) Clauses, and where applicable, current Canadian (Pacific) Total Loss and Excess Liabilities Clauses.

8. FINES IMPOSED BY GOVERNMENT OR CUSTOMS' AUTHORITIES

Liability for fines and penalties, including expenses necessarily and reasonably incurred in avoiding or mitigating same, for the violation of any laws of Canada or of any Province thereof, or of any foreign country including fines imposed by Government or Customs' Authorities in respect of short or over delivery of cargo, smuggling, breach of Immigration Regulations or in respect of other neglect or default of captains or crew for which the vessel or Assured may be held responsible PROVIDED HOWEVER that the Assurer(s) shall not be liable to indemnify the Assured against any such fines or penalties resulting directly or indirectly from the failure, neglect or default of the Assured or his managing officers or managing agents to exercise the highest degree of diligence to prevent a violation of any such laws.

With respect to claims for pollution, this policy shall not indemnify the Assured against any fine or penalty arising out of the actual or potential discharge, spillage or leakage of oil, fuel, cargo, petroleum products, chemicals or other substances of any kind or description.

9. EXTRAORDINARY EXPENSES IN CASES OF QUARANTINE ETC.

Extraordinary expenses incurred in cases of outbreak of plague or other contagious disease, for disinfection of the vessel or persons on board, or for quarantine but not including the ordinary expenses of loading or discharge, nor the wages and/or provisions of crew or passengers. Where the vessel is chartered or, not being under contract is ordered to proceed to a port where it is or ought to be known that she will be subjected to quarantine, the Assured shall receive no benefit from the Assurer(s) under this clause.

10. MUTINY OR OTHER MISCONDUCT

Expenses incurred in resisting any unfounded claim by the master or crew or other persons employed on the vessel, or in prosecuting such persons in case of mutiny or other misconduct.

11. COSTS

(a) Legal Costs

Where the Assured is successful in defending a claim or suit, the ' Legal Costs incurred with the Assurer(s) or their agent's approval shall be payable by Assurers without application of any deductible. Where however, payment has to be made to dispose of a claim and the amount so paid by the Assured, including Legal Costs, exceeds the amount of the deductible stipulated in this policy, the Assurer(s) shall be liable only for the amount in excess of such deductible.

(b) Costs and Charges

Other costs, charges and expenses, reasonably incurred and paid by the Assured in defence against any liabilities herein insured against in respect of the vessel shall be subject to the agreed deductibles applicable, and subject further to the conditions and limitations herein provided.

GENERAL CONDITIONS AND/OR LIMITATIONS

PROMPT NOTICE OF CLAIM - WARRANTED that in the event of any occurrence which may result in loss, damage and/or expense for which the Assurer(s) is/are or may become liable, the Assured will give prompt notice thereof and forward to the Assurer(s) as soon as practicable after receipt thereof, all communications, processes, pleadings and other legal papers or documents relating to such occurrences.

SETTLEMENT OF CLAIM — The Assured shall not make any admission of liability, either before or after any occurrence which may result in a claim for which the Assurer(s) may be liable without the Assurer(s) prior written consent.

The Assured shall not interfere in any negotiations of the Assurer(s) for settlement of any legal proceedings in respect of any occurrences for which the Assurer(s) are liable under this policy; PROVIDED, HOWEVER, that in respect of any occurrence likely to give rise to a claim under this insurance, the Assured is obligated to and shall take steps to protect its (and/or the Assurer(s)) interests as would reasonably be taken in the absence of this or similar insurance. If the Assured shall fail or refuse to settle any claim as authorized by the Assurer(s) the liability of the Assurer(s) to the Assured shall be limited to the amount for which settlement could have been made.

ASSURED TO ASSIST WITH EVIDENCE IN DEFENCE ETC. —Whenever required by the Assurer(s), the Assured shall aid in securing information and evidence and in obtaining witnesses and shall co operate with the Assurer(s) in the defence of any claim or suit or appeal from any judgement, in respect of any occurrence as herein before provided.

SUBROGATION—The Assurer(s) shall be subrogated to all the rights which the Assured may have against any other person or entity in respect of any payment made under this insurance, to the extent of such payment, and the Assured shall, upon the request of the Assurer(s), execute all documents necessary to secure to the Assurer(s) such rights. The Assurer(s) shall be entitled to take credit for any profit accruing to the Assured by reason of any negligence or wrongful act of the Assured's servants or agents, up to the measure of their loss, or to recover for their own **account** from third parties any damage that may be provable by reason of such negligence or wrongful act.

COVER ELSEWHERE—Where the Assured is, irrespective of this insurance covered or protected against any loss or claim which would otherwise have been paid by the Assurer(s) under this insurance, there shall be no contribution by the Assurer(s) on the basis of double insurance or otherwise.

EXCLUSIONS AND WARRANTIES

Notwithstanding anything to the contrary contained in this policy, no liability attaches to the Assurer(s);

- (i) For any loss, damage, or expense which would be payable if the vessel were fully insured under the Hull & Machinery and Excess Liability policies on terms at least equivalent to those of the current Canadian Hulls (Pacific) Clauses and where applicable current Canadian (Pacific) Total Loss and Excess Liabilities Clauses.
- (ii) For any loss, damage or expense sustained by reason of capture, seizure, arrest, restraint or detention, and the consequences thereof or of any attempt thereof; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this exclusion "power" includes any authority maintaining naval, military or air forces in association with a power.

Warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

Warranted free from loss, damage, liability or expense arising from any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

Warranted free from loss, damage, liability or expense arising from:

- (a) The detonation of an explosive
- (b) Any weapon of war
and caused by any person acting from a political motive.
- (iii) For any loss, damage, or expense arising from the cancellation or breach of any charter, had debts, fraud of agents, insolvency, loss of freight,

hire or demurrage, or as a result of the breach of any undertaking to load any cargo, or in respect of the vessel engaging in any unlawful trade or performing any unlawful act, with the knowledge of the Assured.

- (iv) For any loss, damage, expense or claim arising out of or having relation to the towage by the vessel (not being a tug) of any other vessel or craft, whether under agreement or not, unless such towage was to assist such other vessel or craft in distress to a port or place of safety, PROVIDED, HOWEVER, that this clause shall not apply to claims under this policy for loss of life or bodily injury to passengers and/or members of the crew of the vessel arising as a result of towing.
- (v) When the insured vessel is a tug this insurance shall remain in force during the towage of any other vessel, craft or log raft but shall in no way extend to cover loss, damage or expense to (or caused by) her tow or the property thereon, whether liability arises under contract or otherwise.
- (vi) For any claim involving loss of life or bodily injury resulting from or in relation to the handling of cargo where such claim arises from a contract of indemnity between the Assured and a third party.
- (vii) For any claim in respect of cargo carried on board the vessel.
- (viii) Oil pollution resulting from or during services provided under a contract of salvage.
- (ix) The U.S. Water Quality Improvement Act and/or any similar acts enacted by any State or duly constituted legal authority, or any statutory amendment or modification thereof.

ASSIGNMENTS—This insurance shall be void in case the vessel or any part thereof, shall be sold, transferred or mortgaged, or if there be any change of management or charter of the vessel, or if this policy be assigned or pledged, without the previous consent in writing of the Assurer(s).

TITLES OF PARAGRAPH—The titles of paragraphs of this Policy including endorsement and supplementary contracts, if any, now or hereafter attached to this Policy are included solely for the convenience of reference and should not be deemed in any way to limit, alter or affect the provisions to which they relate.

ACTIONS AGAINST THE ASSURER—No Action shall lie against the Assurer(s) for the recovery of any loss sustained by the Assured unless such action is brought against the Assurer(s) within one year of the final judgement or decree is entered in the litigation against the Assured or, in case the claim against the Assurer(s) accrues without the entry of such final judgment or decree, unless such action is brought within one year of the date of the payment of such claim.

CONTINUATION CLAUSE—Should the vessel at the expiration of this insurance be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous written notice be given to the Assurer(s), be held covered to her port of destination and until completion of discharge upon payment of a pro rata monthly premium each 30 days (or part thereof) during which this insurance is held covered.

CANCELLATION CLAUSE—A pro rata net premium for every thirty consecutive days of unexpired time shall be returned if it be mutually agreed to cancel this policy, but there shall be no cancellation or return of premium in event vessel is lost from any cause whatsoever.

It is understood and agreed that in the event of non payment of premiums by the Assured to the Agent or to the Assurer(s), the Agent or the Assurer(s) may cancel this insurance by giving to the Assured five days notice in writing by registered letter.

Unless otherwise agreed in writing with Assurer(s), this insurance shall be cancelled effective immediately from the date of the vessel named herein being sold or requisitioned or transferred voluntarily or otherwise to new management, or chartered on a bareboat basis. A pro rata net premium for each thirty consecutive days of unexpired time of this insurance shall be returned.

EACH VESSEL SEPARATELY INSURED CLAUSE — As a matter of convenience one policy is issued covering the vessels scheduled herein, but as a matter of construction the limit of liability applicable to each vessel is to be deemed a separate interest, separately insured, in all respects as if a separate policy for the limit of liability set against each vessel were issued, and the policy is to be read and applied accordingly. The limit of liability on one vessel is not applicable to any other.

It is expressly understood and agreed if and when the Assured under this policy has any interest other than as a shipowner in the vessel, in no event shall the Assurer(s) be liable hereunder to any greater extent that if such Assured were the owner and were entitled to all the rights of limitation to which a shipowner is entitled.

Unless otherwise agreed by endorsement to this insurance, liability hereunder shall in no event exceed that which would be imposed on the Assured by law in the absence of contract.