

CANADIAN HULLS (PACIFIC) CLAUSES - 1991

1. Touching the Adventures and Perils which we, the Underwriters, are contended to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letter of Mark and counter-mark, Surprisals, Takings at sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, condition or quality soever, Barratry of the Master and Mariners and of the other like perils, losses and misfortunes, that have or shall come to the Hurt, Detriment or Damage of the subject matter insured (hereafter the "Vessel") or any part thereof excepting, however, such of the foregoing Perils as may be excluded by provisions elsewhere in these clauses or by endorsement.

2. It is the duty of the Assured, their servants, agents or assigns, in case of loss or misfortune to take such measures as may be reasonable for the purpose of averting or minimizing a loss which would be recoverable under this insurance. For the purpose of this insurance such measures shall be designated as Sue and Labour.

The reasonable charges therefor will be reimbursed by Underwriters in accordance with their rateable proportion as provided for herein.

It is expressly agreed that no acts of Underwriters or the Assured in recovering, saving or preserving the Vessel shall be considered as either a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

When expenses are incurred pursuant to this clause, the liability under this insurance shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where the Underwriter have admitted a claim for total loss and subject matter insured by this insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.

When a claim for total loss of the Vessel is admitted under this insurance and expenses have been reasonably incurred in salving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may reasonably be regarded as having been incurred in respect of the Vessel; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.

3. This insurance includes loss of or damage to the Vessel directly caused by :-

(a) Accidents in loading, discharging or shifting cargo or fuel

Explosions on shipboard or elsewhere

Breakdown of or accident to nuclear installation or reactors on shipboard or elsewhere

Bursting of boilers, breakage of shafts or any latent defect in the machinery or hull

Negligence of Master, Charterers other than an Assured, Officers, Crew, pilots

Negligence of repairers provided such repairers are not Assured(s) hereunder, but this exclusion shall not apply to loss or damage resulting from the operation by the Assured of a commercial repair division or facility.

(b) Contact with aircraft of similar objects, or objects falling therefrom

Contact with any land conveyance, dock or harbour equipment or installation

Earthquake, volcanic eruption or lightning

Provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

Masters, Officers, Crew or Pilots not to be considered as part Owners within the meaning of this clause should they hold shares in the Vessel.

4. This insurance excludes claims due to or resulting from ice and/or freezing howsoever caused on inland waters above ocean tidal influence.

5. The Vessel is covered subject to the provisions of this insurance at all times and has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or crafts in distress, but it is warranted that the Vessel shall not otherwise tow or be towed, except as is customary or to first safe port or place when in need of assistance.

6. The Vessel is covered in case of any breach of warranty as to cargo, employment, towage, salvage services or date of sailing, provided notice be given to the Underwriters immediately after receipt of advices and any amended terms of cover and any additional premium required by them be agreed.

7. The sum of \$; shall be deducted from the total claims arising out of one accident or occurrence (including claims under the Running Down Clause). Nevertheless, the expense of sighting the bottom after stranding, if reasonably incurred specially for that purpose, shall be paid in full even if no damage be found. This paragraph shall not apply to Sue and Labour, Salvage Expenses, General Average not to a claim for Total or Constructive Total Loss.

Claims for damage by heavy weather (which includes contact with floating ice) occurring during a single sea passage between two successive ports shall be treated as being due to one accident. In the case of such heavy weather extending over a period not wholly covered by this insurance, the deductible to be applied to the claim recoverable hereunder shall be the proportion of the above deductible that the number of days such heavy weather falling within the period of this insurance bears to the number of days of heavy weather during the single sea voyage.

Unless the Assured and Underwriters shall have agreed in writing prior to commencement of suit to participate jointly in recoveries and concomitant legal costs, then net recoveries (excluding interest comprised therein) made against any claim subject to the above deductible, or any other deductions by reason of the difference between incurred and sound values, shall first be credited to the Underwriters up to the amount of the claim paid by them and then to the Assured.

Interest comprised in recoveries shall be apportioned between the Assured and the Underwriters, taking into account the sums paid by the Underwriters and the dates when such payments were made.

8. Unless this insurance otherwise provides, claims for partial loss recoverable hereunder shall not be subject to depreciation.

9. From the cost of cleaning and painting the bottom of the Vessel (exclusive of dry-dock charges) recoverable hereunder there shall be deducted one-twelfth for every month since the Vessel was last painted, but no allowance shall be made for cleaning and painting on account of exposure to air unless the Vessel has been more than twenty our hours out of the water.

Notwithstanding the foregoing, no claim in respect of bottom painting shall be recoverable hereunder unless evidence is provided to show date of the last bottom painting prior to the loss.

10. General Average, Salvage and Special Charges payable as provided in the contract of affreightment, or failing such provision, or there be no contract of affreightment, payable in accordance with the York-Antwerp Rules. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo General Average shall be paid in accordance with same.

When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated, the voyage shall thereupon be deemed to be terminated.

When the contributory value of the Vessel is greater than the valuation herein, the liability of these Underwriters for General Average contribution (except in respect to amount made good to the Vessel) or Salvage shall not exceed that proportion of the total contribution due from the Vessel that the amount insured hereunder bears to the contributory value. If because of damage for which these Underwriters are liable as partial loss, the value of the Vessel has been reduced for the purpose of contribution, the net amount of the partial loss under this insurance shall be deducted from the amount insured hereunder and these Underwriters shall be liable only for the proportion which such net amount bears to the contributory value.

11. In ascertaining whether the Vessel is a constructive total loss, the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed the insured value. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.

12. In the event of total or constructive total loss, no claim to be made by Underwriters for freight whether notice of abandonment has been given or not.

13. In no case shall the Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained from any cause during the term covered by this insurance or extension thereof.

14. It is further agreed that if the Vessel shall come into collision with any other vessel and the Assured shall in consequence thereof become liable to pay to any other person or persons any sum or sums in respect of such collision for :

(i) loss or damage to any other vessel or property on any other vessel,
(ii) delay to or loss of use of any such other vessel or property thereon, or,
(iii) general average of, salvage of, or salvage under contract of any such other vessel or property thereon, the Underwriters shall pay the Assured such proportion of such sum or sums as their respective subscriptions hereto bear to the insured value of the Vessel provided always that their liability in respect of any one such collision shall not exceed their proportionate part of the insured value of the vessel, and in cases in which, with the prior consent in writing of the Underwriters, the liability of the Vessel has been contested, or proceedings have been taken to limit the liability, they will also pay such proportion of the costs which the Assured shall thereby incur. But 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 Owners of each vessel had been compelled to pay to the Owners of the other such vessels such 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.

Provided always that this clause shall in no case extend to any sum which the Assured may become liable to pay for or in respect of :-

(a) removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever,
(b) any real or personal property or things whatsoever except other vessels or property on other vessels,
(c) pollution or contamination of any real or personal property or thing whatsoever (except other vessels with which the insured Vessel is in collision or property on such other vessels),
(d) the cargo or other property on or the engagements of the insured vessel,

(e) loss of life, personal injury or illness.

15. Should the Vessel come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the Assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of Owners not interested in the Vessel ; but in such case the liability for collision or amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured.

16. This insurance covers loss of or damage to the Vessel directly caused by any governmental authority acting under the powers vested in them to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from the damage to the Vessel for which the Underwriters are liable under this insurance, provided such act of governmental authority has not resulted from want of due diligence by the Assured, the Owners or Managers of the Vessel or any of them to prevent or mitigate such hazard or threat. Masters, Officers, Crew or Pilots not to be considered Owners within the meaning of this clause should they hold share in the Vessel.

17. This insurance also covers loss of or damage to the Vessel caused by strikers, locked out workmen or persons taking part in labour disturbances, riots or civil commotions, also destruction of or damage to the Vessel caused by persons acting maliciously.

18. In the event of accident whereby loss or damage may result in a claim under this insurance, notice shall be given in writing to the Underwriters, where practicable, prior to survey, so that they may appoint their own surveyor if they so desire. The Underwriters shall be entitled to decide the port to which the Vessel shall proceed for docking or repairing (the actual additional expense of the voyage arising from compliance with Underwriters' requirements being refunded to the Assured). The majority of Underwriters (in amount) shall also have a right of veto in connection with the place of repair or repairing firm proposed and may take, or may be required to be taken, tenders for the repair of such damage.

In the event of failure to comply with the conditions of this clause pertaining to the repair of the Vessel, 15 percent shall be deducted from the amount of the ascertained claim.

19. If the Vessel is sold or transferred voluntarily or otherwise to new management or chartered on a bare boat basis then, unless the Underwriters agree in writing to continue this insurance, this insurance shall become cancelled from the time of sale or transfer, unless the Vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, in either or which cases such cancellation shall, if required, be suspended until arrival at final port of discharge, if with cargo, or at port of destination if in ballast. A pro rata daily return of net premium shall be made.

For the purpose of this clause, arrest shall not be considered a transfer to new management.

This clause shall prevail notwithstanding any provision whether written, typed or printed in this insurance inconsistent therewith.

20. If payment of premium is not made by the Assured within thirty (30) days after attachment of this insurance or, in the event Underwriters shall have agreed to accept deferred payments, if any payment of any premium is not made on the day agreed, this insurance may be cancelled at any time thereafter by Underwriters giving to the Assured named herein, and to third party payee or payees (if any) named in this insurance, five (5) days' notice of such cancellation.

Such notice may be given by Underwriters or on their behalf by an authorized Agent or by the Agent or Broker effecting this insurance.

Such cancellation shall be without prejudice to the premiums earned and due for the period the insurance was in force.

In the event of total loss sustained from any cause occurring prior to cancellation, full annual premium shall be deemed earned.

21. Underwriters will return percent (net) for every thirty days of unexpired time if it be mutually agreed to cancel this insurance, but there shall be no cancellation or return of premium in event the Vessel is lost from any cause.

At expiration, Underwriters will return percent (net) for every thirty consecutive days the Vessel was laid-up in port out of commission with no cargo on board and not under repair for Underwriters' account.

In the event of the Vessel being laid-up in port for a period of thirty consecutive days, a part only of which attaches to this insurance, it is hereby agreed that the laying up period in which either the commencing or ending date of this insurance falls shall be deemed to run from first day on which the Vessel is laid-up and that on this basis Underwriters shall pay such proportion of the return due in respect of a full period of thirty days as the number of days attaching thereto bears to thirty.

22. Additional insurance as follows are permitted :

(a) DISBURSEMENTS, MANAGER'S COMMISSIONS, PROFITS OR EXCESS OR INCREASED VALUE OF HULL AND MACHINERY AND/OR SIMILAR INTERESTS HOWEVER DESCRIBED, AND FREIGHT (INCLUDING CHARTERED FREIGHT OR ANTICIPATED FREIGHT) INSURED FRO TIME. A sum not exceeding in the aggregate 25 percent of the insured value of the vessel.

(b) FREIGHT OR HIRE, UNDER CONTRACTS FOR VOYAGE. A sum not exceeding the gross freight or hire for the current cargo passage and the next succeeding cargo passage (such insurance to include, if required, a preliminary and an intermediate ballast passage) plus the charges of insurance. In the case of a voyage charter where payment is made on a time basis, the sum permitted for insurance shall be calculated on the estimated duration of voyage subject to the limitation of two cargo passages as laid down herein. Any sum insured under this Section shall be reduced as the freight or hire is earned by the gross amount to be earned.

(c) ANTICIPATED FREIGHT IF THE VESSEL SAILS IN BALLAST AND NOT UNDER CHARTER. A sum not exceeding the anticipated gross freight on next cargo passage, such sum to be reasonably estimated on the basis of the current rate of freight at time of insurance, plus the charges of insurance. Provided, however, that no insurance shall be permitted under this section if any insurance is effected under section (b).

(d) TIME CHARTER HIRE OR CHARTER HIRE FOR SERIES OF VOYAGES. A sum not exceeding 50% of the gross hire which is to be earned under the charter in a period not exceeding 18 months. Any sum insured under this Section shall be reduced as the hire is earned under the charter by 50% of the gross amount so earned but where the charter is for a period exceeding 18 months the sum insured need not be reduced while it does not exceed 50% of the gross hire still to be earned under the charter. An insurance under this Section may begin on the signing of the charter.

(e) PREMIUMS. A sum not exceeding the actual premiums of all interests insured for a period not exceeding 12 months (excluding premiums insured under the foregoing Sections but including if required the premium or estimated calls on any Protection and Indemnity or War etc. Risk insurance) reducing pro rata monthly.

(f) RETRUNS OF PREMIUM. A sum not exceeding the actual returns which are allowable under any insurance but which would not be recoverable thereunder in the event of a total loss of the Vessel, whether by insured perils or otherwise.

(g) INSURANCE IRRESPECTIVE OF AMOUNT AGAINST :-

(i) Risks excluded by Clause 24 herein ; and

(ii) General Average and Salvage Disbursements.

It is a condition precedent to the recovery of any claims hereunder that no insurance on any interests enumerated in the foregoing section (a) to (f), inclusive, in excess of the amounts permitted herein and no insurance subject to P.P.I., F.I.A. or other like term, on any interests whatever excepting those enumerated in Section (a), is or shall be effected to operate during the currency of this insurance by or for the account of the Assured, Owners, Managers or Mortgagees. Provided always that a breach of this condition precedent shall not afford Underwriters any defense to a claim by a Mortgagee who has accepted this insurance without knowledge of such breach.

23. 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 notice be given to the Underwriters, be held covered at a pro rata monthly premium, to her port of destination.

24. THIS CLAUSE SHALL BE PARAMOUNT AND SHALL OVERRIDDE ANYTHING CONTAINED IN THIS INSURANCE INCONSISTENT THERESWITH.

- (a) In no case shall this insurance cover loss, damage, liability or expenses directly caused by
 - I. war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power.
 - II. Capture, seizure, arrest restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat.
 - III. Derelict mines, torpedoes, bombs or other derelict weapons of war
- (b) In no case shall this insurance cover loss, damage, liability or expense arising from
 - I. the detonation of an explosive
 - II. Any weapon of war

And caused by any terrorist or any person acting from a political motive.

- (c) In no case shall this insurance cover 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.

25. This insurance is subject to Canadian law and usage as to liability for an settlement of any and all claims.