

30.05.86

Cl. 337

**INSTITUTE MORTGAGEES INTEREST CLAUSES – HULLS**

**This contract is subject to English Law and practice**

**1 SUBJECT-MATTER INSURED**

- 1.1 This contract commences .....; and is to insure, subject to the conditions stated herein, in interest of ..... as first mortgagees, in vessels to be declared for periods not in excess of 12 months each declaration.
- 1.2 This contract does not cover the interest of any other party and is not assignable or otherwise transferable.

**2 DECLARATIONS**

Subject to the provisions of Clause 3 it is a conditions of this contract that the Assured must declare, without exception, and the Underwriters must accept, all interest by way if first mortgage in any vessel or vessels, giving provisional notice to the name(s) of the vessel(s) and their owner(s) and the amount(s) of the loan(s).

**3 SUM INSURED**

This contract is for an open amount not to exceed ..... in respect of any one vessel unless specially agreed. In the event of loss after provisional but before final declaration the basis of valuation shall be the amount of the loan not exceeding the sound market value of the vessel at the time of the granting of the loan.

**4 WARRANTIES**

It is warranted in respect of each vessel that :

- 4.1 Hull and Machinery Policies on terms equivalent to Institute Time Clauses Hulls or American Institute Hull Clauses and where applicable Increased Value Policies equivalent to Institute Time Clauses – Hulls Disbursements and Increased Value (Total Loss Only including Excess Liabilities) or American Institute Increased Value and Excess Liabilities Clauses, also War Risks policies equivalent to Institute War and Strikes Clauses Hulls – Time and full Protection and Indemnity Risks (hereafter referred to as "Owners' policies and Club Entries") have been taken out and shall be maintained throughout the currency of this contract.
- 4.2 The Owners' Policies and Club Entries, warranted in 4.1 above, shall be taken out and maintained in respect of each vessel at all times for an insured value and limit of liability not less than the amount insured hereunder or the amount of the outstanding loan.
- 4.3 Each of the Owners' Policies and Club Entries is endorsed to the extend of the Assured's interest.

**5 CHANGE OF OWNERSHIP OR CONTROL**

This insurance will terminate automatically at the time of any change of ownership, management or control, of which the Assured hereunder has knowledge or privity, unless the Assured gives prompt notice of such change in writing to the Underwriters hereon and agrees to pay an additional premium, if required.

**6 INDEMNITY**

- 6.1 This contract is to indemnify the Assured for loss resulting from loss of or damage to or liability of each vessel which is prima facie covered by the Owners' Policies or Club Entries but in respect of which there is subsequent non-payment (or reduced payment which is approved in advance by the Underwriters hereon):
  - 6.1.1 by reason of any act or omission of any one or more of the Owners, Operators, Charterers or Managers of the vessel or their servants or agents including breach or alleged breach of warranty or condition whether expressed or implied or non-disclosure or alleged non-disclosure of any fact or circumstances of any kind whatsoever.
  - 6.1.2 By virtue of any alleged deliberate, negligent or accidental actor omission or any knowledge or privity of any one or more of the Owners, Operators, Charterers or Managers of the vessel or their servants or agents, including the deliberate or negligent casting away or damaging of the vessel or the vessel being unseaworthy.
- 6.2 **The cover provided under Clause 6.1 above shall only apply while any such act, omission, non-disclosure, breach of warranty or conditions, knowledge or privity occurs or exists without the privity of the Assured.**
- 6.3 The indemnity payable hereunder shall be an amount equal to whichever shall be at least of
  - 6.3.1 the unrecoverable claim or part thereof under Owners' Policies and/or Club Entries
  - 6.3.2 the outstanding indebtedness under the declared loan at the time for payment under Clause 8 hereof
  - 6.3.3 the sum insured
 provided that if the subject-matter insured is not fully insured hereunder by reason of Clause 3 or otherwise, the indemnity shall be reduced in proportion to the under-insurance.

**7 EXCLUSIONS**

- 7.1 Excluding the Assured's legal costs and expense incurred in relation to any claim under Hull Policies and/or Club Entries
- 7.2 In no case shall this insurance cover loss damage liability or expenses arising from:
  - 7.2.1 the relevant Owners' Policies or Club Entries having been lawfully terminated by the Underwriters thereof due to non-payment of premium or call
  - 7.2.2 insolvency or financial default of any of the Underwriters of the Owners' Policies or Club Entries

- 7.2.3 inability of any party to transmit funds
- 7.2.4 any fluctuation in exchange rates
- 7.2.5 the operation of any franchise deductible or provision for self-insurance.

**8 TIME FOR PAYMENT**

- 8.1 There shall be deemed to be a non-payment by the Underwriters of the Owners' policies and/or Club Entries
  - 8.1.1 when a final court judgement is delivered in favour of those Underwriters, or
  - 8.1.2 at such earlier time as the Assured can demonstrate to the satisfaction of the Underwriters hereon that there is no reasonable prospect of the Owners and/or Assured succeeding in the claim against the Underwriters of the Owners' Policies and/or Club Entries. In the event of disagreement between the Assured and the Underwriters hereon this shall be referred to a sole arbitrator to be agreed upon between the Underwriters hereon and the Assured.
- 8.2 Thereafter the Assured shall formally present their claim hereunder and any amount recoverable hereunder shall be payable within three calendar months of the date on which the Assured shall have presented their properly documented claim to the Underwriters of this contract.

**9 SUBROGATION**

- 9.1 Upon payment to the Assured of a claim hereunder the Underwriters shall be subrogated to all rights and remedies of the Assured in respect of such payment.
- 9.2 It is a condition of this contract that any payment(s) by the Underwriters shall be applied by the Assured in or towards discharge or satisfaction of the outstanding indebtedness.

**10 DUTY OF ASSURED (SUE & LABOUR)**

- 10.1 It is a condition of this insurance that the Assured shall give notice in writing to the Underwriters hereon of any circumstances which may give rise to a claim under this contract and shall thereafter keep the Underwriters fully informed of all developments.
- 10.2 It is the duty of the Assured and their servant and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this contract.
- 10.3 Except as provided in Clause 7.1 the Underwriters will reimburse charges properly and reasonably incurred by the Assured their servants or agents for such measures provided that if the subject-matter insured is not fully insured by reason of Clause 3 or otherwise, the indemnity shall be reduced in proportion to the under-insurance.
- 10.4 Measures taken by the Assured or the Underwriters with the object of averting or minimising a loss which would be recoverable under this contract shall not be considered as a waiver or acceptance of a claim or otherwise prejudice the rights of either party.
- 10.5 The sum recoverable under this Clause 10 shall be in addition to the loss otherwise recoverable under this contract.

**11 CANCELLATION**

This contract may be cancelled by either the Underwriters or the Assured giving thirty days notice in writing. Notice to commence from midnight of the day when it is issued but such cancellation shall not apply to any risks which have attached in accordance with the cover granted hereunder before the cancellation becomes effective.

**12 AUTOMATIC TERMINATION AND NOTICE OF CANCELLATION – WAR AND STRIKES RISKS**

Cover hereunder in respect of the risks which are covered by the Institute War and Strikes Clauses Hulls – Time 1/10/83 shall terminate

- 12.1 automatically upon the occurrence of any of the events mentioned in Clause 5.2.1 and 5.2.2 of the Termination Clause in the Institute War and Strikes Clauses Hulls – Time 1/10/83
- 12.2 in respect of any vessel
  - 12.2.1 automatically in the event of the vessel being requisitioned either for title or use
  - 12.2.2 7 days after the Underwriters of the Owners' War Risks Insurances or any of them have given notice of cancellation, or
  - 12.2.3 7 days after the Underwriters hereon have given notice of cancellation in respect of the said risks.
- 12.3 Cancellation in accordance with Clause 12.2.2 and 12.2.3 shall become effective at the expiry of 7 days from midnight of the day on which the notice of cancellation is given. The Underwriters agree however to reinstate this insurance subject to the agreement between the Underwriters and the Assured prior to the expiry of such notice of cancellation as to new rate of premium and/or conditions and/or warranties.