



# The British European & Overseas FD&D Insurance Facility

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## General Conditions of Insurance for Freight, Demurrage and Defence in respect of Maritime Risks

Version dated 3 November 2009

**MANAGERS: DGS MARINE MANAGEMENT SERVICES**

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## Clause 1 Assured and Co-Assured

Unless the policy states otherwise, the insurance covers only the interest of the Assured. The interests of third parties are only insured in so far as this is stated in the policy. In this case all rules of these general terms and conditions, which apply to the Assured, also apply to Co-Assured.

## Clause 2 Risks Insured

2.1. Unless otherwise agreed in the policy, the Underwriter will afford cover, subject to the provisions of Cl. 8 and on the basis of the following provisions, for maritime law disputes arising in connection with the seagoing vessel of the Assured named in the policy as follows:

- 2.1.1. Disputes under charter parties, bills of lading or other contracts of affreightment as well as contracts for hire of ships or ship leasing contracts.
- 2.1.2. Disputes relating to contracts of passage.
- 2.1.3. Disputes relating to the supply of ships with bunker lube oil, provisions or equipment.
- 2.1.4. Disputes relating to General Average.
- 2.1.5. Disputes relating to Salvage.
- 2.1.6. Disputes under towage and tug assistance contracts.
- 2.1.7. Disputes under repair contracts and agreements with shipbuilding yards (other than disputes referred to in provision 2.2 below)
- 2.1.8. Disputes under insurance contracts in connection with the vessel.
- 2.1.9. Disputes under contracts with ship's agents, ship's brokers, stevedores and other port operators.
- 2.1.10. Disputes with and representation at customs, port and other public authorities.

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- 2.1.11. Disputes under contracts relating to the operation, management or crewing of the vessel.
- 2.1.12. Disputes under employment contracts with masters or other crewmembers.
- 2.1.13. Disputes relating to statutory claims which are pursued by or against the Assured in connection with one of the contracts referred to in paragraphs 2.1.1 to 2.1.12 above.

2.2. By special agreement to be contained in the policy and in consideration of an additional premium, the insurance cover can be extended to:

- 2.2.1. Disputes relating to shipbuilding contracts, ship sale and purchase contracts, ship finance contracts or ships mortgage/hypothecation.
- 2.2.2. Criminal and administrative and/or regulatory summary offence proceedings against the Assured relating to the vessel named in the policy unless the Assured is accused of intentional misconduct.

Unless otherwise agreed, it is a pre-condition for such extended cover that the insurance contract exists at the time the contracts under which the disputes arise are concluded or proceedings have been started against the Assured or that the contract of insurance is concluded at least at the same time of any such contracts or proceedings.

## Clause 3 Costs Insured

3.1 Unless the Underwriters in their absolute discretion otherwise decide, it is a condition precedent of an Assured's right to make any recovery under the Policy of Insurance in respect of any legal costs and expenses, that he shall first have discharged or paid the same out of funds belonging to him unconditionally and not by way of loan or otherwise.

3.2. The Underwriter will reimburse up to the amount specified in the policy, as follows,

3.2.1. In the case of litigation:

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- 3.2.1.1. The costs of the lawyer acting on behalf of the Assured in accordance with Cl.13.1, the costs of the lawyer acting for the opponents as well as court fees;
- 3.2.1.2. Court within the meaning of these insurance conditions is every court of law or every arbitration tribunal, either institutional or established ad hoc; litigation within the meaning of these insurance conditions refers to every type of procedure in the so defined court for claims defined at provision 2.
- 3.2.1.3. The court fees include all costs to be borne by the Assured by way of an enforceable decision of the court, tribunal or other entity entitled to issue such an enforceable decision including the costs for proceedings relating to the taking of evidence.
- 3.2.1.4. The reimbursement in respect of costs will be made irrespective of the position of the Assured in the proceedings (plaintiff, defendant, joined voluntarily or involuntarily as third party); costs to be reimbursed also include counter claims and objection procedures of the Assured or his opponent.
- 3.2.1.5. At the absolute sole discretion of the Underwriter, and on terms the Underwriter see fit. The Underwriter may provide the Assured with security for costs as ordered by the court and arrange for advance payments of costs ordered by the court and may arrange for payment, in the appropriate amount, of on-account payments or retainer fees to lawyers acting for the Assured.

### 3.2.2. In the case of pre-litigation disputes:

- 3.2.2.1. The costs for the lawyers acting on behalf of the Assured in accordance with paragraph 13.1.
- 3.2.2.2. Pre-litigation dispute within the meaning of these terms and conditions is every dispute which has not yet reached the stage of court proceedings within the meaning of paragraph 3.2.1.2. Such pre-litigation disputes also include pre-trial administrative or conciliation procedures.

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- 3.2.2.3. At the absolute sole discretion of the Underwriter, and on terms the Underwriter see fit. The Underwriter may arrange for the payment of a reasonable on-account payment or retainer fee to lawyers acting on behalf of the Assured.

## Clause 4 Exclusions

Excluded from the insurance are disputes relating to:

4.1. Claims involving amounts of less than US\$ 12,500 or the equivalent in any other currency, unless the Insurer specifically confirms cover;

4.1.1 Claims not specified at provision 3.

4.2. Unless otherwise agreed, claims in respect of which the Assured has obtained cover under a Hull and Machinery insurance policy on the vessel or could have obtained cover under a Hull and Machinery insurance in accordance with the Institute Time Clauses or DTV Clauses or under any other Hull and Machinery insurance with equivalent terms and conditions;

4.3. Unless otherwise agreed, claims in respect of which the Assured is covered under the P & I insurance of the vessel;

4.4. Claims arising in connection with war, war-like incidents or as a consequence thereof;

4.5. Tax or other public charges;

4.6. Claims in connection with radioactive substances;

4.7. Claims in connection with an illegal employment of the vessel;

4.8. Claims in connection with the carriage of contraband or the employment of the vessel as a blockade runner;

4.9. Claims in respect of which the Assured could have obtained reimbursement of costs under any other insurance contract in the event that the Assured had not concluded this insurance contract. This also applies where such other contract of insurance includes a subsidiary clause.

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4.10. The Assureds' inability to pay debts.

## **Clause 5 Extension of Cover in Special Cases**

The Underwriter, in his absolute and unfettered discretion, may grant cover for disputes not listed but similar to those listed in these terms and conditions and for costs not listed but similar to those listed in these terms and conditions, where covering the dispute appears appropriate to the Underwriter in the circumstances of the particular case. There is no legal right of the Assured for such extension of cover. The Underwriter does not have to give reasons for refusing such extended cover and there is no requirement for the Underwriter to act reasonably in refusing such extended cover.

## **Clause 6 Period of Cover and Duration of Insurance Contract**

6.1. Insurance cover exists only for disputes and claims which have arisen during the period of the policy.

6.2. A dispute is deemed to have arisen at the moment when the main cause of the dispute has come into existence.

6.3. Disputes, the main cause of which lies prior to or after the end of the time specified in the policy, do not give rise to a claim for insurance cover.

6.4. This insurance contract will automatically renew for a further year unless the Assured or the Underwriter gives written notice of termination of the contract of insurance at the latest three months prior to expiry of the current insurance period.

6.5. In case of more than one vessel being named in the policy on sale of a vessel the insurance cover is reduced to cover only the remaining vessels.

6.6. The insurance contract will in any event terminate automatically without notice having been given:

- 6.6.1. On the application for the insolvency of the Assured, unless the Insurer and the trustee of the insolvency proceedings agree on the continuation of the insurance.

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6.6.2. On the sale of the last vessel operated and insured hereunder by the Assured.

6.7. The insurance contract can be terminated in accordance with provision 10.

## Clause 7 Sum Insured

The insurance cover is limited per incident and in respect of the total number of cases within the insurance period to the sum insured specified in the policy, **but not exceeding Euro 1 Million.**

## Clause 8 Deductible

Unless otherwise agreed the Assured will bear

8.1. For each claim covered, subject to Cl. 8.2, a deductible of 15%, subject to a minimum of US\$ 7,000 and limited, however, to a maximum of US\$ 35,000;

8.2. For each claim covered resulting from disputes in the United States of America, a deductible of 25%, subject to a minimum of US\$ 45,000 and limited, however, to a maximum of US\$ 100,000.

## Clause 9 Examination of Merits - Powers of the Underwriter to support the Assured

9.1. The Underwriter will examine the merits of the dispute. The examination of the merits and the decision of the Underwriter on the basis of this will be conducted

9.1.1. Separately for pre-litigation and litigation disputes;

9.1.2. In the case of disputes subject to appeal, separately for each instance;

9.1.3. Separately for counter claims of the Assured as well as for counter claims of opponents.

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9.2. Where the Underwriter is of the view that the matter does not have a sufficiently good chance of success, cover can be denied. In the event that cover is denied, the Assured will be notified of this in writing without undue delay with reasons for the decision being given.

9.3. The Underwriter is entitled to examine the chances of success of a matter during all stages of proceedings. If the Underwriter is of the view that the matter no longer has a sufficiently good chance of success, the Underwriter can withdraw cover for the future and in that event the cover is limited to only those costs, which Underwriter would have to bear at the date the cover is withdrawn.

9.4 The Underwriter can require at any stage of the dispute that the dispute is to be resolved by waiver, acceptance, discontinuance, settlement or any other way. Where the Assured does not adhere to the requirement/instruction of the Underwriter, the cover is limited to those costs, which the Underwriter would have had to bear, if the dispute had been terminated as required/instructed by the Underwriter.

9.5. Where the Underwriter has denied or withdrawn cover in accordance with Cl. 9.2 or 9.3 and where the Assured does not agree with the view taken by the Underwriter, the Assured can request arbitration in accordance with Cl.17.2. Where the arbitration tribunal confirms a sufficiently good chance of success its opinion shall bind the Underwriter. In this case the Underwriter bears the costs of the arbitration tribunal. The arbitration proceedings must be commenced within a period of three (3) months after the Assured has received notice from the Underwriter denying cover. This time limit will only begin to run if the expiry of the time limit has been expressly pointed out to the Assured in said notice.

### Clause 10 Payment of Premium and Other sums due

10.1. The insurance premium is to be paid annually in advance.

10.2. Where the Assured is in default on payment of the premium and/or other sums due, the Insurer is entitled to rescind the contract of insurance Ab Initio.

10.3. Where the Assured fails to make timely payment of a subsequent insurance premium and/or other sums due.

10.3.1. The Underwriter is entitled to give written notice requiring payment of any costs within a minimum period of two weeks. Said notice must indicate the legal consequences resulting from the expiry of the payment deadline

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pursuant to Cl.10.3.2 and 10.3.3. A payment deadline which does not observe these requirements is without legal effect and invalid.

- 10.3.2. In the event that an insured event occurs after the expiry of the payment deadline and the Assured is in default on payment of the premium or in default of claims for interest or costs the Underwriter does not provide cover.
- 10.3.3. After the expiry of the payment deadline, if the Assured is in default on payment, the Underwriter can terminate the insurance without observance of a termination period. The Assured is hereby expressly informed that termination can take effect simultaneously with expiry of the payment deadline if the Assured is in default at this point in time. If the Assured makes payment within one month after the date of termination, or in the event that termination is connected to the payment deadline then within one month from the expiry of said payment deadline, the termination will not take effect provided that an insured event has not occurred.

10.4. The Underwriter does not provide cover for claims arising during the time that the Assured is in default of making payment of premium and/or other sums due.

## Clause 11 Obligations of the Assured

The Assured is under a duty:

11.1. To provide the Underwriter prior to attachment of the insurance contract with all information relevant to the assessment of the risk and to answer all questions put to him fully and correctly;

11.2. To inform the Underwriter in writing of every incident which could give rise to a claim under this policy for reimbursement of costs even where the Assured does not have the intention of claiming under the insurance cover.

The notice must include as much information as possible at the time of the notice and must be made at the latest three (3) months after the Assured has obtained knowledge of said incident. Where applicable the notice is to be supplemented as soon as the Assured receives new information that is or may be relevant to the assessment of the legal situation.

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Failure to comply with this obligation will result in the Assured's claim against the Underwriter being considered time barred, and the Underwriter shall be discharged. The Underwriter shall also be under no further liability in respect thereof unless and insofar as the Underwriters in their absolute discretion shall otherwise determine.

11.3. To provide the Underwriter with all documents, or at least copies thereof, which are required for the assessment of the matter.

11.4. Without prejudice to the duty of prompt notification contained within the terms and conditions, if an Assured:-

Fails to submit a claim to the Underwriters for reimbursement of any loss, damage, liabilities, costs or expenses within three (3) months after discharging the same (in the case of an agreed settlement, after he receives the Underwriter' approval for the settlement in accordance with the Conditions hereof), the Assured's claim against the Underwriter shall be time barred and, the Underwriter shall be under no further liability in respect thereof.

11.5. To waive or accept claims or to conclude a settlement or discontinue proceedings and/or an appeal in the course of any dispute only with prior written agreement of the Underwriter.

11.6. At all times during the currency of this insurance carry and maintain or cause to be carried and maintained Hull and Machinery and Protection and Indemnity Insurance on the seagoing vessels of the Assured named in the policy.

11.7. At all times during the currency of this insurance ensure that the seagoing vessels of the Assured named in this policy are fully class and class maintained and compliant with ISM code.

The Insured Ship and "the company" (as defined by Chapter IX of the International Convention for the Safety of Life at Sea (as amended), hereinafter referred as "SOLAS 1974" and, as defined in the International Safety Management Code, hereinafter referred as the "ISM Code") shall throughout the Policy Period comply at all times with all applicable provisions and requirements of SOLAS 1974 and the ISM Code. There shall be no cover under these Terms and Conditions in respect of any liability, loss, damage, cost and/or expense that arose out of or was consequent upon the Insured Ship and/or the company failing to comply with any applicable provisions and requirements of SOLAS 1974 and the ISM Code unless and to the extent that the Underwriters in their sole discretion determine otherwise

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## Clause 12 Consequences of Breach of Obligations

12.1. Where the Assured is in breach of his obligations under but not limited to Cl. 8, 9, 11, 13, and 16 or any other agreed obligation, the Underwriter does not provide cover. The Underwriter can terminate the policy within one month from the date on which he becomes aware of such a breach.

12.2. By breach of an obligation of the Assured towards the Underwriter the purpose of which is to minimise the risk or mitigate the level of risk of the Underwriter, the Underwriter may not rely on the agreed contractual right not to provide cover if the breach did not affect the onset of the insured event or the scope of cover that the Underwriter is obliged to provide.

## Clause 13 Employment of Lawyers and other persons - Conditions under which third parties may be instructed to investigate or handle matters falling within the FD&D Insurance

13.1. Without prejudice to any other provisions of these terms & conditions and without waiving any of the Underwriter's rights hereunder, the Underwriter may at any and all times appoint and employ on behalf of an Assured upon such terms as they may think fit lawyers, surveyors or other persons (whether or not lawyers, surveyors or other persons have already been appointed or employed by the Assured) for the purpose of dealing with any matter liable to give rise to a claim by the Assured upon the Underwriter, including, but not limited to, investigating or advising upon any such matter and taking or defending legal or other proceedings in connection therewith. The Underwriter may also at any time discontinue such employment as they may think fit.

13.2. The costs and expenses incurred in connection with a particular case shall only be recoverable from the Underwriter on condition that all lawyers, surveyors and other persons employed in the case are appointed with the prior consent of the Underwriter

13.3. All lawyers, surveyors and other persons appointed by the Underwriter on behalf of an Assured or appointed by an Assured with the prior consent of the Underwriter shall at all times be and be deemed to be appointed and employed on the terms:-

That (without prejudice to their right to retire from the matter on any other grounds) they shall be entitled to retire from the matter if either the Underwriter or the Assured so requests or if

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such person considers that a conflict of interest has arisen or may arise between the Assured and the Underwriter so that he ought to retire from the matter;

That they have been instructed by the Assured at all times (both while so acting and after having retired from the matter) to give advice and to report to the Underwriter in connection with the matter without prior reference to the Assured;

That they are to produce to the Insurer without prior reference to the Assured any documents or information in their possession or power relating to such matter,

As if such person had been appointed to act and had at all times been acting on behalf of the Assured and notwithstanding that any such advice, reports, documents or information would otherwise be the subject of legal or any other form of privilege.

## Clause 14 Exclusion of Off-Set

The right to off-set claims for premium and other claims against claims for reimbursement on the part of the Assured is excluded, unless such claims for reimbursement have been accepted by the Underwriter or have been judicially ascertained without recourse to appeal. That said, any off-set is at the absolute sole discretion of the Underwriter.

## Clause 15 Assignment of Rights

The Assured is not entitled to assign claims under this insurance contract to a third party prior to their final determination by way of a legally enforceable and unappealable decision without the express consent of the Underwriter.

## Clause 16 Limitation Period

All claims of the Assured against the Insurer are subject to a limitation period of one year, beginning with the end of the year in which the claim arose.

Without prejudice to the duty of prompt notification contained within the terms and conditions, if an Assured:-

Fails to submit a claim to the Insurers for reimbursement of any loss, damage, liabilities, costs or expenses within three (3) months after discharging the same (in the case of an agreed

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settlement, after he receives the Underwriters' approval for the settlement in accordance with the Conditions hereof), the Assured's claim against the Underwriter shall be time barred and, the Underwriter shall be under no further liability in respect thereof.

## Clause 17 Wilful Misconduct

The Underwriter shall not be liable for any loss, damage, liabilities, costs or expenses caused by the wilful misconduct of the Assured or his Managers/Agents.

## Clause 18 Applicable Law, Arbitration Agreement and Jurisdiction

18.1 These Terms and Conditions and any Policy of Insurance between the Underwriter and the Assured shall be governed by and construed in accordance with English law, including the provisions of the Marine Insurance Act 1906. A person who is not a party to the Policy of Insurance has no rights under the Contracts (Rights of Third Parties Act) 1999 to enforce any term of the Policy of Insurance but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

18.2 The Court or tribunal with jurisdiction to determine disputes arising out of or in connection with this Contract shall be determined as follows:

### Claims for premium or sums due to the Underwriter

18.3 Any claim by the Underwriter against the Assured for premium or others sums due to the Underwriter may be commenced, at the Underwriter's sole discretion, in any of the following jurisdictions:

18.3.1 the English Courts; or

18.3.2 the Courts of the Assured's place of domicile; or

18.3.3 London Maritime Arbitrators Association (LMAA) arbitration in London as set out in paragraphs 18.5 - 18.7 below.

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## All other claims

18.4 All other claims or disputes arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

18.5 The arbitration shall be conducted in accordance with the LMAA Terms current at the time when the arbitration proceedings are commenced.

18.6 The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and give notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

18.7 Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

## Clause 19 Consortium/Managers

19.1 DGS Marine Management Services, have been appointed the exclusive managers (the "Manager") of the FD&D Facility.

19.2. Any notification and declaration by the Assured has to make to the Underwriter according to these rules must be directed towards the Manager and is deemed to be served to the Underwriter as soon as the Manager receives the same.

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## The British European & Overseas FD&D Insurance Facility

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### **Clause 20 Good Faith**

All parties concerned shall act in the utmost good faith.

### **Clause 21 Powers of the Underwriter to recover costs from an Assured**

Where an Assured has in respect of an Insured Ship become entitled by judgment, award, agreement, admission or otherwise to recover in whole or in part the costs of or incidental to any legal or other proceedings from any other party to such proceedings but the Assured has been unable to recover the full amount of the claim and costs to which he has become entitled, the Assured shall be obliged, if the Underwriters in their absolute discretion so require, to pay to the Underwriter such proportion of the sum actually recovered by him as the costs would have borne to the claim including costs, if the Assured had recovered his entitlement to both in full.

#### **MANAGERS: DGS MARINE MANAGEMENT SERVICES**

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