



## **FREIGHT SERVICES LIABILITY INDEMNITY**



**WCA Ltd**

**Indemnity Wording  
1051011B**

2017-V2

In consideration of the Service Fee payable in respect of this indemnification agreement (herein after referred to as the Agreement), the WCA Ltd (herein after referred to as WCA) undertakes to indemnify the Member, (hereinafter called the Member) named in the Agreement Confirmation, for all liabilities, costs or expenses that the WCA is liable to pay in respect of events or circumstances which occur during the Agreement Period, and to indemnify the Member in respect of loss or damage sustained which fall within the terms and conditions and exclusions of this Agreement subject to the deductible(s) and limit(s) of liability herein and set out in the Agreement Confirmation attaching to and forming part of this Agreement.

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**IMPORTANT INFORMATION**

It is important to read this Indemnity Schedule and the Agreement Indication and/or Agreement Confirmation carefully in order to understand what is covered and what is not covered and also to understand the rights, duties and obligations of the indemnified Member.

All Agreements, Exclusions and Conditions contained herein precedent to WCA's liability apply unless noted otherwise in the Agreement Confirmation or any endorsement attaching thereto.

Acceptance of an Agreement Indication by the Member shall be deemed to be acceptance of all terms and conditions of this Agreement.

## A) COVERAGE - CARGO AND RELATED LIABILITIES

This Agreement will indemnify the Member in respect of its legal and/or contractual liability under Conditions of Trade approved by WCA and for costs for Indemnified Services directly flowing from such liabilities subject to its terms conditions and limits and to the following General Terms and Conditions and Exclusions for: -

### 1. Loss or Damage to Cargo in respect of liabilities, this is not a cargo contract

Liability for loss or damage to cargo whilst in transit or in storage during the normal course of transit in the care, custody or control of the Member, or a party with whom the Member has contracted to provide transportation services.

### 2. Additional Cover

The additional cover set out below shall apply following liability under Clause 1. above.

#### 2.1 Consequential Loss

Liability for consequential loss including business interruption, subject to a limit of liability any one claim of twice the carriage charges.

#### 2.2 General Average

Liability (without application of deductible) for cargo's proportion of general average, salvage and/or salvage charges.

#### 2.3 Accidental delay in delivery of customers Goods

This Agreement covers additional costs, penalties, duty, freight and/or storage charges and all other similar charges as a result of accidental delay in delivery of customers Goods but specifically excluding all losses directly attributable to "just in time" contracts, where fines and/or penalty charges become due as a result of the Member's failure to meet contract criteria. Such additional cover is subject to an each and every loss limit of not more than three times the amount of the carriage charges subject to a limit of USD250,000 for the total of all losses during the annual Agreement period.

#### 2.4 Duty

Liability for duty payable where the duty forms part of a claim for loss or damage to cargo other than duty under any form of bond or guarantee.

#### 2.5 Damage to Transport Equipment and other Cargo

Liability for loss or damage to any container, transport equipment, vehicle, cargo, vessel or aircraft operated by another party resulting from the mode and/or manner in which the cargo being transported is secured and/or stowed. WCA Indemnity shall not exceed USD100,000 per incident or occurrence and USD100,000 in the aggregate during the annual Agreement period.

#### 2.6 Temporary Storage

Liability for loss or damage to cargo during temporary storage arising out of rejection of cargo by a consignee, or where the cargo cannot be delivered, provided that WCA are notified within 7 days of the rejection or non-delivery of the cargo respectively.

#### 2.7 On-forwarding Costs

WCA agree to pay the cost and expense of on-forwarding cargo to destination including the cost of temporary storage, unloading, reloading and transferring cargo to other transport equipment, or containers, in order to mitigate the loss. WCA Indemnity shall not exceed USD15,000 per incident or occurrence and USD30,000 in the aggregate during the annual Agreement period.

#### 2.8 Failure to Collect Cargo

Liability where the Insured is held legally liable for demurrage, storage, port, forwarding, disposal or other charges arising directly or indirectly out of the failure of the consignee or receiver to take delivery of the goods, such liability not to exceed USD15,000 any one event and USD30,000 in the aggregate during the annual policy period.

Where a country/ territory does not provide domestic Conditions of Trade or Carriage and for that reason a Member trading in such a country/territory does not always operate under domestic Conditions of Trade or Carriage then Part A) of this Schedule will, as far as is applicable, not apply and cover under the Agreement will be subject only to Part C) subject to its terms and conditions.

Notwithstanding the above, where the Member operates in a country/territory which does not provide domestic Conditions of Trade or Carriage but the Member operates on other conditions of trade or carriage for domestic trade, limiting their liability under such contract(s), whether such conditions are in-house/own conditions, internationally recognised or otherwise, then Part A) of this Schedule will apply.

**B) SPECIAL CONDITIONS AND EXCLUSIONS**  
**(Applicable to all sections of the policy and schedule)**

**1. Approval of the Member's Trading Conditions**

Where the Member performs services in any country under conditions of trade, carriage / storage other than that listed in 1.1 and 1.2 below the Member must arrange for WCA to view and approve such conditions prior to commencement of coverage cover under this Agreement;

1.1 conditions of trade, carriage / storage agreed by International convention and/or national, civic, commercial or common law that is applicable by compulsion or statute and/or

1.2 the Member's house bill of lading or air waybill or standard trading conditions provided such conditions and limitations of carriage or trade accept no greater liability or responsibility for the Member than those in 1.1 above.

There is no cover under this Agreement in respect of any liabilities costs or expenses incurred;

1.3 by reason of the provision by the Member or any agent or sub-contractor of the Member of an indemnity without the agreement in writing of the WCA

1.4 pursuant to any agreement by the Member or any agent or sub-contractor or agent to waive any right to exclude, restrict or limit any such liabilities, costs and expenses

1.5 pursuant to any contractual term which requires the Member to perform the services set out in the Agreement Confirmation, forming part of this Agreement, with greater than reasonable care and skill, or a level of care and skill greater than that required by operation of law

1.6 by reason of any failure by the Member to commence, or any delay in or abandonment of the provision of the services set out in the Agreement Confirmation, forming part of this Agreement.

**2. Road Transport - Sub-contractor's Conditions of Carriage**

Where the Member sub-contracts carriage of cargo by road, or sub-contracts carriage which includes carriage by road, the Member will, where possible, use sub-contractors that operate under a contract of carriage whose terms and conditions are no less wide than those of the Member, other than where such terms and conditions are imposed by law or do not materially affect the liability and amount of the claim for loss or damage to cargo being carried.

**3. Road Transport – Sub-contractors Coverage**

It is a condition precedent to the liability of WCA that the Member shall take all care to ensure that the actual carrier or sub-contractor in relation to carriage by road has adequate, valid and sufficient insurance cover in respect of its liability for loss or damage to the cargo being carried. However, this Agreement shall not be prejudiced by any unintentional error or omission of the Member's employees, or as a direct result of an isolated negligent act, provided any claim presented shall otherwise be recoverable under the Agreement terms and conditions, and provided that the Member can provide evidence to WCA that there are in place satisfactory procedures for checking insurance coverage of any carrier or subcontractor.

#### 4. Road Transport – High Risk Cargo

It is a condition precedent to the liability of WCA where the Member operates or utilises a vehicle, container or trailer and the cargo being carried is 'high risk' as defined under Clause 5 that: -

- (a) During the day, whilst parked for rest breaks, or for similar short stays, the vehicle/trailer/container
  - (i) is at a recognised and designated parking area for road hauliers, and
  - (ii) is securely locked with keys removed and all openings securely closed at all times, and
  - (iii) the driver remains within the immediate vicinity.
- (b) Whilst parked overnight or during the day other than for rest breaks or for similar short stays, the vehicle, trailer or container:
  - (i) is garaged in a locked building or parked in a fully enclosed location (which remains locked apart from when authorised vehicles are entering and exiting the location) under constant surveillance, or
  - (ii) is securely locked with all keys removed and all openings securely closed and is in a recognised and designated parking area for road hauliers and the driver remains in attendance at all times.

#### 5. High Risk Cargo

The following cargo shall be deemed high risk in accordance with clause 4. above and shall not be covered unless;

- i) the total of such high risks cargo is less than 5% of the annual traffic; and
  - ii) such high risk cargo is shipped in Full Container Loads (FCL) or Full Trailer Loads; and
  - iii) the Member specifically disclosed to WCA in writing and WCA may agree by endorsement to coverage, subject to 7 clear days written notice to the WCA:
- (a) Wines, Spirits and other Alcoholic Beverages;
  - (b) Cigarettes and other Tobacco based products;
  - (c) Furs and Leather and garments or items made from Fur or Leather;
  - (d) Televisions, CD players, DVD players, CDs, DVDs tapes and videos;
  - (e) Clocks, watches and parts;
  - (f) Computer micro-chips;
  - (g) Computers including but not limited to Laptops;
  - (h) Personal Computers and games consoles.

#### 6. Excluded Cargo

The Agreement excludes liability relating to the transportation of the following cargoes:-

- a) Bullion and Precious Metal Objects;
- b) Bank Notes, Coins, Cheques and Credit Cards;
- c) Bonds, Negotiable Documents, Securities and other financial instruments;
- d) Jewellery, Works of Art, Antiques or Precious Stones, except where part of Household/Personal Effects consignment and not to exceed 10% of total consignment value;
- e) Live Animals, Birds, Reptiles and Fish;
- f) Cellular or Mobile Telephones of any description.
- g) Military goods and / or goods for military purpose;

#### 7. Excluded Contract Terms

The Agreement excludes claims arising out of any contractual agreement, whether or not in writing, by the Member;

- a) to an agreed shipment or delivery date or time;
- b) to higher limits of liability or greater responsibility than that notified to and/or agreed by WCA;
- c) to an agreed or declared value.

#### 8. Member's Property

The Agreement excludes claims in respect of property and/or cargo owned, leased or licensed to/by the Member unless specifically agreed by WCA and endorsed on the Agreement.

#### 9. Indemnified Services

The Agreement excludes claims in respect of any Service not previously declared to WCA and agreed by them to be covered.

**10. Liability to Customs**

The Agreement excludes claims by Customs or similar Governmental or European Union organisations or bodies against the Member except where covered under the Errors and Omissions part C) of this Agreement.

**11. Storage of goods in the normal course of transit – Alarms/Security**

It is a condition precedent to the liability of WCA that any warehouse utilised shall be: -

- 11.1 operationally alarmed for fire and theft at all material times including but not limited to when the warehouse is unattended, the alarm to be linked to a third party surveillance system or to the police or fire service, as applicable, and to be maintained to manufacturer's specification and
- 11.2 locked and all openings securely closed when the warehouse is unattended.

**12. Warehouse Keeper's Liability where storage is subcontracted to an agent.**

Irrespective as to the coverage offered under Section G) of this Agreement, WCA agree that where cover under this Agreement is for legal liability in respect of storage outside of the ordinary course of transit and subcontracted by the Member to an agent, such liability for loss of or damage to cargo is covered under this Agreement subject to the following:

1. Conditions as outlined in Section G) herein but Special Conditions 1.1 to 1.5 not to apply.
2. Limit of liability USD250,000 any one incidence or occurrence subject always to the agreed cover deductible.
3. Such storage is only covered under this Agreement whilst in secure and locked premises, including a warehouse or building, suitable for the care and protection of the cargo (bearing in mind the type, value, and nature of the cargo).

**C) ERRORS AND OMISSIONS**

This Agreement will indemnify the Member in respect of its legal and/or contractual liability for a negligent act, error or omission, arising out of the Member's indemnified Services subject to its terms, conditions and limits and to the following terms and conditions and General Agreement Terms, Conditions Exclusions and sub-limits:

**1. General**

Liability for a negligent act, error or omission by the Member, its servants, agents whilst acting within the scope of their duty or authority carrying out the legitimate forwarding and ancillary services of the Member, arising out of the following;

- (a) preparation and/or issuance of documentation
- (b) clerical and/or documentary procedures
- (c) failure to follow and/or provide instructions
- (d) provision of advice or information
- (e) delay, misdelivery or wrongful delivery of cargo
- (f) declaration or description of cargo
- (g) risks referred to under clause 2.2.1 to 2.2.5 inclusive but subject to their terms and conditions.

**It is warranted that immediately following the error and omissions claim, preventative and practical measures are put in place and appropriate instructions issued to avoid reoccurrence.**

**2. Special Provisions**

Cover under Clause 1. above is subject to the specific terms and conditions, when applicable as set out below: -

**2.1 Trade or Conditions of Carriage**

Failure to contractually incorporate the Member's General Conditions of Trade and/or Conditions of Carriage is also covered provided that the Member's right to indemnity by WCA shall only apply if the Member establishes that;

- a) it has in operation procedures to contractually incorporate the above Conditions and
- b) in the case in question, the Conditions were not incorporated solely as a result of an isolated negligent act, error or omission of the Member, its servants or agents.

**2.2 Bills of Lading**

Liability resulting from deviation and/or incorrect information on a bill of lading/waybill or similar contract of carriage is covered, including but not limited to;

- a) pre- or post-dating of the bill of lading/waybill or similar contract of carriage;
- b) unlawful or unreasonable deviation from the contractual voyage;
- c) on deck stowage contrary to contract of carriage;
- d) incorrect information as regards;
  - i) port of loading;
  - ii) port of discharge;
  - iii) voyage route;
  - iv) carrying vessel;
  - v) description of cargo, weight, number and/or quality;
  - vi) received for shipment or shipped on board date.
- e) delivery of cargo without production of an original bill of lading or similar document, (duly endorsed as appropriate) or delivery to an unauthorised or unentitled person;

Liability where the Member is held legally liable for demurrage, storage, port, forwarding, disposal or other charges arising directly or indirectly out of the failure of the consignee or receiver to take delivery of the goods, such liability not to exceed USD15,000 per incident or occurrence and USD30,000 in the aggregate during the annual policy period

### **2.3 Customs Information**

Liability arising out of the provision of information or documentation to a Custom's Authority or similar governmental organisation, or body, or arising out of the provision of a bond or customs guarantee or the issuance of a Single Administration Document (SAD) or a Community Transit document (CT) or other bond or guarantee for use by the Member or in connection with a transport arranged by the Member, provided that WCA have been specifically informed of any such bond, guarantee or document in writing in advance. WCA Indemnity not to exceed USD25,000 any one event and in the aggregate during the annual policy period but limit in 2.6 to apply where appropriate.

### **2.4 Cargo Insurance**

This cover shall include as part of the insured services, to propose, arrange, place and obtain and acceptance of marine cargo insurance for cargoes that are handled by the Member and cover the indemnity of the Member against its legal liability within the conditions of this Agreement subject to the following:

- 1 - The proximate cause of loss is the negligent act occurring from the insured's failure to comply with the written instructions of their client
- 2 - The indemnity shall be limited to be no more than USD100,000 per shipment and/or aggregate.
- 3 - The cargo marine insurance are placed or proposed through the WCA Cargo Insurance Programme.
- 4 - The policy excludes absolutely any claims arising out of unlawful or fraudulent transactions and any liability whatsoever for failure to pay insurance premium.

### **2.5 Sub-contractors Coverage**

If the Member fails to comply with its obligations under part B) Clause 3, the Member shall be covered under this Agreement provided that the Member has complied with the provisions of part B) Clause 3.

### **2.6 Member's Services as Customs Broker/Agent and/or Clearing Agent and/or Handling Agent**

WCA liability shall not exceed USD500,000 per incident or occurrence from liability arising out of the Indemnified services, as declared and agreed by WCA, as Customs Broker/Agent and/or Clearing Agent and/or Handling Agent.

## **D) DEFENCE AGAINST CLAIMS**

### **1. Coverage**

- 1.1 WCA will handle the defence of any claim against the Member when made, including claims falling below deductible which would be recoverable under this Agreement, (but



for the deductible), and in so doing all costs relating to claims handling by WCA shall be for the account of WCA.

- 1.2 Whilst WCA will bear the costs as above, the claim under the deductible shall remain for the account of the Member.
- 1.3 Where during the handling of the defence of a claim by WCA, WCA conclude a claim should be settled or compromised but the Member does not agree with such a course, WCA may in their sole discretion cease to handle the defence of such claim and shall have no further liability for any defence costs.

## E) DEFINITIONS

**Container:** An ISO standard container, transportable tank or flat rack in conformance with ISO standards.

**Costs:** Costs shall mean fees, disbursements and expenses including but not limited to those relating to surveyors, adjusters, lawyers, experts and other professional advisers.

**Endorsement:** **An endorsement shall be issued to amend the Policy and shall be read together with the Policy as one contract.**

**Error and Omission:** This denotes an act/conduct or failure to act, as the case may be, that is unintentional.

**Geographical Limit:** This is the geographical scope relating to the Policy cover.

**Incident or Occurrence:** Any one incident or occurrence or a series of incidents or occurrences arising from one event.

**Insolvency:** Shall include the inability to pay debts as and when they fall due.

**Insured:** The Insured is the party identified in the Policy. The Insured does not include an associate, subsidiary, or other related company, corporation, association, individual, partnership, or agent unless stated in the Policy, or endorsed on the Policy (or as expressly stated otherwise in the Policy Terms Conditions and Exclusions).

**Limit:** The Policy limit shall be the maximum sum including any indemnity and costs that Insurers shall pay to the Insured per incident or occurrence, less any deductible that may apply.

**Locked:** Locked shall mean secured by means of a suitable deadlock or mortise lock or other similar locking mechanism offering the same level of protection as the aforementioned. **Loss Payee: A loss payee is not insured under this Policy. However upon receiving written notice Insurers agree that any claim may be paid to the loss payee and such payment shall be a full discharge of any obligations under any such claim.**

**Period:** This is the period shown on the Policy. The period shall run to and from Midnight local time on the dates stated.

**Policy:** The Policy shall comprise the Policy, Schedule, Extensions, Endorsements, General Policy Terms and Conditions, Exclusions, and Definition which shall all be read together as one Contract.

**Temporary Storage:** Temporary storage shall mean;

1. storage in secure and locked premises, including a warehouse or building, suitable for care and protection of the cargo (bearing in mind the type, value, and nature of the cargo) and
2. storage not in the ordinary course of transit and
3. storage not exceeding 72 consecutive hours.

**Transport Equipment:** Trailer or similar item used for transport of cargo or containers

## F) GENERAL TERMS, CONDITIONS AND EXCLUSIONS

### 1. Indemnity

The WCA will indemnify only the Member identified in this Agreement and will only make payment to the Member or loss payee. The Agreement is non-assignable. The Agreement shall only cover the Member and shall not cover, benefit or be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

### 2. Claims Occurrence

The WCA will indemnify the Member only in relation to a claim arising out of an incident occurring during the period of the Agreement.

**3. Disclosure: Misrepresentation**

- 3.1 The Member, its employees or agents shall disclose all material information to the WCA prior to inception of the Agreement.
- 3.2 The Member its employees or agents shall not make any material misrepresentation prior to inception of the Agreement.
- 3.3 Failure to disclose material information or any material misrepresentation, whether deliberate or innocent, shall entitle WCA to cancel the Agreement from inception.

**4. Continuing Duty of Disclosure**

The Member, its employees or agents shall be under a continuing duty throughout the period of the Agreement to disclose any change in material information or circumstance. Failure to comply with this continuing duty, whether deliberate or innocent, shall entitle the WCA to cancel the Agreement from inception.

**5. Service Fee**

The Service Fee is due to WCA in accordance with the Payment Terms stated in this Agreement. Failure to make payment as required will entitle WCA to cancel the Agreement from inception.

**6. Disputes and Governing Law**

This Agreement shall be construed according to and governed by Hong Kong law. Any dispute shall be submitted to the exclusive jurisdiction of the Hong Kong courts.

**7. Notification of Claims**

It is a condition precedent to the Member's right to be indemnified under this Policy provided that in the event of an incident or occurrence, the Member shall, as soon as possible but in any case no later than 30 days after becoming aware of an incident or occurrence likely to give rise to a claim, give notice of:

- 7.1 any claim, whether or not in writing, made or intimated against the Member for which the Member may claim indemnification under this Agreement;
- 7.2 any notification, whether or not in writing, holding the Member responsible for any incident, occurrence, event or other matter for which the Member may claim to be indemnified under the Agreement;
- 7.3 any legal claim, summons, application, or other legal process, document, submission or pleading relating to or pertaining to a claim against the Member;
- 7.4 any incident, occurrence or event that will probably result in matters referred to under clauses 7.1, 7.2 or 7.3 above,

in writing, **WCA LTD or W K Webster** @ [www.italuk.com/neon](http://www.italuk.com/neon) together with all known details including every letter, fax, e-mail, notice, writ, summons and process relating thereto on receipt.

The specific reporting procedures for seepage and pollution as described in F) 12.5.4. in Exclusions remain paramount.

**8. Claims Procedures**

It is a condition precedent to indemnification under this Agreement that in the event of a claim being made, intimated or notified in accordance with Clause 7 above that:-

- 8.1 the Member must take all reasonable steps to avoid, mitigate, or minimise liability including but not limited to giving proper notice in due time to any other party and ensuring that any time limit or other necessary legal step is protected;
- 8.2 the Member must not admit liability (expressly or impliedly), or agree to compromise or settle any claim against the Member unless expressly permitted by WCA;
- 8.3 the Member must promptly, at the request of WCA, take or procure such steps and actions, and permit to be done such steps and actions as may be necessary or reasonably required by WCA for the purpose of investigating and/or defending any claim or legal process against the Member and/or enforcing any rights and remedies or of obtaining relief or indemnity from any other party to which WCA shall or become entitled

or subrogated upon paying any claim regardless of whether such action shall be or become necessary or required before indemnification by WCA.

- 8.4 WCA note that it is not unusual for freight forwarders doing business in China not to register as an NVOCC or obtain approval of their House Bills by the Chinese Ministry of Commerce. Notwithstanding anything contained herein to the contrary, WCA agree that the afformentioned will not prejudice the settlement of any claim recoverable hereunder

## 9. Investigation, Defence and Mitigation Costs

- 9.1 Subject to clause 9.3 below, WCA will pay reasonable costs incurred with their written consent relating to the investigation, defence or mitigation of any claim exceeding the deductible or costs of enforcing or obtaining relief or indemnity in relation to any claim exceeding the deductible. Such costs shall be payable by WCA without application of any deductible.
- 9.2 Subject to clause 9.3 below WCA will pay reasonable costs incurred with their written consent relating to a debt owed to the Member, provided that the monies due to the Member are being withheld by a third party solely because of a claim for which the WCA may be liable under the Agreement.
- 9.3 WCA shall not however be liable to pay to the Member costs if they exceed the Agreement Limit, Sub-Limit or Aggregate Limit, or if costs combined with any indemnity payable under the Agreement exceed any applicable limit.
- 9.4 Further to clauses 9.1 and 9.2 above, WCA shall not be under any obligation to defend a claim made against the Member (or expend costs in relation thereto), which is less than the applicable deductible, nor shall they be obliged to pay costs referable to such a claim even if such costs on their own or when added to the claim exceed the applicable deductible.

## 10. Admission of Liability

By giving consent to the incurring of costs relating to the investigation, defence or mitigation of any claim or by requiring the Member to take or procure any actions or step or by taking any other action or step, WCA shall not be considered as having admitted liability under this Agreement.

## 11. Right to Settle

Where in the sole opinion of WCA a claim covered under the Agreement may be settled or compromised, WCA shall be entitled to demand that the Member shall settle and/or compromise the claim. If the Member shall unreasonably refuse, then WCA may discharge their obligations under the Agreement either by payment to the Member of any sum representing the amount at which the claim could be settled or compromised (in the opinion of WCA) less the applicable deductible, or if the claim may be settled or compromised under such deductible, then by giving written notice to the Member that WCA consider their liability to have been discharged and by giving such notice WCA shall be discharged in respect of the claim. Failure to do so will entitle WCA to reject the claim.

## 12. Exclusions

Claims caused by inexperienced staff who have not received adequate training and supervision.

Also WCA shall not under any circumstance whatsoever be liable under the Agreement for a claim against the Member (whether made in contract, tort or otherwise howsoever) arising out of, caused or contributed by, or connected with (directly or indirectly):-

- 12.1 The use, management, ownership or rental of a motor vehicle, trailer, chassis or similar motorised conveyance and/or an incident relating thereto which is covered by any law, statute, rule, regulation or directive (including but not limited to licensing) of any government (local or national) or international body.
- 12.2 A contract of employment or for supply of labour, director's service contract (or similar), statutory legislation relating to employer's liability or workman's compensation, disability or unemployment benefit, or employment practice.
- 12.3 Ionising radiation or contamination by radioactivity from nuclear fuel or nuclear waste or from the combustion of nuclear fuel or any derivative or similar substance.
- 12.4 Radioactive, toxic, explosive, or other hazardous properties of any explosive or nuclear assembly or nuclear component or any derivative or similar substance.

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- 12.5 Seepage and/or pollution including but not limited to discharge, dispersal, release or escape of smoke, vapours, soot, fumes, alkalis, toxic substance or derivative including any oil refuse or oil mixed waste or other irritant, contaminant or pollutant into or upon land, the atmosphere, property, persons, animals or other living creatures, watercourse or body of fresh or salt water unless;
- 12.5.1 the seepage and/or pollution is sudden and unexpected and does not result from any failure to comply with any statute, rule, regulation or directive of any government (local or national) or international body;
- 12.5.2 the seepage and/or pollution occurs during the period of this Agreement, and
- 12.5.3 the seepage and/or pollution is notified to WCA within 7 clear days of the occurrence whether continuous or not, and
- 12.5.4 any claim by the Member is made within 3 calendar months of the expiry of the Agreement.
- But in any event WCA liability shall not exceed USD500,000 per incident or occurrence
- 12.6 War (whether war be declared or not), hostilities, military or usurped power, acts of a foreign enemy or power, civil war, revolution, rebellion, insurrection or terrorist act (or act by any person acting from political or religious motive), mines, torpedoes, bombs, weapons of explosion or of war whether derelict or not, unless such claims arise whilst at sea. However where there is detonation of a nuclear device and/or where there is outbreak of war involving the following: the United States of America, former CIS States, People's Republic of China and Member states of the European Union, cover shall be excluded absolutely.
- 12.7 Civil strife, riot, civil commotion, strike, lockout, labour disturbance or stoppage, unless these arise during loading or unloading operations to or from a vessel or within the designated boundaries of a Port.
- 12.8 Piracy, capture, seizure, arrest, restraint or detainment or the consequences arising there from.
- 12.9 Confiscation, seizure, arrest, expropriation, nationalisation, requisition, detainment, destruction or damage under the order of any government, public or local authority or Customs authority.
- 12.10 Libel, slander or malicious statement.
- 12.11 Fraudulent, criminal or illegal activity by the Member, its employees or agents.
- 12.12 Deliberate, intentional, reckless or willful act or omission by the Member, its employees or agents.
- 12.13 Infringement of personal and/or human rights, and civil liberties and/or wrongful imprisonment.
- 12.14 Sexual or racial discrimination and/or any other discriminatory act.
- 12.15 Insolvency (whether or not officially declared) and/or financial default of the Member. "Insolvency" shall include the inability to pay debts as and when they fall due.
- 12.16 Exercise of a lien and/or possessory claim (whether or not lawful) over property of the Member (including but not limited to property bailed to the Member, under lease or hire/conditional purchase) by a party with whom the Member has contracted, or other third party.
- 12.17 Subject to clause 9.2 above, failure to obtain payment, collect monies, or to pay debts by the Member or a party with whom the Member has contracted or other third party.
- 12.18 Punitive, exemplary, aggravated, multiple or compound damages.
- 12.19 Death, bodily or mental injury or illness including but not limited to death, injury or illness relating to inhalation, ingestion or absorption of asbestos, tobacco or tobacco based products or coal dust and/or relating to any form of repetitive strain or, stress (physical or mental).
- 12.20 Subject always to the exclusions under clause 12.19 above, death bodily or mental injury or illness relating to other matters except where covered under a Third Party Liability Extension.
- 12.21 Any property including but not limited to containers and transport equipment whilst leased, rented or licensed out by the Member to a third party unless specifically agreed to be covered in writing by WCA.
- 12.22 Third Party liability arising from the ownership, rental or license of any office building or premises.
- 12.23 Chartering of an aircraft or vessel except where covered under a Charterers Liability Extension.
- 12.24 Any service/operation or activity of the Member not notified to and agreed by WCA as covered prior to commencement of this Agreement or any service/operation or activity subsequently undertaken during the currency of this Agreement and not notified to and agreed by the WCA as covered.

12.25 Any service or activity of the Member or a claim arising there from, which occurs or takes place outside the geographical limits or specified location under the Agreement.

12.26 Any fine or penalty for breach of any law, statute, rule, regulation or directive including but not limited to a fine or penalty imposed by a Customs Authority or Governmental authority (local or national), except where covered under the Errors and Omissions Section C) herein.

### **13. Cancellation and Non-Renewal Notice**

This Agreement may be cancelled by the WCA or Member giving 60 clear days written notice in writing to the other, but where cover includes War and Strikes risk the period of notice shall be 7 clear days. WCA shall be under no obligation to renew any Agreement nor under any obligation to give notice of non-renewal, nor be obliged to give any reason for non-renewal.

### **14. Payment Terms**

The Member undertakes that Service Fee will be paid in full to WCA within 30 days of the inception of this Agreement. If the Service Fee due under this Agreement has not been so paid to WCA by the forty-fifth day from the inception of this Agreement WCA shall have the right to cancel this Agreement by notifying the Member in writing.

### **15. Double Coverage**

If the Member's claim is covered under another Agreement or insurance or the claim would have been covered under another Agreement or insurance but for a breach of a warranty or condition or due to misrepresentation, non disclosure, non-payment of fee/premium, fraud, or breach of the obligation as to good faith then the claim shall not be payable under this Agreement. This exclusion shall apply even if there is a different indemnifiable interest.

### **16. Words & Headings**

All words in the singular shall include, where the context permits, the plural and vice versa. All words importing the masculine gender shall include the feminine gender. Headings to clauses are for identification purposes only and shall not be an aid to construction.

### **17. Express Rights**

In addition to any express right of WCA to avoid a claim and/or cancel or avoid the Agreement, breach of any term stated to be a warranty, condition or condition precedent shall entitle WCA to avoid cover.

### **18. Errors and Omissions Claims**

WCA liability under this Agreement in respect of claims insured under Errors and Omission shall cease;

- a) 12 calendar months after the expiry of the Agreement unless WCA have been previously notified as stipulated in Clause 7 (30 days). All claims will be considered closed after 24 months after expiry of the Agreement unless expressly agreed by WCA.

Warranted WCA are kept fully apprised of all developments by the member throughout the course of the claim.

or

- b) in accordance with the terms stated in the Member's Conditions of Trade and/or Bill of Lading and/or Air Waybill, such Conditions of Trade to be seen and agreed by WCA in accordance with the Conditions contained in this Agreement.  
whichever is the greater period.

### **19. Sanction Limitation and Exclusion Clause**

WCA shall NOT be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose WCA to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

### **20. Subrogation**

The principles of subrogation shall at all times apply to this Agreement and the Member agrees to take all reasonable steps (including but not limited to the provision of all relevant information and documentation at WCA's request but at no cost to them) to enable WCA to pursue a subrogated claim.

## **21. Good Faith**

- 21.1 The Member shall act in good faith at all times and shall be under a continuing obligation to act in good faith before, during and after the Agreement. Failure to comply with this obligation will entitle WCA to cancel the Agreement from inception.
- 21.2 If the Member shall submit any claim to WCA knowing the claim to be false or fraudulent, or shall fail to act in good faith in any respect whatsoever when submitting a claim, this Agreement may be cancelled from inception.

## **22. Alternative Dispute Resolution**

- 22.1 In the event of a dispute between the parties under the Agreement, prior to commencement of legal proceedings, both parties agree that they will endeavor to resolve the dispute by submitting the matter to Alternative Dispute Resolution (ADR), including but not limited to mediation.
- 22.2 If ADR is agreed, then both parties will use best endeavors to expedite resolution as soon as relevant information and documentation has been obtained.
- 22.3 The parties will endeavor in good faith to complete the ADR procedures within three calendar months from the date of agreement to ADR.
- 22.4 Where one party no longer wishes to resolve the matter by ADR, it shall give written notification to the other.
- 22.5 In order to assist the resolution of any dispute, WCA agree that ADR procedures, including but not limited to mediation, may take place outside Hong Kong. However, by agreeing to such procedures, both parties accept and agree that this cannot be considered as a waiver of the provisions contained in Clause F.6 above.

## **23. Radioactive Contamination, Chemical, Biological, Biochemical and Electromagnetic Weapons Exclusion**

This Policy is subject to the Institute Radioactive Contamination, Chemical, Biological, Biochemical and Electromagnetic Weapons Exclusion Clause CL370, dated 10 November 2003.

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from:

23.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel

23.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof

23.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

23.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes

23.5 any chemical, biological, bio-chemical, or electromagnetic weapon

### **23a Institute Cyber Attack Exclusion Clause E CL380 10.11.03**

1.1 Subject only to clause 1.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

1.2 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife, arising therefrom, or any hostile act by or against a belligerent power, or terrorism, or any person acting from a political motive, clause 1.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system, computer software programme or any other electronic system.

#### **24. Termination of Transit Clause (Terrorism)**

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith:

- 24.1 Notwithstanding any provision to the contrary contained in this Policy or the clauses referred to therein, it is agreed that in so far as this Policy covers loss or damage to the Subject Matter Insured caused by any terrorist or any person acting from a political motive, such cover is conditional upon the Subject Matter Insured being in the ordinary course of transit and, in any event, shall terminate:
- Either
- 24.1.1 as per the Transit clauses contained in the Policy, or
  - 24.1.2 on delivery to the Consignee's or other final warehouse or place of storage at the destination named herein,
  - 24.1.3 on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the Insured elect to use either for storage other than in the ordinary course of transit for allocation or distribution, or
  - 24.1.4 in respect of Marine transits, on the expiry of 60 days after the completion of discharge overseaside of the goods hereby insured from the overseas vessel at the final port of discharge;
  - 24.1.5 in respect of air transits, on the expiry of 30 days after unloading the Subject Matter Insured from the aircraft at the final place of discharge;
- whichever shall first occur;
- 24.2 if this Policy or the clauses referred to therein specifically provide cover for Inland or other further transits following on from storage, or termination as provided for above, cover will re-attach, and continues during the ordinary course of transit terminating again in accordance with clause 24.1.**

### **G) WAREHOUSE KEEPERS**

#### **1. Coverage**

Subject to the Agreement limits and Deductibles, this Agreement extends to cover the Member in respect of its legal liability as principal and/or agent, as declared by the Member and agreed by WCA, for;

- a) loss or damage to cargo whilst in the care, custody or control of the Member or a party who it has contracted to provide storage or warehousing;
- b) legally recoverable consequential loss and/or business interruption arising from loss or damage to cargo under clause 1 a) above;
- c) duty payable arising from loss or damage to cargo under clause 1 a) above, other than duty payable under bond or guarantee. WCA's liability in respect of a claim under clause 1c) shall be limited to USD150,000 per incident or occurrence and in the aggregate any one Agreement year.

#### **1.1 Special Conditions – Alarms/security**

It is a condition precedent to the liability of WCA that any warehouse utilised shall be:-

- 1.1.1 operationally alarmed for fire and theft at all material times including but not limited to when the warehouse is unattended, the alarm to be linked to a third party surveillance system or to the police or fire service, as applicable, and to be maintained to manufacturer's specification and
- 1.1.2 locked and all openings securely closed when the warehouse is unattended.

#### **1.2 Special Conditions – Locations**

WCA's liability to indemnify the Member shall be only in respect of cargo stored within a warehouse in a location specified herein including cargo stored within a warehouse compound, or on a vehicle or trailer in a warehouse or within the warehouse

compound. Cover also includes loading and unloading from the carrying vehicle or trailer in a warehouse or within the warehouse compound.

### 1.3 Named Locations

It is a condition of this Agreement that prior to attachment of cover hereunder a Member must advise WCA of the named warehouse locations.

### 1.4 Conditions of Trade

It is a condition of this Agreement that the Member must comply with the terms and conditions set out in Section B clauses 1.1 to 1.6 herein.

### 1.5 Variation of Conditions of Trade

Where after attachment of the Agreement the Member varies or amends its General Conditions of Trade and as a result WCA are exposed to liability under the Agreement, which would not have been incurred but for such variation or amendment, the liability of WCA shall be limited to liability under the General Conditions of Trade prior to variation or amendment.

### 1.6 Stock-taking Losses

Stock-taking losses are not covered under this Agreement.

## H) THIRD PARTY LIABILITY EXTENSION – to be agreed by WCA on application via the website.

### 1. Coverage

Subject to the terms and conditions of this Agreement, and where specifically requested in writing or via the website, WCA agree to extend this Agreement to cover losses arising from legal liability incurred during the period of this Agreement, on the part of the Member or their servants or agents, resulting in:-

- 1.1 Physical loss of, or damage to, the property of a third party occurring during the period of the Agreement;
- 1.2 Death of, or bodily injury to, a third party occurring during the period of this Agreement.

### 2. Special Exclusions

No cover shall be available under this Optional Extension for: -

- 2.1 Legal liability for loss of or damage to any property owned by or leased to or licensed by the Member.
- 2.2 Legal liability for loss of or damage to any property leased to or given to a third party by the Member.
- 2.3 Legal liability in relation to death of or bodily injury to the Member's employee, subcontractor or agent, who is acting in the course of employment at the time of accident.
- 2.4 Legal liability for damage to Cargo.

### 3. Limits

WCA agree to provide cover hereunder up to but not exceeding the limit of USD1,000,000 any one claim or as may be agreed on application.

### 4. Deductible

This Agreement is subject to a deductible of USD5,000 any one claim or as may be agreed on application.

### 5. Service Fee

Service Fee, limit and deductible to be agreed by WCA on application via the website.

## I) CONTAINER & EQUIPMENT EXTENSION - to be agreed by WCA on application via the website.

### 1. Coverage

Subject to the terms and conditions of this Agreement, and where specifically requested in writing or via the website, WCA agree to extend this Agreement, subject to the following terms and conditions and the General Agreement Terms and Conditions and Exclusions, to cover:-

- 1.1 The risk of physical loss or damage, including total and/or constructive total loss to any equipment or container owned, operated, leased to, or hired by the Member and declared to WCA and as per the scope of cover stated herein.



- 1.2 Contributions in general average, salvage and/or salvage charges in respect of loss or damage under Clause 1.1 above.
- 1.3 Claims under Clause 1.2 shall be payable without applicable deductible.

## 2. Special Conditions and Exclusions

Claims arising out of the following are excluded;

- 2.1 wear, tear and gradual deterioration;
- 2.2 mysterious disappearance, unexplained loss or loss only discovered upon taking an inventory;
- 2.3 mechanical or electrical derangement, malfunction or breakdown;
- 2.4 detention, confiscation, seizure, expropriation, requisition or removal by an authority including but not limited to a governmental organisation or department;
- 2.5 nationalisation;
- 2.6 defect in design or manufacture;
- 2.7 failure to carry out proper maintenance or repair;
- 2.8 insolvency or financial default.

## 3. Basis of Valuation

- 3.1 WCA's liability in respect of any one item shall not exceed the limit stated under this extension.
- 3.2 Notwithstanding clause 3.1 above, WCA's liability shall not in any event exceed the basis of valuation agreed under this extension or if no such valuation is stated then;
  - (a) the depreciation value of any item, or
  - (b) the market value of any item, or
  - (c) in the event of an item being subject to a lease/rental agreement, the value in that agreement;whichever shall be the lower of (a), (b) or (c) above.

## 4. Maintenance:

It is a condition precedent to liability of WCA that all items covered hereunder shall be maintained and/or repaired according to internationally accepted standards.

It is a condition precedent to liability of WCA that the Member shall maintain written records in relation to transport, storage, inspection, repair and/or maintenance carried out on any item which is covered and shall make such records available to WCA.

## 5. Contingent Cargo Liability:

### 5.1 Coverage:-

This Agreement will indemnify the Member in respect of liability for loss or damage to cargo whilst in a container provided that:-

- (a) the cargo is in a container operated by the Member and
- (b) the container is covered under this Agreement and
- (c) the loss or damage to cargo has occurred either prior to the commencement of contractual transit or subsequent to completion of contractual transit.

5.2 Cargo in a container shall include cargo stowed on a flat rack.

5.3. Excluding Claims for loss or damage occurring during period of contractual transit.

## 6. Service Fee:

Service Fee, deductible and values to be agreed by WCA on application via the website.