



Sunderland Marine

MARINE GENERAL CONDITIONS

In these General Conditions, all defined terms and expressions shall, unless otherwise stated or inconsistent with the context in which they appear, have the same meanings as detailed in the Proposal and/or the Policy of Insurance.

1. Insurance

- 1.1 By the issue of a Certificate of Insurance to the Insured the Company undertakes to indemnify the Insured, in the manner and to the extent set out in these General Conditions and subject to the terms and provisions of the Certificate of Insurance itself, against loss incurred during the Period of Insurance directly as the result of the perils insured against. In the event of any conflict between these General Conditions and the terms and conditions of the applicable Certificate of Insurance the latter shall prevail.
- 1.2 Each successive Period of Insurance shall be regarded on expiry and renewal as subject to a separate contract of insurance and not as a continuation of a pre-existing contract.

2. Basis of Coverage – the Duty of Fair Presentation

- 2.1 Before the inception of the relevant Period of Insurance, the Insured must make a fair presentation of the risk to the Company, in accordance with section 3 of the Insurance Act 2015. In summary, the Insured must:
 - 2.1.1 Disclose to the Company every material circumstance which the Insured knows or ought to know. Failing that, the Insured must give the Company sufficient information to put a prudent insurer on notice that it needs to make further enquiries in order to reveal material circumstances. A matter is material if it would influence the judgement of a prudent insurer as to whether to accept the risk, or the terms of the insurance (including premium);
 - 2.1.2 Make the disclosure in clause 2.1.1 above in a reasonably clear and accessible way; and
 - 2.1.3 Ensure that every material representation of fact is substantially correct, and that every material representation of expectation or belief is made in good faith.
- 2.2 For the purposes of clause 2.1 above, the Insured is expected to know the following:
 - 2.2.1 If the Insured is an individual, what is known to the individual and anybody who is responsible for arranging his or her insurance.
 - 2.2.2. If the Insured is not an individual, what is known to anybody who is part of the Insured's senior management; or anybody who is responsible for arranging the Insured's insurance.
 - 2.2.3. Whether the Insured is an individual or not, what should reasonably have been revealed by a reasonable search of information available to the Insured. The information may be held within the Insured's organisation, or by any third party (including but not limited to subsidiaries, affiliates, the broker, or any other person who will be covered under the insurance). If the Insured is insuring subsidiaries, affiliates or other parties, the Company expects that the Insured will have included them in its enquiries, and that the Insured will inform the Company if it has not done so. The reasonable search may be conducted by making enquiries or by any other means.
- 2.3 If, prior to entering into this insurance contract, the Insured shall breach the duty of fair presentation, the remedies available to the Company are set out below.
 - 2.3.1 If the Insured's breach of the duty of fair presentation is deliberate or reckless:
 - 2.3.1.1 The Company may avoid the contract, and refuse to pay all claims; and
 - 2.3.1.2 The Company need not return any of the premiums paid

in respect of the relevant Period of Insurance.

- 2.3.2 If the Insured's breach of the duty of fair presentation is not deliberate or reckless, the Company's remedy shall depend upon what the Company would have done if the Insured had complied with the duty of fair presentation:

- 2.3.2.1 If the Company would not have entered into the contract at all, the Company may avoid the contract and refuse all claims, but must return the premium paid, in respect of the relevant Period of Insurance.
 - 2.3.2.2 If the Company would have entered into the contract but on different terms (other than terms relating to the premium) the contract is to be treated as if it had been entered into on those different terms from the inception of the relevant Period of Insurance if the Company so requires.
 - 2.3.2.3 In addition, if the Company would have entered into the contract in respect of the Period of Insurance, but would have charged a higher premium, the Company may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims) made during the Period of Insurance. In those circumstances, the Company shall pay only X% of what it would otherwise have been required to pay in respect of the relevant claim(s), where $X = (\text{premium actually charged/higher premium}) \times 100$.
- 2.4 If, prior to entering into a variation to this insurance contract, the Insured shall breach the duty of fair presentation, the remedies available to the Company are set out below.
 - 2.4.1 If the Insured's breach of the duty of fair presentation is deliberate or reckless:
 - 2.4.1.1 The Company may by notice to the Insured treat the contract as having been terminated from the time when the variation was concluded; and
 - 2.4.1.2 The Company need not return any of the premiums paid in relation to the relevant Period of Insurance.
 - 2.4.2 If the Insured's breach of the duty of fair presentation is not deliberate or reckless, the Company's remedy shall depend upon what the Company would have done if the Insured had complied with the duty of fair presentation:
 - 2.4.2.1 If the Company would not have agreed to the variation at all, the Company may treat the contract as if the variation was never made but must in that event return any premium paid in respect of the variation.
 - 2.4.2.2 If the Company would have agreed to the variation of the contract but on different terms (other than terms relating to the premium paid in respect of the variation) the variation is to be treated as if it had been entered into on those different terms if the Company so requires.
 - 2.4.2.3 If the Company would have increased the premium paid in respect of the Period of Insurance then the Company may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Company shall pay only X% of what it would otherwise have been required to pay in respect of the relevant claim(s), where $X = (\text{total premium actually charged in respect of the Period of Insurance including the variation premium/total premium the Company would have charged in respect of the Period of Insurance including the variation premium had it received a fair presentation of the risk}) \times 100$.
 - 2.4.2.4 If the Company would not have reduced the premium paid in respect of the Period of Insurance as much as it did or at all, then the Company may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Company shall pay only X% of what it would otherwise have been required to pay in respect of the relevant claim(s), where $X = (\text{total premium actually charged in respect of the Period of Insurance/total premium the Company would have charged in respect of the Period of Insurance had it received a fair presentation of the risk}) \times 100$.
- 2.5 Nothing in these clauses is intended to vary the position under the Insurance Act 2015.
- 2.6 Where there are two or more Insureds interested in the same risk they shall each be jointly and severally liable to discharge the duties of the Insured.

3. Specific Undertakings by the Insured

- 3.1 The Insured expressly warrants:
- 3.1.1. That due diligence will be exercised throughout the Period of Insurance to maintain all insured property in good condition and fit for use for the purpose for which it is intended.
 - 3.1.2. If the insured property is a Vessel that due diligence will be exercised to ensure that it is seaworthy and properly equipped and manned for its intended employment.
 - 3.1.3. That insured property will be used only for lawful purposes.
 - 3.1.4. That insured property will only be used for purposes for which it was designed and intended.
 - 3.1.5. That the ownership of the insured property and/or Vessel is as described in the presentation of the risk made by the Insured.
 - 3.1.6. That the identity and qualifications of the operator(s), master, skipper and crew of the Vessel (as applicable) are as described in the presentation of the risk made by the Insured.
 - 3.1.7. That insured property will be used only as declared in the presentation of the risk made by the Insured.
 - 3.1.8. That the Insured will comply with all governmental rules and regulations whether statutory or otherwise which apply to, affect or are connected with the insured risk(s).
 - 3.1.9. That the Insured and/or all other relevant persons operate the insured Vessel and/or property (as applicable) with reasonable skill, care, competence and diligence on a continuous basis for the duration of all periods of operation.
 - 3.1.10. That neither the Insured nor any other person involved in the ownership or operation of the insured Vessel and/or property have been charged with or convicted of any offence including dishonesty of any kind (including but not limited to fraud, arson, robbery, smuggling, theft or handling of stolen goods).
 - 3.1.11. That the loss history of the insured Vessel and/or property is as described in the presentation of the risk made by the Insured.
 - 3.1.12. If the insured property is a Vessel that it will be kept in full compliance with all applicable practices and standards of its state of registry and (if different) state of establishment and/or operation.
 - 3.1.13. If the insured property is a Vessel that it will only be navigated within the limits detailed in the Certificate of Insurance.
 - 3.1.14. That any surveyors or assessors instructed by the Company to inspect the subject matter of the insurance will be permitted access to that subject matter without let or hindrance at any time of their choosing.
- 3.2. The consequence of any breach of any part of these warranties or any other warranties arising by operation of law or pursuant to the terms of the applicable Certificate of Insurance issued by the Company will be to suspend the Company's liability from the time of the breach until the time when the breach is remedied (if it is capable of being remedied). The Company will have no liability to the Insured for any loss which occurs, or which is attributable to something happening, during the period where the Company's liability is suspended.

4. Terms Not Relevant to the Actual Loss

Where:-

- 4.1. there has been a failure to comply with a term (express or implied) of this insurance contract, other than a term that defines the risk as a whole; and
- 4.2. compliance with such term would tend to reduce the risk of the loss of a particular kind and/or loss at a particular location and/or loss at a particular time

the Company cannot rely on the breach of such term to exclude, limit or discharge its liability if the Insured shows that the failure to comply with such term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

5. Premiums

- 5.1 Each instalment of premium due to the Company must be paid to the Company in full without set-off or deduction of any kind by the Due Date stated on the Company's invoice.
- 5.2 The consequence of failure to pay premium by the Due Date will be:
 - To entitle the Company to withhold payment of any claim then outstanding and to reject any claim in respect of any loss incurred after the Due Date; and
 - Unless the late premium together with interest at a commercial rate set at the Company's discretion is subsequently received within a reasonable period, also determined by the Company at its sole discretion, to entitle the Company to cancel the insurance with effect from the Due Date.

6. Claims

- 6.1 Notice of the occurrence of any event likely to lead to a claim on, or for the support of, the Company must be given to the Company as soon as possible after the event has occurred. Notice should be given first by telephone and then promptly confirmed in writing.
- 6.2 The Insured must comply promptly with all instructions issued by the Company in connection with the handling of the consequences of any loss event, and also with all requests made by the Company for the provision of vouchers, survey reports, loss adjustments and other documents or information in support of or in connection with a claim.
- 6.3 The Insured must not, without having first obtained the express written authority of the Company to do so, admit any form of liability in any degree, nor settle or compromise any claim in respect of which indemnity will be sought from the Company.
- 6.4 The consequence of any breach by the Insured of any of the obligations set out in this clause will be to entitle the Company to reject the claim concerned or to restrict the amount of the indemnity payable to the Insured to a value that it in its sole discretion deems appropriate.
- 6.5 When the Insured is entitled to limit any liability arising from a loss event, the maximum amount of indemnity payable by the Company shall be restricted to the limitation figure irrespective of any waiver of the right of limitation by the Insured whether by contract or otherwise.
- 6.6 When a claim on the Company arises out of the loss of or physical damage to insured property, the Company shall have the option, exercisable in its sole discretion, either to reinstate the Insured Property or to pay indemnity by reference to the immediately pre-damage realisable market value of the property concerned or the cost of its repair.
- 6.7 In no case will the Company provide indemnity in respect of any loss, liability, costs or expenses which either:
- Is or are recoverable under any other insurance taken out by the Insured, or
 - Would have been recoverable under any such other insurance had that other insurance not contained any terms excluding or limiting the liability of the other insurer on the grounds of double insurance.
- 6.8 Unless otherwise required by law, in no case will the Insured be entitled to interest on any indemnity payment from the Company.
- 6.9 Where two or more persons are named as the Insured, and are therefore "Co-Insureds" under the Certificate of Insurance, the Company shall, before making any indemnity payment, be entitled to establish that each such person is agreed that the payment shall be made to a particular nominated account. If no such agreement is forthcoming within what the Company in its sole discretion regards as a reasonable time, it shall be entitled to discharge its liability in full by crediting the payment to an escrow account and leaving it to the Co-Insureds subsequently to determine either by agreement between themselves or by reference to the courts or other dispute resolution process to what extent each of them is entitled to benefit from that payment.
- 6.10 Where the person entitled to benefit from a payment to be made by the Company under the insurance has died or is incapacitated, the Company shall be entitled fully to discharge its liability to the beneficiary by making that payment to the beneficiary's legally accredited personal representatives.
- 6.11 If the insured Vessel is accepted by the Company to have become an actual or constructive total loss, or it is agreed that it shall be accepted as a compromised or arranged total loss, the full annual premium or balance of any premium instalments due to the end of the Period of Insurance shall become payable.

7. Fraudulent Claims

- 7.1 If the Insured makes a fraudulent claim under this insurance contract, the Company:-
- 7.1.1 Is not liable to pay the claim; and
- 7.1.2 May recover from the Insured any sums paid by the Company in respect of the claim; and
- 7.1.3 May by notice to the Insured treat the contract as having been terminated with effect from the time of the fraudulent act.
- 7.2 If the Company chooses to exercise its right under clause 7.1 above:
- 7.2.1 The Company shall not be liable to the Insured in respect of a relevant event occurring after the time of the fraudulent act. A relevant event is whatever gives rise to the Company's liability under the insurance contract (such as the occurrence of a loss, the making of a claim, or the notification of a potential claim); and
- 7.2.2 The Company need not return any of the premium paid in respect of the relevant Period of Insurance.
- 7.3 If this insurance contract provides cover for any person who is not a party to the contract ("a covered person"), and a fraudulent claim is made under the contract by or on behalf of a covered person, the Company may exercise the rights set out in clause 7.1 above as if there were an individual insurance contract between the Company and the covered person. However, the exercise of any of those rights shall not affect the cover provided under the contract for any other person.

7.4 Nothing in these clauses is intended to vary the position under the Insurance Act 2015.

8. Termination of Insurance "Without Cause" by the Insured or by the Company

- 8.1 The Insured may, for its own reasons, terminate the insurance at any time by giving the Company 28 clear days notice in writing to that effect and shall then be entitled to the return of any unearned premium as at the termination date pro-rata to its time on risk.
- 8.2 The Company may also terminate the insurance at any time if, for its own reasons, it does not wish to continue to underwrite the risk(s) insured. In this case the Company will give the Insured at least 28 days clear notice in writing of its intention to terminate so that alternative cover can be arranged and will refund any unearned premium as at the termination date pro-rata to its time on risk.
- 8.3 Nothing in this clause shall affect the Company's rights under clauses 5, 7 and 9.

9. Cancellation or Amendment of Insurance by the Company

- 9.1 During the Period of Insurance, the Insured shall notify the Company of any material change in the circumstances of the Insured or of the risk. Upon receipt of such notification, the Company may in its sole discretion decide either to continue, vary or cancel the insurance contract.
- 9.2 The provisions of clause 2 (the duty of fair presentation) shall apply to the Insured when presenting any material change to the Company.
- 9.3 The consequence of the decision by the Company to cancel the insurance shall be that the insurance will cease on a specific date being not less than 14 days after the dispatch of written notice to that effect to the Insured or the broker through whom the insurance was originally placed. In this event the Insured shall be entitled to the return of any unearned premium calculated as at the effective Date of Cancellation pro rata to time on risk.
- 9.4 The consequence of a decision to vary the terms of the insurance shall be that the amended terms proposed by the Company shall apply from the date of the material change of circumstances, and that the Insured has a specified period of time being not less than 14 days from the dispatch (as above) of notice to that effect in which to agree the terms on which the insurance shall continue. If the Insured fails to reach agreement with the Company as to continuing terms within the specified period, then the insurance shall automatically be cancelled at the end of that period, and the Insured shall be entitled to the return of any unearned premium calculated as at the effective Date of Cancellation in accordance with the applicable termination scale.
- 9.5 If, where appropriate according to the nature of the insurance provided, insured property is accepted by the Company to have become an actual or constructive total loss, or it is agreed by the Company and the Insured that it shall be accepted as a compromised or arranged total loss, then coverage in respect of the property concerned shall cease from the time of such acceptance, except that (but only where liability coverage is part of the insurance provided) the Insured shall remain entitled to indemnity for liabilities, costs and expenses covered by the Company and arising directly from the event which gave rise to the total loss itself.

10. Communication and Notices

- 10.1 Any notice or other communication given by either party shall be in writing and:
- 10.1.1 Delivered by hand
 - 10.1.2 Sent by pre-paid first class post;
 - 10.1.3 Sent by airmail post;
 - 10.1.4 Sent by facsimile; or
 - 10.1.5 Sent by email.

Where a notice or communication is sent to the Company, it shall be sent to the office address stated in the Certificate of Insurance or a valid fax or e-mail address as notified to the Insured from time to time by the Company. For the avoidance of doubt, the delivery by the Insured of any notice or communication to an intermediary, broker, or other agent acting on the Insured's behalf is ineffective for these purposes.

Where a notice or communication is sent to the Insured, it shall be sent to the address, and using the details on the Insured's proposal or other application for insurance, or, if applicable the latest renewal form or change of address advice provided by the Insured to the Company. It is the responsibility of the Insured to keep the Company advised of any change of address, facsimile number or e-mail address. In the event that the Insured is a partnership, the sending by the Company of a notice or communication to the partnership's last notified place of business, facsimile number or e-mail address, or alternatively (if no such details have been specified) to the last known home address, facsimile number or e-mail address of any one of the partners, shall be deemed for all purposes to constitute due delivery of that notice or communication to all of the members of the partnership.

- 10.2 Any notice or communication given in accordance with clause 10.1 shall be deemed to have been served:
- 10.2.1 If delivered by hand, at the time of delivery:

10.2.2 If sent by pre-paid first class post, on the second working day after the date of posting;

10.2.3 If sent by airmail post, at 9.00am on the fifth working day after the date of posting;

10.2.4 If sent by facsimile, at the time of confirmation of the completion of the transmission by way of a transmission report; and

10.2.5 If sent by e-mail, at the time of sending (except that if an automatic electronic notification is received by the sender within 24 hours after sending the e-mail informing the sender that the e-mail has not been delivered to the recipient, or that the recipient is out of the office, that e-mail shall be deemed not to have been served); provided that, if a notice or communication is deemed to be served before 9.00am on a working day it shall be deemed to have been served at 9.00am on that working day and if it is deemed to be served on a day which is not a working day or after 5.00pm on a working day it shall be deemed to be served at 9.00am on the immediately following working day.

10.3 For the purposes only of this clause 10, references to the time of day are to the time of day at the address of the Company as stated in the Certificate of Insurance and references to working days are to normal working days of the Company at that address.

11. Non-Waiver

In certain circumstances when it seems to it in its sole discretion to be appropriate to do so, the Company may decide not to exercise, either at all or to some extent, one or more of the rights which are given to it by the terms of the insurance. In the event that it does so, and whatever form such decision may take, no relaxation of the Company's insistence on exercising its rights to the full shall in any way constitute any form of precedent binding upon the Company in respect of any future claims, nor may it be relied upon by the Insured in any dispute with the Company over a claim.

12. Assignment

The Insured may assign the benefit of the insurance to a mortgagee or similar person for a similar purpose, but no such assignment shall in any way be binding on the Company unless and until the Company has approved the assignment in writing both to the assignor and to the assignee.

13. Mediation, Arbitration and Governing Law

13.1 The Contract of Insurance between the Insured and the Company is governed by and is to be construed in accordance with English law and practice and in particular, except to the extent specifically contradicted in the policy documentation, by the Marine Insurance Act 1906 and the Insurance Act 2015.

13.2 If any dispute or difference arises between the Company and the Insured concerning the construction of the Contract of Insurance or the validity or value of any claim on the Company by the Insured, such dispute or difference must be referred to Mediation in London or elsewhere as agreed. The Mediation must be agreed upon by the parties within 14 days of one party requesting the appointment of a Mediator. Unless otherwise agreed the parties will share the cost of the Mediation equally. The use of Mediation will not be construed under any legal doctrine adversely to affect the legal rights of either party, and in particular either party may seek an injunction or other preliminary or ancillary judicial relief at any time that it consider that such action is necessary to protect its interests. Should the parties fail to resolve their differences or disputes through Mediation then it will be referred to two Arbitrators in England or elsewhere as agreed (one to be appointed by the Company and the other by the Insured) and an Umpire to be appointed by the Arbitrators, and the submission to Arbitration will be subject to the Arbitration Act 1996 or any statutory modification or re-enactment thereof.