

**WAVELENGTH PORTS AND TERMINALS CONSORTIUM  
SECTION 1 - LIABILITY WORDING**

1. **LOSS, IF ANY, PAYABLE** to Assured or Loss Payee as set out in the Insurance Schedule.
2. **INSURING CLAUSES**

In consideration of the payment of the premium, Underwriters agree, subject to the provisions of this Policy and the Section 1 limit as set out in the Insurance Schedule, to indemnify the Assured in respect of their legal or contractual liabilities to third parties arising from an Accident which the Assured may incur by reason of their Insured Operations as Port Authorities or Terminal Operators for:

- 2.1 Physical loss or physical damage to the real or personal property of any third party, including resultant loss of use or demurrage, provided that such loss or damage directly results from an Insured Operation performed by the Assured within the Confines of the Port, Terminal or Insured Location(s); and
- 2.2 Bodily Injury to any third party provided that such Bodily Injury directly results from an Insured Operation performed by the Assured within the Confines of the Port, Terminal or Insured Location; and.
- 2.3 Any liability of the Assured in connection with any tenant of the Assured for Operations performed by any sub-contractor appointed by the Assured, but being subject to the terms, conditions and exclusions of this Policy. It is a condition of cover being given under this clause 2.3 that the Assured must ensure that any such tenant and/or sub-contractor purchases and maintains adequate liability insurance. Adequate insurance means terms no less favourable than the cover provided to the Assured under this Policy. Such policy must also stipulate that it will respond first to any liability loss prior to any other policy of insurance which may cover the same liability.
- 2.4 Costs and expenses incurred in the defence of any claim(s) arising from an Accident covered under Section 1, and the costs and expenses of litigation awarded to any claimant in any competent Court or arbitration proceedings against the Assured by way of interest on judgements, investigation, adjustment, appraisal, appeal and legal costs and expenses subject to the overall limit of this Section 1. Indemnifiable legal costs and expenses shall exclude, all fees, salaries, or retainers for salaried employees and employed counsel and all office expenses of the Assured unless prior agreement has been obtained from Underwriters. Such costs and expenses shall be subject to clause 2 of the General Policy Provisions
- 2.5 Costs and expenses incurred by the Assured in disposing of the cargo or property of an Assured's customer, including the removal of any wreck or debris thereof, following an Accident to such cargo or property during the Policy period for which the Assured is legally liable within the Confines of the Port, Terminal or Insured Location subject to the overall limit for this Section. This clause does not provide cover for costs and expenses relating to seepage, pollution or contamination.

- 2.6 In respect of Port Authorities only, costs and expenses incurred either voluntarily or in the exercise of the Assured's statutory right or legal obligation to remove any wreck or debris thereof following an Accident during the Policy period. Subject to the overall limit for this Section 1, and providing such costs and expenses are incurred by the Assured for the purpose of avoiding or minimising a claim under this Section. Such wreck or debris removal must not be undertaken without the prior approval of Underwriters, or the costs and expenses will not be recoverable under this Policy.

### 3. EXCLUSIONS

This Section does not cover any actual or alleged liability howsoever arising:

- 3.1 To employees of the Assured, except as insured under clause 4, or 6 of this Section;
- 3.2 Directly or indirectly under Workmen's Compensation or Employers Liability Acts or any other statutory or Common Law Liability to any employee of the Assured when such Bodily Injury arises out of or in the course of the employment of such employees;
- 3.3 Directly or indirectly caused by any continuous, intermittent or repeated exposure to or ingestion, inhalation or absorption of the following substances or condition(s) in any form:
- asbestos, tobacco, coal dust, polychlorinated biphenyls, silica, benzene, lead, talc, dioxin, pharmaceutical products or drugs of any type, pesticides or herbicides, mould, human immune virus or acquired immune deficiency syndrome or electro magnetic fields;
- 3.4 For any repetitive motion, repetitive stress, repetitive strain and/or cumulative trauma disorder, including, without limitation, (i) liability or alleged liability arising from alleged improper design of goods, equipment or machinery or operations, (ii) failure to warn or properly instruct as to the use of goods, equipment or machinery or conduct of operations, (iii) improper supervision of use of the goods, equipment or machinery or conduct of operations, or (iv) without limiting the foregoing, carpal tunnel syndrome;
- 3.5 For loss, damage or expense to any property or equipment owned, leased, hired, occupied or rented by the Assured;
- 3.6 For loss, damage or expense caused by wear, tear or gradual deterioration;
- 3.7 From the release of cargo without the original bill of lading, unless otherwise endorsed by Underwriters;
- 3.8 For loss, damage or expense to ad valorem or valuable cargo (including but not limited to bullion, precious metals or precious object(s), jewellery, cash, securities, fine art or thoroughbred horses) unless the Assured was not informed and could not reasonably have known such cargo was being handled.

Underwriters may agree to insure such liability on a case by case basis subject to terms and conditions to be agreed in advance by Underwriters;

- 3.9 As the owner, operator or user of any vehicle(s) or conveyance(s) of any description required to be licensed under any statutory provision(s) or regulation(s), or any Accident involving a vehicle, chassis, trailer, conveyance or the like on public roads or outside the Confines of the Port, Terminal or Insured Location;
- 3.10 In respect of any interest the Assured may have in any vessel, aircraft or helicopter whether owned, leased, rented, hired, chartered or operated by the Assured, including any management or operation of any airport, area or building upon which aircraft or helicopter(s) land or manoeuvre, or in which they are housed, maintained or repaired;
- 3.11 Directly or indirectly caused by, or arising out of seepage, pollution or contamination howsoever caused whenever or wherever happening unless the Assured establishes that all of the following conditions have been met:
- A. The seepage, pollution or contamination was caused by an Accident.
  - B. The Accident occurred during the Policy period on an identified specific date.
  - C. The Accident was first discovered by the Assured within 72 hours of the commencement of the Accident.
  - D. Written notification of the accident was first received from the Assured by Underwriters within 30 days of the Assured's first discovery of the Accident.
  - E. The Accident did not result from the Assured's intentional or wilful violation of any statute, rule, ordinance or regulation.

Even if the above conditions A to E are satisfied, this Policy does not apply to, or provide cover for, any actual or alleged liability howsoever arising:

- (i) To abate or investigate any threat of seepage onto or pollution or contamination of the property of a third party.
- (ii) For seepage, pollution or contamination of property which is or was, at any time, owned, leased, rented or occupied by any Assured, or which is or was, at any time, in the care, custody or control of any Assured (including the soil, minerals, water or any substance on, in or under such owned, leased, rented or occupied property or property in such care, custody or control).
- (iii) For loss of, damage to or loss of use of property directly or indirectly resulting from subsidence caused by sub-surface operations of the Assured.
- (iv) For fines, penalties, punitive damages, exemplary damages, or any other damages resulting from the multiplication of compensatory damages

- 3.12 From the disposal, handling, processing, treatment, storage or dumping of any waste materials, spoil or substances or during transportation, including the operation of any land fill, dump site and/or location used for such. In the event of a conflict between this exclusion and exclusion 3.11, this exclusion shall prevail;
- 3.13 Out of dredging operations, while such operations are being performed;
- 3.14 For fines, penalties, punitive or exemplary damages howsoever awarded or described, or any additional damages resulting from the multiplication of compensatory damages;
- 3.15 For failure or delay in performance of any contractual obligation or guarantee, including failure to supply or from fluctuations in supply of any substance, product or service whatsoever;
- 3.16 Under any contract or agreement to compensate another party unless:
- A. Such liability would have attached to the Assured in the absence of such contract or agreement or as specifically agreed by Underwriters prior to such Accident, and
  - B. Such liability was caused by or contributed to by the Assured's fault or negligence;
- 3.17 As a result of the Safe Working Load of any equipment being overloaded other than for the purpose of inspecting or testing;
- 3.18 From the transit, movement, erection or dismantling of an item of handling equipment other than during the course of inspection, maintenance, repair or removal to another working position within the Confines of the Port, Terminal or Insured Location;
- 3.19 Out of goods or products, manufactured, processed, graded, blended, or sold by the Assured or by others trading under the name of the Assured where loss or damage occurs away from the premises owned, leased, rented or controlled by the Assured and after physical possession of such goods or products has been relinquished to others. This exclusion shall also apply to reliance upon a representation or warranty made in connection with such goods or products at any time;
- 3.20 From any negligent act, error or omission of any Assured, or any other person for whose acts the Assured is legally liable, in the administration of any Assured's employee benefits programme or pension programme. Employee benefits programme includes but is not limited to group life insurance, group accident or health insurance, profit sharing plans, employee stock subscription plans and social benefits;
- 3.21 Under any statute, law, rule or regulation relating to:
- A. the purchase, sale or distribution, or offer of securities, or investment counselling;
  - B. monopolies, activities in restraint of trade, unfair competition, or deceptive acts or practices;
  - C. copyright, patent or trademark infringement;

- D. disclosure relating to sales or offers to sell real property;
- E. employee, officer or director dishonesty, or improper conduct or conflict of interest in the performance of the Assured's operations, or any action taken outside the scope of an employee, officer, or director's authority as granted by the Assured.

#### **4. CROSS LIABILITY**

Always subject to the exclusions in this Section, in the event of claim(s) being made against the Assured for Bodily Injury suffered by any employee of the Assured which does not arise out of the injured employee's employment, and for which another Assured, is legally liable for causing the Bodily Injury, then this Section shall cover the Assured against such claim provided it is made in the same manner as if separate policies had been issued to each Assured. Nothing contained herein shall operate to increase Underwriters liability as specified in the Insurance Schedule, and subject to the sub-limit specified in the Insurance Schedule.

#### **5. CONTRACTS AND AGREEMENTS**

Always subject to the exclusions in this Section, Underwriter's, shall only cover liability to third parties contracting with the Assured:

- 5.1 in the case of contracts existing at inception of this Policy, when the Assured has informed Underwriters of the contract(s) by means of the questionnaire and if requested by Underwriters, supplied copies of the contracts for Underwriter's approval; or
- 5.2 if the contract(s) is entered into after inception of this Policy, the Assured must inform Underwriters of such contract(s) if the terms are substantially different from the terms of the contract(s) advised to Underwriters under 5.1 and if requested by Underwriters supply copies of the contract(s) for Underwriter's approval.

Underwriters reserve the right to charge additional premium and impose such terms and conditions or exclusions as they deem appropriate to any new or amended contractual arrangement.

#### **6. ACTION OVER INDEMNITIES**

Always subject to the exclusions in this Section, Underwriters agree to include claim(s) for Bodily Injury to third parties where responsibility is assumed by the Assured for such claims in connection with their Operations as a Port Authority and/ or Terminal Operator under any written contract. Nothing in this Clause shall operate to increase Underwriter's liability as specified in the Insurance Schedule, and liability under this clause is limited to the sub-limit specified in the Insurance Schedule.

#### **7. UNITED STATES OIL POLLUTION ACT DISCLAIMER**

This Policy of Insurance is not evidence of financial responsibility under the Oil Pollution Act of 1990 or any similar federal or state laws. Any showing or offering of this Policy by the Assured as evidence of insurance shall not be taken as any indication that the

Underwriters consent to act as guarantor or to be sued directly in any jurisdiction whatsoever. The Underwriters do not consent to be guarantors or to be sued directly.

**THIS SECTION IS TO BE READ IN CONJUNCTION WITH THE GENERAL POLICY PROVISIONS, THE INSURANCE SCHEDULE AND THE QUESTIONNAIRE, ALL OF WHICH FORM PART OF THE POLICY**

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