

01.03.97

Cl. 337

INSTITUTE MORTGAGEES INTEREST CLAUSES – HULLS**This contract is subject to English Law and practice****A. RECITAL**

Whereas the Assured has entered in a loan agreement commensurate with which the Assured holds certain collateral security including a first mortgage on the Mortgaged Vessel and endorsements of its interests on the Owners' Policies and Club Entries.

Now it is agreed as follows:

1 INSURING CLAUSE

- 1.1 This insurance will indemnify the Assured for loss resulting from loss of or damage to or liability of the Mortgaged Vessel which, in the absence of an insured Peril set out in Clause 2.1 below, would prima facie be covered by the Owners' Policies and Club Entries, and not excluded therein, but in respect of which there is subsequent non-payment (or reduced payment which is approved in advance by the Underwriters hereon) by any of the underwriters of Owners' Policies and Club Entries as a result of Insured Peril, **provided always that such Insured Peril occurs or exists without the privity of the Assured.**
- 1.2 The indemnity payable hereunder shall be
- 1.2.1 the amount of the Assured's Net Loss and any amounts recoverable under Clause 6 herein, collectively not exceeding the sum insured on the Mortgaged Vessel, or
- 1.2.2 the amount of the unrecoverable claim or part thereof under any of the Owners' Policies and Club Entries whichever is the lesser amount
- 1.3 All the above is subject to the Definitions, Exclusions, Warranties and Conditions below.

2 DEFINITIONS**2.1 Insured Perils**

- 2.1.1 Avoidance of the Owners' Policies and Club Entries or any of them by the underwriters thereof on the grounds of a misrepresentation or non-disclosure of any material circumstance, whether such misrepresentation or non-disclosure arises from the assured thereunder or any of such assured's insurance agents or insurance brokers.
- 2.1.2 Breach of any statutory provision or any express or implied promissory warranty or condition, including without limitation
- 2.1.2.1 breach of any implied warranty or seaworthiness or legality,
- 2.1.2.2 breach of Section 39(5) of the Marine Insurance Act of 1906,
- 2.1.2.3 breach of trading warranties contained in any of the Owners' Policies and Club Entries,
- 2.1.2.4 breach of any warranty or condition in any of the Owners' Policies and Club Entries in respect of the classification of the Mortgaged Vessel by a Classification Society or any failure to comply with the recommendations of such Society to the extent required by such warranty or condition,
- 2.1.2.5 breach of any warranty or condition in any of the Owners' Policies and Club Entries which requires compliance with any condition survey, structural survey or P&I Club survey requirements and pursuant to which clauses underwriters deny a claim,
- 2.1.2.6 breach of any warranty or condition in any of the Owners' Policies and Club Entries in respect of the Ownership, flag, management or charter on a bareboat basis of the Mortgaged Vessel.
- 2.1.3 failure of the assured under the hull and machinery policy or the owners, managers or superintendents of the vessel or any of their onshore management to exercise due diligence in respect of any loss or damage to the Mortgaged Vessel where such failure to exercise due diligence entitles the underwriters of the owner's hull and machinery policy to deny a claim otherwise recoverable hereunder,
- 2.1.4 any deliberate or fraudulent casting away of or damage to the Mortgaged Vessel,
- 2.1.5 avoidance of a claim under any of the Owners' Policies and Club Entries or of any of the Owners' Policies and Club Entries by reason of breach of the duty of good faith in respect of such claim, or
- 2.1.6 the operation of any applicable provision in any of the Owners' Policies and Club Entries which provides for a time limitation on the presentation of claims,
- 2.1.7 in the event of the total loss of the Mortgaged Vessel, the final judgement or award of the courts or arbitration tribunal agreed to have jurisdiction under the express terms of the Owners' Policies and Club Entries (or in the event of their being no such expressed terms a competent court) following a contested hearing whereby the Owners' claim is not recoverable under either the Owners' hull and machinery or war risks policies on the ground that the loss has not been proved to have been proximately caused by a peril insured under those policies and is not otherwise excluded from payment by any exclusion or other provision therein.

- 2.2 **Owners' Policies and Club Entries** – means hull and machinery policies on terms equivalent to or wider than the current Institute Time Clauses Hulls or American Institute Hulls Clauses (if taken, increased values policies on terms equivalent to Institute Time Clauses – Hull Disbursements and Increased Value (Total Loss Only and Excess Liabilities) or American Institute Increased Values and Excess Liabilities Clauses), war risks on terms equivalent to current Institute War and Strikes Clauses Hulls – Time and full protection and indemnity risks on conditions equivalent to the rules of P&I Club that is a member of the International Group of P&I Associations.
- 2.3 **Net Loss**- means the Assured's loss under the loan agreement to the extend secured by mortgage on the Mortgaged Vessel net of any amounts recovered or recoverable under all security arrangements contained in or collateral to the loan including but not limited to all mortgages (whether on vessels insured hereunder or on other vessels), liens, any floating and fixed charges, security interests, guarantees, insurance policies and pledges.
- 2.4 **Mortgaged Vessel** – means the vessel mortgaged to the Assured which is listed on the schedule attached hereto.

3 EXCLUSIONS

In no case shall this policy cover:

- 3.1 any loss or expenses arising from or as a result of
- 3.1.1 the relevant Owners' Policies and Club Entries having been terminated or cover suspended or non-payment of claims by the underwriters or insurance brokers thereof due to non-payment of premium or call.
- 3.1.2 Insolvency or financial default of any of the underwriters of the Owners' Policies and Club Entries,
- 3.1.3 Inability of any parties to transmit funds,
- 3.1.4 Any fluctuation in exchange rates
- 3.1.5 The operation of any franchise deductible or provision for self-insurance.
- 3.2 loss or damage directly or indirectly caused by or contributed to by or arising from:
- 3.2.1 ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste of from combustion of nuclear fuel,
- 3.2.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,
- 3.2.3 any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

4 WARRANTIES

It is warranted in respect of the Mortgaged Vessel that:

- 4.1 Owners' Policies and Club Entries have been taken out and, except as a result of the occurrence or existence of an Insured Perils without the privity of the Assured, shall be maintained throughout the currency of this insurance for an insured value and limit of liability not less than the amount insured hereunder or the amount of the outstanding loan to the extend secured by the Mortgaged Vessel,
- 4.2 Each of the Owners' Policies and Club Entries is endorsed to the extend of the Assured's interest, and
- 4.3 The Assured has procured and registered a valid first mortgage.

5 CHANGE OF OWNERSHIP OR CONTROL

This insurance will terminate automatically at the time the Assured becomes or is aware of or privy to any change of:

- 5.1 Classification Society or of change, suspension, discontinuance, withdrawal or expiry of the Mortgaged Vessel's class within that Society,
- 5.2 Ownership, flag, management or control of the Mortgaged Vessel,
- Unless the Assured gives prompt notice of such change in writing , and agrees to pay an additional premium, if required, and Owners' Policies and Club Entries are maintained.

6 DUTY OF THE ASSURED (SUE AND LABOUR)

- 6.1 The Assured shall report in writing to the Underwriters any circumstances which may give rise to a claim under this insurance within 30 days of the Assured's knowledge of such circumstances and shall thereafter keep the Underwriters fully informed of all developments.
- 6.2 It is the duty of the Assured and their servants 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 insurance.
- 6.3 The Underwriters will reimburse charges properly and reasonably incurred by the Assured their servants or agents for such measures except for legal costs and expenses incurred by the Assured in relation to any claim under Owner's Policies and Club Entries which shall only be reimbursed in accordance with Clause 6.4 herein.
- 6.4 Subject to the condition precedent that the Mortgaged Vessel is entered in a Freight, Demurrage and Defence Club covering the cost of the owner proceeding against the Owners' Policies and Club Entries, the Underwriters will reimburse those legal costs and expenses incurred by the Assured in pursuing the non-paying Owners' Policies and Club Entries not otherwise recoverable as part of the Net Loss but only where the Assured can demonstrate to the satisfaction of the Underwriters that it as made every reasonable effort to compel the owner to pursue the non

paying Owners' Policies and Club Entries. This policy shall not pay for legal costs and expenses incurred by the Assured in monitoring the claim against the Owners' Policies and Club Entries.

- 6.5 Any amounts payable under this clause shall be included within and shall not be additional to the Sum Insured.
- 6.6 Measures taken by the Assured or the Underwriters with the object of averting or minimising a loss which would be recoverable under this insurance shall not be considered as a waiver or acceptance of a claim otherwise prejudice the rights of either party.

7 CLAIMS

- 7.1 The Assured shall prove a claim under this insurance by:
 - 7.1.1 demonstrating to the satisfaction of the Underwriters, that by reason of the perils insured under clause 2.1 there is no reasonable prospect of the Owners and/or Assured succeeding in the claim against the underwriters of the Owners' Policies and Club Entries, or
 - 7.1.2 in the event of disagreement between the Underwriters and the Assured by either referring the issue to a sole arbitrator in London to be agreed upon between the Underwriters and the Assured or on final court judgement or arbitration award delivered in favour of the underwriters of Owners' Policies and Club Entries.
- 7.2 The Underwriters shall pay any claim hereunder within 3 months of the date that both the claim is proved in accordance with Clause 7.1 and Net Loss is established.

8 SUBROGATION

- 8.1 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.
- 8.2 It is a condition of this insurance that any payments by the Underwriters shall not be applied by the Assured in or towards discharge or satisfaction of the outstanding indebtedness.

9 EFFECT OF UNDER INSURANCE

If the loan amounts are not fully insured hereunder at the time of loss then the indemnity payable hereunder including any sue and labour amounts shall be reduced in proportion to the under insurance.

10 AUTOMATIC TERMINATION

- 10.1 Cover hereunder for loss of or damage to or liability of a Mortgaged Vessel shall terminate in respect of those risks covered by the War and Strikes Clauses of the Mortgaged Vessels.
 - 10.1.1 AUTOMATICALLY upon the outbreak of war (whether there be a declaration of war or not) between any of the following
 - United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China.
 - 10.1.2 AUTOMATICALLY in respect of a Mortgaged Vessel in the event of that Mortgaged Vessel being requisitioned either for title or use
 - 10.1.3 7 days after the Underwriters of the Owner's War Risks Insurances or any of them have given notice of cancellation unless such War Risks Insurances have been reinstated prior to or from the expiry of such notice and any new rate of premium and amendments to terms, conditions or warranties, if any, have been agreed, or
 - 10.1.4 7 days after the Underwriters hereon have given notice of cancellation in respect of such risks.
- 10.2 Cancellation in accordance with Clauses 10.1.3 and 10.1.4 shall become effective on the expiry of 7 days from midnight on 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.